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Human rights situation that require the Council's attention

Report of the International Commission of Inquiry on Libya*** **

Summary

In emergency session, the Human Rights Council on 25 February 2011 established the International Commission of Inquiry on Libya and gave it the mandate “to investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes perpetrated and, where possible, to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable”.

The Commission conducted its investigations applying the international legal regimes dictated by the situation. It concluded that international crimes, specifically crimes against humanity and war crimes, were committed by Qadhafi forces in Libya. Acts of murder, enforced disappearance, and torture were perpetrated within the context of a widespread or systematic attack against a civilian population. The Commission found additional violations including unlawful killing, individual acts of torture and ill-treatment, attacks on civilians, and rape.

The Commission further concluded that the *thuwar* (anti-Qadhafi forces) committed serious violations, including war crimes and breaches of international human rights law, the latter continuing at the time of the present report. The Commission found these violations to include unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate attacks, and pillage. It found in particular that the *thuwar* are targeting the Tawergha and other communities.

The Commission concluded that North Atlantic Treaty Organization (NATO) conducted a highly precise campaign with a demonstrable determination to avoid civilian

* Late submission.

** The annexes are reproduced as received, in the languages of the submission only.

*** Pursuant to General Assembly resolution 66/1, the credentials of the National Transitional Council were accepted and a change was made in the name of the country, which was previously known as the “Libyan Arab Jamahiriya”.

casualties. On limited occasions, the Commission confirmed civilian casualties and found targets that showed no evidence of military utility. The Commission was unable to draw conclusions in such instances on the basis of the information provided by NATO and recommends further investigations.

The interim Government faces many challenges in overcoming a legacy of more than 40 years of serious human rights violations and deterioration of the legislative framework, judicial and national institutions. It has nevertheless expressed a commitment to human rights and has taken positive steps to establish mechanisms for accountability. The government is gradually restoring the judiciary by reopening courts and recalling judges, and there has been some progress in the transfer of detainees to central government control.

The Commission is nevertheless concerned by the failure to hold accountable *thumar* committing serious violations. Libyan authorities can break with the Qadhafi legacy by enforcing the law equally, investigating all abuses - irrespective of the perpetrator - and ensuring that amnesty processes comport with Libya's obligations under international law.

To give effect to its commitment to improve the human rights situation in Libya, the interim Government will need considerable support from the United Nations and the international community.

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I. Introduction

1. On 25 February 2011, the United Nations Human Rights Council adopted resolution S-15/1 entitled “Situation of Human Rights in the Libyan Arab Jamahiriya” which *inter alia*, decided to dispatch an independent, international Commission of Inquiry.
2. On 15 March 2011, the President of the Human Rights Council established the International Commission of Inquiry and appointed its three members, Ms. Asma Khader (Jordan), Mr. Philippe Kirsch (Canada), and Mr. M. Cherif Bassiouni (Egypt). The President also designated Mr. Bassiouni as Chairperson, a role taken over by Mr. Kirsch in October 2011. The Office of the United Nations High Commissioner for Human Rights (OHCHR) supported the Commission with a Secretariat.
3. Resolution S-15/1 requested the Commission “to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, establish the facts and circumstances of such violations and of the crimes perpetrated and where possible, to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable.” Given the Security Council’s referral of events in Libya to the International Criminal Court, the Commission also considered events in light of international criminal law.
4. On 15 June 2011 the Commission submitted a report to the Human Rights Council setting out its findings. The Council extended the mandate of the Commission in light of the extensive and on-going allegations of abuses. It requested the Commission to provide a second report at the Council’s nineteenth session in March, 2012.
5. The Commission previously noted that the legal regimes applicable during each phase of the conflict differed. International Humanitarian Law and International Human Rights Law applied throughout Phase II (armed conflict). With the end of armed conflict (Phase III), international human rights law became predominant.
6. As with its first report, the Commission took a cautious approach in assessing the information gathered. It relied where possible on its own observations and first-hand accounts. The Commission bore in mind that it was not seeking evidence of a standard to support a criminal conviction, but an assessment based on a “balance of probabilities” to determine whether a violation had occurred.
7. The Commission faced a number of significant challenges (see Annex I, sect. I). Security and administrative difficulties prevented a return to the field until October 2011 and no substantive investigations were possible before December 2011. There were also logistical difficulties in accessing places and individuals.
8. Notwithstanding these constraints, the Commission has gathered substantial evidence. This official report is strictly limited in length and allows only for a general summary of the findings in relation to some of the most serious allegations investigated. Detailed information, including all significant evidence, is contained in the Annexes.
9. The Commission is grateful to the new Libyan Government, other states, a number of United Nations agencies, NATO, and other organizations who have provided assistance to the Commission. The Commission is especially appreciative of the victims and witnesses of violations who have shared their information

II. Background

10. It is not possible to understand the current conditions in Libya without understanding the damage caused to the fabric of the society by decades of corruption, serious human rights violations and sustained repression of any opposition. Those factors are described in more detail in Annex I.

11. This report has focussed on alleged violations committed by all parties. Given the shift in power, a significant amount of this report focuses on abuses by those who rose up against the Qadhafi government. While major abuses are still occurring, the difference between the past and the present is that those responsible for abuses now are not as part of a system of brutality sanctioned by the central government. The Commission is cognizant of the challenges facing the new Libyan leadership in rebuilding a country left by the Qadhafi government devoid of independent institutions, a civil society, political parties, and a judiciary able to provide justice and redress.

12. Few officials spoken to by the Commission have demonstrated a real understanding of basic legal and human rights standards. Most existing prisons do not meet basic standards. Prison guards and police exhibited little concept of prisoners' rights. Judges, prosecutors, the judicial police and others involved in the administration of justice and detention centres require training in human rights standards. Existing Libyan laws will need to be repealed or amended. The judicial system is not functioning effectively and suffers from the legacy of being used as a tool of repression. The vast majority of detainees are still held outside the legal framework, despite efforts to centralise detentions.

13. Some senior Government officials have expressed commitments to human rights. They have failed, however, to publicly condemn violations taking place since the fall of the Qadhafi government. In meetings with the Commission, government officials emphasized the precariousness of the security situation, the weakness of the national police and judicial police force, and the inability of the central authorities to enforce rule of law. The Commission acknowledges these difficulties, and welcomes the Government's plans to disarm militias, and integrate fighters into the National Army or police force. A law on transitional justice and a law on amnesty have recently been adopted (See Annex I, sect. V). Delays in the administration of justice, however, increase risks of individual victims or their family members taking the law into their own hands.

14. The Commission gathered information on military forces and structures of the Qadhafi Government and the *thuwar* (See Annex I, sect. II) to obtain a better understanding of the conflict and to be able to identify specific units involved in violations. In many instances, the Commission has been able to assign responsibility to specific individuals. The Annex to this report contains details of these forces. In most cases, the Commission has withheld the names of individuals believed to hold responsibility for violations. This is partly to prevent reprisals and partly to avoid prejudicing future fair trials. The Commission will, however, provide a list of such individuals to the High Commissioner for Human Rights.

III. The Commission's findings

A. Excessive use of force¹

1. Introduction

15. In its first report, the Commission concluded that Qadhafi forces used excessive force against demonstrators in February 2011. The Commission subsequently conducted over 60 interviews looking at this issue.

2. Qadhafi forces

16. The Commission interviewed medical personnel on duty during the protests. Testimony, medical records, and photographs received show predominantly head and chest wounds, in some cases consistent with the use of high-calibre weapons. It also received a videotape of a purported senior regime figure giving instructions to "crush" demonstrators in Benghazi and received a first-hand account of orders from Colonel Qadhafi to suppress demonstrations "with all means necessary". While former Qadhafi officials claimed the initial approach was not to fire until fired upon, evidence collected does not support this.

17. Witnesses detailed how, in Benghazi, protesters were shot near the Juliana Bridge. On 18 February 2011, after rocks were thrown as the funeral procession passed a military base, soldiers fired shots, killing several people. Witnesses reported later finding nine burnt bodies inside the base with their hands bound and with gunshots to the head.

18. The Commission determined that Qadhafi forces fired on protesters in Misrata, leading to deaths and injuries. A senior military figure indicated that the 32nd brigade passed instructions to ground commanders to shoot civilians.

19. The Commission received testimony and medical records relating to protesters killed in Tripoli. Doctors informed the Commission that between 20-21 February 2011 over 200 bodies were brought into morgues. Protesters were denied access to medical care while others did not seek medical treatment due to a well-founded fear of being detained. Further, the Commission received reports of protesters being shot outside mosques after Friday prayers throughout February and March 2011. Qadhafi forces reportedly seized ambulances to use for security patrols and for the arrest of protesters.

20. The Commission found local authorities exercised initial restraint when engaging protesters in the central square in Al Zawiyah. The Commission determined a violent response began after the 32nd Brigade arrived on 23 February 2011 and shot at unarmed protesters, killing seven, and prompting an escalation of violence on both sides.

21. Following the eruption of protests in Zintan, Qadhafi forces set up checkpoints encircling the town, cutting off supplies of fuel and food. The Commission received reports that Qadhafi forces shot at and beat protesters in the central square. The Commission was further informed that Qadhafi forces removed the injured from hospitals and detained men at the checkpoints.

3. Conclusion

22. The Commission found that Qadhafi forces engaged in excessive use of force against demonstrators in the early days of the protests, leading to significant deaths and injuries. The nature of the injuries indicates an intention to kill; the level of violence

¹ See Annex I, chap. III, sect. A for a detailed analysis.

suggests a central policy of violent repression. These actions breach international human rights law as an arbitrary deprivation of life.

B. Unlawful killings²

1. Introduction

23. In its second phase, the Commission concentrated on the larger scale executions by Qadhafi forces, but is aware that many individual killings also occurred.

2. Qadhafi forces

24. On 6 June 2011, 18 detainees died in Al Khums from suffocation due to being held by Qadhafi forces in poorly ventilated metal containers in rising temperatures. Seventeen died in side the containers while 1 died later in hospital. The Commission was able to corroborate much of the testimony of survivors through physical evidence at the site. The Commission also interviewed one of the guards present at the time.

25. A number of detainees were tortured at a boy scouts camp used by Qadhafi forces as a military base and detention centre in Al Qalaa. Following the retreat of Qadhafi forces in July 2011, footage reportedly taken from the telephone of a soldier showed bodies in a mass grave behind the base. Witnesses, together with the local prosecutor, uncovered the bodies of 34 men and boys, blindfolded and with their hands tied behind their backs. There were three other bodies lying nearby. The Commission interviewed witnesses who participated in the exhumation and identification of bodies as well as former detainees at the Boy Scouts' base who had been released prior to the executions. The Commission also visited the site. Rifle cartridge cases remained at the scene along with some skeletal remains.

26. An informal detention centre was established in a warehouse adjacent to the 32nd Brigade's base in Yarmouk, Tripoli. According to testimony received, torture and ill-treatment of detainees was routine there. On 23 August 2011, as Tripoli fell, guards threw grenades into the warehouse and then began to fire through the door, killing dozens. As the prisoners were so tightly packed, however, some survived and managed to escape. Two days later, the guards burned the bodies of those killed. Of the 157 detainees, only 51 survivors were confirmed. The Commission interviewed survivors, as well as two of the guards who admitted direct or indirect involvement. The testimony is broadly consistent and corroborative. The Commission's forensic pathologist identified skeletal remains inside the warehouse. Other forensic evidence remaining at the site is considerable and supports the testimony closely. Six detainees, including three medical doctors, were shot a day earlier in a second warehouse, a few hundred metres away. Three of the six died.

27. Gargur, in Tripoli, was the site of another unofficial detention centre. Locals knew the building as the former "Green Security Building". Witnesses and survivors told the Commission that on 23 August 2011 guards opened fire on the detainees. Twenty-one people were shot and killed.

28. Further evidence of executions carried out by Qadhafi forces was found in Bab Al Aziziyah. On 23 August 2011, a witness described how he helped gather 15 bodies, all men in civilian clothes and all handcuffed. The Commission interviewed two witnesses who reportedly saw the killing of three medical personnel, taken from an ambulance and shot.

² See Annex I, chap. III, sect. B for a detailed analysis.

The Commission was able to corroborate the testimony with photographs showing decomposing bodies.

29. The Commission found further mass executions had occurred in Bani Walid, as well as significant numbers of individual killings elsewhere.

3. *Thuwar*

30. In its first report, the Commission found that a number of Chadian nationals were executed by groups of *thuwar* in Benghazi in late February 2011. The Commission confirmed further similar killings during Phase II of the conflict. In February 2011 in Al Zawiyah, eyewitnesses told the Commission how two captured Qadhafi soldiers were killed by a mob. One was beaten to death, while the other was hanged from a bridge. Individual cases of killings of members of communities perceived by the *thuwar* to be Qadhafi loyalists. (see Annex I, sect. IV.)

31. The Commission received reports of executions by *thuwar*. Over a dozen Qadhafi soldiers were reportedly shot in the back of the head by *thuwar* around 22-23 February 2011 in a village between Al Bayda and Darnah. This is corroborated by mobile phone footage. Scores of Qadhafi soldiers and alleged loyalists (estimates ranging from 65 to 78) were executed in October 2011 at the Mahari Hotel in Sirte by *thuwar*. The victims had their hands bound behind their backs and were shot. Physical evidence and video footage corroborated witness testimony of the killings. Some of the dead were captured fighters, while others were believed to have been those previously receiving treatment at the Ibn Sina Hospital. Still others were civilians reportedly arrested at checkpoints established by *thuwar*. The Commission also documented 12 cases of men who died in custody in detention facilities controlled by *thuwar*. The cases involve either agents of Qadhafi's security apparatus or Tawerghans who are a community targeted by the Misrata *thuwar* (see Annex I, chap. III, sect. E). Bodies were abandoned in hospitals with visible signs of torture. The Commission's forensic pathologist concluded that the injuries were consistent with torture.

4. The deaths of Muammar and Mutassim Qadhafi

32. Both Muammar and Mutassim Qadhafi were captured separately on 20 October 2011 outside Sirte by Misrata *thuwar*. Though wounded, both were alive on capture and subsequently died in *thuwar* custody.

33. In relation to the death of Muammar Qadhafi, the Commission was not provided access to the autopsy report despite numerous requests to the authorities. Photos of Muammar Qadhafi's body were provided to the Commission and reviewed by the Commission's forensic pathologist but it was not possible to conclusively determine the cause of death from the photographs provided. While the Commission has eyewitness testimony of those with Muammar Qadhafi at the time of capture, it has not been able to obtain a first-hand account of the circumstances of his death and has received inconsistent accounts from secondary sources. Consequently, the Commission has been unable to confirm the death of Muammar Qadhafi as an unlawful killing and considers that further investigation is required.

34. In relation to the death of Mutassim Qadhafi, the Commission has reviewed video footage showing him alive and in the custody of *thuwar* post-capture, but has been unable to obtain any account of the circumstances of his death. Consequently, the Commission has been unable to confirm the death of Mutassim Qadhafi as an unlawful killing and considers that further investigation is required.

5. Conclusions

35. The Commission finds that the Qadhafi forces executed and tortured to death large numbers of prisoners in detention centres. Executions tended to occur immediately prior to retreats. During the armed conflict, this amounts to a war crime. Insofar as many of the detainees were part of the civilian population rather than captured fighters, the systematic and widespread executions constitute a crime against humanity.

36. *Thuwar* have executed and tortured to death perceived Qadhafi loyalists and suspected mercenaries. These were either hors de combat fighters or members of civilian population. During the armed conflict, this amounts to the war crime of murder. Once the conflict ended, it constituted an arbitrary deprivation of life.

37. The Commission is also deeply concerned that no independent investigations or prosecutions appear to have been instigated into killings committed by *thuwar*.

C. Arbitrary detentions and enforced disappearances³

1. Introduction

38. In its first Report, the Commission concluded that Qadhafi forces arbitrarily detained a significant number of persons and subjected others to enforced disappearance, while it received very little information on violations in respect of *thuwar*. In its second phase, the Commission met with 197 persons who referred to such violations by parties to the conflict, 158 of those were direct victims or their immediate family members.

2. Qadhafi forces

39. The Commission confirmed its earlier findings with respect to arbitrary arrests by the Qadhafi forces and found that the practice continued until the Qadhafi Government's disintegration. The Commission found evidence of unlawful detentions in Tripoli, Al Zawiyah and the Nafusa Mountains. A significant number were held in unofficial or unacknowledged sites. Detainees were not provided access to counsel and many were not allowed to challenge the lawfulness of their detention. Credible accounts related that the detainees were tortured.

40. As Qadhafi forces retreated, detainees were either released or in some instances killed. Others were freed when *thuwar* intervened. The Commission confirmed dozens of disappearance cases.

3. *Thuwar*

41. *Thuwar* involvement in arbitrary arrest and enforced disappearance increased considerably since the Commission's first report. When they overran cities, *thuwar* arrested en masse former soldiers, police officers, suspected mercenaries, and others they perceived to be Qadhafi loyalists. The arrests continued well into January 2012. It initially held the detainees outside the domestic legal framework, often in unacknowledged places of detention. A large number were tortured.

4. Conclusions

42. The Commission concluded that Qadhafi's forces arbitrarily detained persons it suspected were supporting *thuwar*. While many detainees may have been fighters, the

³ See Annex I, chap. III, sect. C for a detailed analysis.

Commission found that family members and peaceful demonstrators were also detained. Detainees were not afforded the requisite legal protections in violation of both Libya's domestic and international human rights obligations.

43. *Thuwar* have been involved in arbitrary arrest and enforced disappearance of perceived Qadhafi loyalists, security officers and members of the former government. The Commission is concerned that the *thuwar* have applied a presumption of guilt to those who fought against them or who are believed to have supported the Qadhafi Government. Moreover, many detainees are being held outside the framework of the law rendering their continued detention arbitrary per se.

D. Torture and other forms of ill-treatment⁴

1. Introduction

44. The Commission received reports of torture and other forms of ill-treatment perpetrated on a wide scale by both Qadhafi forces and *thuwar*. The Commission visited more than 20 places of detention, both official and unofficial, under the control of the former government and *thuwar*. The Commission interviewed 150 detainees, victims and perpetrators. The Commission's investigators examined wounds of torture victims and reviewed medical files. The Commission also met with relatives of victims, prison commanders and NGOs. The Commission established that torture was both widespread and systematically perpetrated in Libya throughout Phases II and III of the conflict.

2. Qadhafi forces

45. The Commission interviewed 35 people who were tortured by Qadhafi forces. Torture methods catalogued included severe beatings including on the soles of the feet (*falaqa*), electric shocks on genitalia; burning, threatening with dogs, suspension over doors, hanging from bars, and locking in small spaces or in solitary confinement for extended periods. The Commission verified most claims by examining victims' wounds, scars and medical reports and by visiting the sites.

46. Cases of torture occurred in official and unofficial detention facilities as Qadhafi's forces sought information on opposition activities. Torture also occurred during arrest or searches of houses of suspected *thuwar*. The most severe torture generally occurred immediately after arrest and during interrogations about *thuwar* strategy and weapons' locations. The Commission gathered compelling evidence of torture of suspected fighters and other opponents in various prisons including Ein Zara, Abu Salim, and Jdeida, and the locations of former intelligence agencies.

47. Torture was also rampant in unofficial detention centres including in Yarmouk and Al Khums. The Commission interviewed former detainees in such facilities who reported severe beatings and electric shocks. Conditions of detention – including lack of toilet facilities and severe overcrowding – constitute ill-treatment of detainees.

48. Rape and other types of sexual violence were also inflicted in detention. The Commission interviewed several former male and female detainees who described rape and other sexual assaults.

⁴ See Annex I, chap. III, sect. D for a detailed analysis.

3. *Thuwar*

49. During the second phase of its work, the Commission visited detention facilities in Misrata, Tripoli, Al Zawiyah, Tajoura and Zintan run by individual brigades, security committees or military councils or by the interim Government. It interviewed more than 100 current and former Libyan and foreign detainees. The Commission encountered compelling evidence of torture and ill-treatment. Most frequently used methods included beating with objects such as electric wires, rubber hoses, wooden sticks; electric shocks; falaqa; and suspension in contorted positions. The purpose of torture appeared to be the extraction of information or confessions, and/or punishment for alleged crimes.

50. At the time of writing, most detained Qadhafi soldiers and alleged loyalists were held in unofficial centres outside the legal framework.

51. The Commission noted that detainees were especially vulnerable to torture upon arrest, during the first days of detention, and during interrogations. Many of those arrested were tortured in temporary facilities before being transferred to prisons or other locations. The Commission documented a pattern of severe torture perpetrated in particular against Tawerghans by Misratan *thuwar*, who accuse them of committing rapes and other crimes in Misrata. Detainees told the Commission that they confessed to serious crimes including rape – that they denied committing – after they could no longer withstand the torture.

4. **Conclusions**

52. The Commission found that Qadhafi forces committed torture and ill-treatment in a widespread and systematic manner.

53. The Commission further found that the Qadhafi forces and the *thuwar* perpetrated torture and ill-treatment. These acts are violations of international human rights law, and when committed during armed conflict constitute war crimes.

E. **Targeted communities⁵**

1. **Introduction**

54. The Commission has received reports of abuses against particular groups. It interviewed 111 witnesses in this regard and conducted on-site visits to Misrata, Tawergha, Al Khums, Tripoli, Abu Kammesh, Tiji, Awaniya and other towns.

2. **Qadhafi forces**

55. While the Qadhafi government targeted people for arrest, torture and killing based on their opposition to the government, the Commission has not found evidence that one particular group was targeted more than others. While some towns were historically oppressed by Qadhafi's government, there is no indication they were treated during the conflict in a worse way as a consequence of this previous discrimination.

3. *Thuwar*

56. Misratans believe Tawerghans to be Qadhafi loyalists and responsible for crimes, including rape. With the capture of Tawergha by *thuwar*, most Tawerghans left, fearing reprisals. When Tripoli fell to the *thuwar*, brigades from Misrata entered a Tawergha IDP camp in the city and arrested and beat 85 Tawergha men. In September 2011, they arrested

⁵ See Annex I, chap. III, sect. E for a detailed analysis.

between 40-50 more. According to eyewitnesses, as recently as 6 February 2012 Misratan *thuwar* attacked the Tripoli IDP camp and killed five Tawerghans, including an old man, a woman, and three minors.

57. The Commission received multiple reports that, in the months which followed the capture of Tripoli, there were arbitrary arrests of Tawerghans by Misratan *thuwar* on the streets of Tripoli. Their whereabouts often remain unknown. Those who have been released report being beaten. The Commission has documented multiple incidents of Tawerghans held in detention in Misrata being subjected to torture. The Commission has examined corroborating injuries on victims.

58. A similar pattern of arrests, torture, other forms of ill-treatment, and killings was documented by the Commission in Sirte, Zlitan, Al Jufra, Shawarif, Alut and Benghazi.

4. Tawergha

59. In the months after Tawergha was emptied of its population, houses and public buildings continue to be looted and destroyed by the Misratan *thuwar*. The Commission found that roads into the town had been blocked. The Commission observed houses being set alight. Buildings appeared to have been bulldozed. The Commission observed that the word “Tawergha” had been scratched off road signs. The words “New Misrata” has been written over them. The Commission notes that the Misratan *thuwar* have been open about their views of the Tawerghans. One fighter told the Commission he thought that Tawerghans deserved “to be wiped off the face of the planet”. The language reportedly used by the Misratans during the arrests was often of a racist and derogatory nature, for example calling them “slaves”, “blacks”, and “animals”. Some have been told that they cannot ever return.

5. Targeting of other communities

60. *Thuwar* from Zintan have targeted Mashashiya towns, perceived as loyalist. The Commission was able to confirm reports that Mashashiya detainees have been tortured, towns looted, and property burnt. Mashashiyans who have attempted to return to their homes have reportedly been beaten. In December 2011, Zintani *thuwar* reportedly shelled a town containing Mashashiya internally displaced persons (IDPs). The Military Council twice refused to allow the Commission to enter one of the towns. Nonetheless, damage was visible. Graffiti was written on the town signs, including “Mashashiya - Qadhafi’s dogs”.

61. The inhabitants of Tiji and Badr are Arabs in an originally Amazigh region. When Nalut *thuwar* entered Tiji and Badr in August 2011 they reportedly demanded that its remaining residents leave, and killed three brothers. *Thuwar* from Nalut subsequently shelled Tiji in October 2011 with Grad rockets, killing at least three young women. According to testimony received, Nalut *thuwar* detained a number of adult men, called them “Arab dogs” and told them “this is not your land”. The Commission observed that evidence of burning could still be seen in the town.

62. The Commission has received reports of beatings and looting in Abu Kammesh by Zowara *thuwar*. One interviewee stated that a work colleague told him “you’re an Arab living on Amazigh land, we’re going to kick you all out”. Sub-Saharan Africans were also arbitrarily arrested and beaten in detention and even killed, by various *thuwar*.

6. Conclusions

63. The Misrata *thuwar* have killed, arbitrarily arrested and tortured Tawerghans across Libya. The destruction of Tawergha has been done to render it uninhabitable. Murder, torture and cruel treatment, and pillaging which occurred during the hostilities constitute a war crime. Where they have continued since, they violate international human rights law.

The torture and killing by Misratan *thumar* would also, given the widespread and systematic manner in which they have occurred here, be capable of constituting a crime against humanity and the facts indicate crimes against humanity have taken place.

64. The Commission found that Zintan *thumar* have killed, arbitrarily arrested and tortured members of the Mashashiyan community; that Nalut *thumar* have committed unlawful killings and torture in Tiji, as well as looting and destroying property; and that Zowara *thumar* have committed unlawful killings and torture, as well as looting and destruction of property in Abu Kammesh. In these cases, while there were clear indications that the communities were targeted and the consequences for individuals were severe, the Commission did not find the necessary evidence to indicate that the attacks against these communities were as widespread or as systematic as is the case with the Misratan *thumar* and Tawergha. Insofar as these acts took place within the context of the armed conflict, however, they constitute war crimes; where they have occurred since the armed conflict ceased, they constitute a violation of international human rights law.

F. Sexual violence⁶

1. Introduction

65. The Commission is aware of numerous media accounts of rapes in Libya and endeavoured to investigate the allegations. The Commission interviewed more than 20 male and female victims of sexual violence. The Commission met with another 30 witnesses including doctors, attorneys, and individuals with direct contact with victims or perpetrators. The Commission interviewed five perpetrators accused of committing rape and also reviewed relevant reports of NGOs and other material.

2. Qadhafi forces

66. One pattern of sexual violence identified was that of women who were beaten and raped by armed men in their homes, or abducted and beaten and raped elsewhere, sometimes for days. Some victims were targeted because of their allegiance to the *thumar* and others were assaulted for no known reason. Of those targeted, rape appeared to be used as a means to punish, terrorize, and send a message to those who supported the revolution.

67. A second pattern was of sexual violence and torture of males and females in detention centres who were *thumar* or supportive of the *thumar*, to extract information, humiliate and punish. Victims were arrested and normally taken to a location where they were interrogated and tortured. The allegations of rape and sexual violence made to the Commission included vaginal rape, sodomy and penetration with an instrument, as well as electrocution and burning of the genitals. The majority of their allegations came from men detained in Abu Salim and several men and women detained in Ein Zara.

68. The Commission interviewed five perpetrators accused of raping men and women during the conflict. While they provided some specific details, the Commission believes that there is a strong possibility that the confessions were made under torture and therefore cannot be relied upon. The Commission received one credible interview from a local organization which detailed five different rapes over five nights committed in Misrata by the perpetrator and his colleagues.

⁶ See Annex I, chap. III, sect. F for a detailed analysis.

3. *Thuwar*

69. The Commission has received limited evidence of rapes and sexual violence committed by the *thuwar*. The Commission interviewed two victims, known to be Qadhafi loyalists, who had been sexually tortured by *thuwar* in detention centres.

4. Conclusions

70. The prevailing culture of silence, the lack of reliable statistics, the evident use of torture to extract confessions, and the political sensitivity of the issue combine to make this issue the most difficult one for the Commission to investigate. The Commission found that sexual violence occurred in Libya and played a significant role in provoking fear in various communities. The Commission established that sexual torture was used as a means to extract information from and to humiliate detainees. The Commission did not find evidence to substantiate claims of a widespread or a systematic attack, or any overall policy of sexual violence against a civilian population. The information received is, however, sufficient to justify further investigation to ascertain the extent of sexual violence.

G. Attacks on civilians, civilian objects, protected persons and objects⁷

1. Introduction

71. In its first report, the Commission indicated that in relation to attacks on civilians, civilian objects, protected persons and objects, it has “not had access to full information allowing it to definitively evaluate allegations of these violations of international humanitarian law”. As part of its continuing investigations, the Commission subsequently conducted over 75 interviews looking at this issue and inspected destruction in towns across Libya.

2. Qadhafi forces

72. The Commission visited a number of areas affected by the fighting including Misrata, Al Zawiyah, Nalut, Yafran, Zintan and Sirte. The Commission found that Qadhafi forces used inherently indiscriminate weapons, as well as weapons prohibited by many nations, including landmines and cluster bombs, causing considerable suffering to the civilian population and damage to civilian objects.

73. The city of Misrata endured some of the most protracted fighting during the conflict. Misrata was under siege for over three months, between March and May 2011 when Qadhafi forces retreated from the centre of town. Indiscriminate shelling of the city continued sporadically until August 2011. Unlike other areas, where the civilian population was evacuated, civilians were trapped inside the city. Its port, which provided the only means of evacuation of war-wounded and civilians as well as entry of humanitarian aid, was also targeted by Qadhafi forces. Senior Qadhafi military officers interviewed by the Commission confirmed that there were several attempts, some of them successful, to mine the Misrata port. The Commission found remains of Chinese-manufactured Type-84 rocket-dispersed scatterable anti-tank mines and their rockets at the port.

74. In surveying the damage to the city, the Commission’s military expert noted that the damage to buildings was consistent with the use of small arms (7.62x39mm and other), heavy machine guns (12.7mm and 14.5mm), anti-aircraft guns (23mm), tube and rocket artillery, large calibre weapons (HEAT - “high-explosive anti-tank” tank rounds and HESH

⁷ See Annex I, chap. III, sect. G for a detailed analysis.

- “high explosive squash head” tank rounds), mortars (various from 60-120mm), rockets (122mm Grad entry holes were found with the rear of the rockets still protruding from ground), RPGs and recoilless rifles

75. Qadhafi forces launched a military assault on Al Zawiyah after it fell to the opposition in late February 2011. Those interviewed by the Commission, including a former senior security official, stated that Qadhafi forces fired Grad rockets and mortars into Al Zawiyah. They also used tanks, rocket launchers and 14.5mm anti-aircraft guns.

76. Opposition-held towns in the Nafusa Mountains also sustained heavy shelling from Qadhafi forces. The majority of the civilian population evacuated, with the exception of Zintan, where at least 55 civilian casualties, including women and children, were reported. The most extensive damage was observed in Yafran, which was occupied by Qadhafi forces between 18 April and the first week of June 2011.

77. The Commission received numerous allegations of attacks on hospitals, medical personnel and ambulances, including in Al Zawiyah, Misrata, Tripoli and Yafran. Medical personnel treating *thuwar* were subject to killings, arbitrary arrests and detentions accompanied with torture, ill-treatment and harassment; ambulances were reportedly shot at by Qadhafi forces several times during the course of the conflict and were misused to transport armed soldiers. Hospitals were shelled, medical supplies restricted, and wounded demonstrators and *thuwar* reportedly denied medical treatment.

78. The Commission investigated reports of Qadhafi forces deliberately targeting places of worship, including the mosque on the central square in Al Zawiyah. The Commission found that in some instances civilian buildings including mosques were inappropriately used for military purposes by the *thuwar*, and could therefore be considered lawful targets.

3. *Thuwar*

79. The Commission found that *thuwar* also used inherently indiscriminate weapons in their military offensives against cities perceived as loyalist. Of particular concern is their conduct in Sirte. The Commission found that almost every building exhibited damage. The most common damage and weapon debris observed was from Grad rockets, and heavy machine-gun fire from 14.5mm and 23mm weapons. Dozens of buildings are uninhabitable due to their structural integrity being compromised, with multiple walls and roofs collapsed. Numerous buildings exhibited impacts from shells consistent with fire from 106mm recoilless rifles and 107mm rocket artillery, using both High-Explosive Anti-Tank rounds and High Explosive Squash Head rounds. Although some of the buildings were likely used by the Qadhafi forces and were therefore legitimate targets for attacks, damage was so widespread as to be clearly indiscriminate in nature.

4. Conclusions

80. The Commission found that both the Qadhafi forces and the *thuwar* launched unguided munitions into residential areas in breach of the fundamental principle of distinction.

81. The Qadhafi forces launched sustained shelling on many towns and cities across Libya during the conflict. Some of these towns, such as Misrata, still contained civilians. The use of unguided weapons in these cases constituted an indiscriminate attack. While these attacks damaged and destroyed some apparently civilian objects such as mosques, the *thuwar* were using individual buildings for military purposes, removing their protected status.

82. The same principle applies to the *thuwar's* attack on Sirte. The scale of the destruction there and the nature of the weaponry employed indicated that the attacks were indiscriminate.

H. North Atlantic Treaty Organization⁸

1. Introduction

83. On 17 March 2011, the United Nations Security Council adopted resolution 1973 which authorized “all necessary measures” to “protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya” short of a “foreign occupying force.” On 19 March 2011 military forces from France, the United Kingdom, and the United States began attacks. On 31 March 2011, NATO assumed command of all offensive operations.

2. Findings

84. NATO aircraft flew a total of 17,939 armed sorties in Libya, employing precision guided munitions exclusively. NATO told the Commission that it had a standard of “zero expectation” of death or injury to civilians, and that no targets were struck if there was any reason to believe civilians would be injured or killed by a strike. NATO also told the Commission that the majority of munitions employed used delayed fusing to minimize collateral effects and that it also employed the minimum-sized munitions necessary to achieve the objective. NATO also provided warning to the population in the form of leaflets and radio broadcasts.

85. The Commission took account of claims by the Qadhafi Government in regard to civilian casualties, but subsequent testimony from former regime members and others, as well as its own interviews at the sites, confirmed to the Commission that the Government deliberately misstated the extent of civilian casualties. In one case, the Commission received a credible report of Libyan forces moving the bodies of children from a hospital morgue and bringing them to the site of a NATO airstrike.

86. Despite precautions taken by NATO as described above, the Commission notes incidents of civilian deaths and damage to civilian infrastructure. Amongst the 20 NATO airstrikes investigated, the Commission documented five airstrikes where a total of 60 civilians were killed and 55 injured. The Commission also investigated two NATO airstrikes which damaged civilian infrastructure and where no military target could be identified.

87. The single largest case of civilian casualties from a NATO airstrike in Libya took place in the town of Majer on 8 August 2011 where the Commission found NATO bombs killed 34 civilians and injured 38. After the initial airstrike killed 16, a group of rescuers arrived and were hit by a subsequent attack, killing 18.

88. Of the five targets where the Commission identified civilian casualties, four were termed command and control (C2) nodes or troop staging areas by NATO. The Commission saw no physical evidence of this during its site visits. Witnesses also denied that the sites had military utility. NATO told the Commission that “the regime was using civilian rather than military structures in support of military action”. Assuming this to be the case, the Commission remains concerned about the resulting civilian harm.

⁸ See Annex I, chap. III, sect. H for a detailed analysis.

3. Conclusions

89. The Commission found NATO did not deliberately target civilians in Libya. For the few targets struck within population centres, NATO took extensive precautions to ensure civilians were not killed. However, there were a small number of strikes where NATO's response to the Commission has not allowed it to draw conclusions on the rationale for, or the circumstances of the attacks. The Commission is unable to conclude, barring additional explanation, whether these strikes are consistent with NATO's objective to avoid civilian casualties entirely, or whether NATO took all necessary precautions to that effect. NATO's characterization of four of five targets where the Commission found civilian casualties as "command and control nodes" or "troop staging areas" is not reflected in evidence at the scene and witness testimony. The Commission is unable to determine, for lack of sufficient information, whether these strikes were based on incorrect or out-dated intelligence and, therefore, whether they were consistent with NATO's objective to take all necessary precautions to avoid civilian casualties entirely.

I. Prohibited weapons⁹

90. The Commission examined the use of weapons prohibited by treaty and customary international law. The Commission is aware that not all weapons discussed here are prohibited for all countries involved. Qadhafi forces employed cluster munitions and anti-personnel and anti-vehicle landmines, including in civilian areas. The Commission found considerable evidence of the use of cluster munitions and mines against civilian areas of Misrata in April 2011. The Commission also found evidence of the use of landmines in the Nafusa Mountains. Minefields were not properly recorded by Qadhafi forces. Many of the mines used contained low metal content, complicating detection and removal, further endangering civilians. There was some limited use of landmines by individual *thuwar*. There was no evidence of the use of chemical weapons, phosphorous or dum-dum bullets by any party to the conflict.

J. Mercenaries¹⁰

91. The Commission established that an organised group of Sudanese fighters were brought in by the Qadhafi government specifically to fight the *thuwar*. The Commission has not found that these fighters were promised or paid material compensation substantially in excess of that promised or paid to local Qadhafi forces, a requirement for these individuals or groups to fall within the definition of a "mercenary" under the United Nations Convention against Mercenaries or under Organization of African Unity (OAU) Convention on Mercenarism. The Commission also determined that there were fighters within the Qadhafi forces who, though of foreign descent, were born in Libya or resident there. They would also fall outside the definition of mercenaries.

K. Child soldiers¹¹

92. The Commission found evidence suggesting that the Qadhafi government recruited and used children under the age of 18 in its armed forces, in breach of Libya's obligations under the Optional Protocol to the Convention on the Rights of the Child on the

⁹ See Annex I, chap. III, sect. I for a detailed analysis.

¹⁰ See Annex I, chap. III, sect. J for a detailed analysis.

¹¹ See Annex I, chap. III, sect. K for a detailed analysis.

involvement of children in armed conflict. The Commission interviewed four minors detained by *thuwar* as a result of their participation in the fighting. They are held together with adults in contravention to the Convention on the Rights of the Child. The Commission also received concerning reports of children involved in fighting alongside *thuwar*, or in providing logistical support at frontlines, but determines that further investigation is needed.

L. Pillaging¹²

93. The Commission received reports of theft on a small scale perpetrated by Qadhafi forces during the conflict. The Commission established that *thuwar* and other groups of armed men were responsible for widespread pillaging and destruction of public and private property across the country during Phase II and III of the conflict. Victims included entire communities perceived as Qadhafi loyalists and individuals seen as having provided support to Qadhafi forces during the conflict, as well as their relatives (sometimes distant ones). Such violations mostly took place after cities fell under the control of *thuwar*, as well as during arrests of perceived loyalists at their homes. In some cases documented by the Commission, relatives of the alleged loyalists were driven out of their homes or prevented from returning by *thuwar* who had appropriated their homes and other belongings. Evidence of pillage by *thuwar* was found - but is not limited to - Abu Kammesh, Al Zawiyah, Awaniya, Beni Walid, Garabulli, Tawergha, Tiji, Tripoli, and Sirte.

94. The Commission is concerned that no full, impartial and independent investigations appear to have been carried out into any of allegations of pillage and the destruction of property. At times, government officials downplayed the gravity of the violation, noting that Qadhafi forces did the same thing to opposition, so “it is now their turn.”

IV. Accountability¹³

1. Introduction

95. The Commission’s mandate includes the requirement “to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable. The Commission therefore tried to identify individuals who may have been responsible for violations and crimes either directly or through command responsibility. The Commission decided not to include the names of these individuals, apart from senior figures who are publicly known in the report.

96. The Commission has also reviewed institutional and legislative issues, and efforts of the interim Government to ensure accountability in the longer term.

2. Applicable law

97. International human rights law places an obligation on States “to ensure that any person whose rights or freedoms... are violated shall have an effective remedy” and “to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy”.

¹² See Annex I, chap. III, sect. L for a detailed analysis.

¹³ See Annex I, chap. IV.

98. Due process and fair trial rights of the accused must be guaranteed. Fair trial standards cannot be suspended during emergency situations.

99. The Convention against Torture obliges Libya to investigate all allegations of torture and to prosecute all alleged perpetrators.

100. A duty to prosecute crimes against humanity and war crimes is part of customary international humanitarian law.

3. Current situation in Libya

101. Accountability mechanisms in Libya are deficient in a number of respects, many of which are the direct consequence of the legacy of the Qadhafi era.

102. Libya's existing Criminal Code does not adequately define international crimes. The Code provides for statutory limitation of 10 years for crimes, after which there can be no prosecution. Although a law that came into effect in 1998 repealed this provision, it does not have retrospective effect. The Military Penal Code precludes statutory limitations.

103. In practice, the current situation shows that the law has not been applied consistently or equally. The Commission has received information of attacks, including unlawful killings, torture and arbitrary arrests by *thumar* on members of the former government and those perceived to be among its supporters. The Commission is not aware of any *thumar* arrested or detained for these crimes

104. While the interim Government is making progress in re-establishing courts, the absence of a functioning court system prevents perpetrators being held accountable.

105. The Libyan authorities face considerable challenges in dealing with recent and past violations. They are likely to have difficulties in processing the approximately 8,000 detainees currently in custody.

106. In February 2012, criminal proceedings commenced before a military court in Benghazi against 41 Qadhafi loyalists accused of crimes during the conflict. The Commission notes the case has now appropriately been transferred the case to a civilian court.

107. In December 2011, the NTC issued a law establishing the National Council for Civil Liberties and Human Rights, and appointed its members. The Council has authority to receive complaints on violations of human rights and to file cases in court.

108. The NTC recently adopted a Transitional Justice Law, which created a National Fact-finding and Reconciliation Commission charged with investigating incidents of human rights violations committed over the past 42 years. The law also establishes a victims' compensation fund.

109. A law on amnesty has recently been adopted by the NTC. The law seen by the Commission allows amnesty to perpetrators of crimes on certain conditions. Crimes of murder, serious injuries, rape, torture and abduction are excluded from amnesty. The draft law provides, however, that reconciliation between the perpetrator and the victim dismisses the criminal charges or penalty. Granting amnesty will not preclude the right of victims to restitution and compensation.

4. Conclusions

110. The Commission has gathered information linking individuals to human rights violations or crimes and will hand over the list to the UN High Commissioner for Human Rights.

111. The Commission considers it imperative that appropriate mechanisms be established to ensure accountability for such crimes and violations in the long term.

112. The Commission is concerned that allegations of violations are not treated on an equal basis. Failure to apply criminal law to crimes committed by *thuwar* during and after the end of the conflict creates a climate of impunity. Those detained are also unable to challenge their detention or to lodge complaints of torture against *thuwar*.

113. Such problems are due in part to the current conditions in Libya but are also in part systemic. The courts lack judges and properly trained staff. Libya's existing legislation does not adequately provide for the prosecution of international crimes. Unless repealed, the existing statute of limitations will prevent the prosecution of serious Qadhafi era crimes. The absence of a functioning justice system allows violations to go unpunished and allows for a cycle of reprisals.

114. The Commission notes steps to address some of those issues, including the creation of a National Council for Civil Liberties and Human Rights and adoption of a Transitional Justice Law. However, it is concerned at the lack of an independent and impartial process for appointing members to the National Fact-finding and Reconciliation Commission.

115. The Commission considers it important to ensure that the reconciliation process under amnesty law is applied in a manner consistent with Libya's obligations under international law.

V. Assessment and findings

1. Introduction

116. The Commission benefited from a far greater availability of information than was the case for its first report, primarily because it was able to spend a significant amount of time on the ground and because witnesses were more willing to provide information in the knowledge that the Qadhafi government was no longer in power. As with its first report, however, the quality of the evidence and information obtained by the Commission varied in its accuracy and reliability. The Commission maintained the cautious approach it adopted for its first report, while recalling that its evidentiary standard is less than that required for criminal proceedings.

117. Robust efforts were made to corroborate information received, through cross-referencing and testing of witness testimony; interviews with both perpetrators and victims where possible; and site visits to seek physical evidence. While it took account of information from media sources and NGOs, the Commission relied primarily on evidence gathered from its own interviews and observations. Alongside the substantial additional evidence of violations by Qadhafi forces which the Commission has been able to gather for this second report, a significant amount of new information was also gathered relating to violations by the *thuwar*. The Commission is impartial and its mandate covers all violations irrespective of the perpetrator.

2. Qadhafi forces

118. The Commission has concluded that international crimes, specifically crimes against humanity and war crimes, were committed by Qadhafi forces in Libya. The Commission confirms its finding from its first report that there have been acts of murder, torture, enforced disappearance and certain acts of sexual violence committed by Qadhafi forces within the context of a widespread or systematic attack against a civilian population, with knowledge of the attack. These constitute crimes against humanity.

119. The Commission confirms its finding from its first report that there have been violations of international humanitarian law by Qadhafi forces which amount to war crimes. Violations identified included murder, torture, rape, and attacks on civilians and civilian objects and protected buildings, medical units and transport. Breaches of international human and humanitarian rights law include indiscriminate attacks, arbitrary arrest, and recruitment and use of child soldiers.

3. *Thuwar*

120. The Commission has also concluded that war crimes and crimes against humanity were committed by *thuwar* and that breaches of international human rights law continue to occur in a climate of impunity. The Commission found acts of extra-judicial executions, torture, enforced disappearance, indiscriminate attacks and pillage. No investigations have been carried out into any violations committed by the *thuwar*.

121. The Commission was unable to reach conclusions in relation to the deaths of Muammar and Mutassim Qadhafi, and recommends further investigation.

4. NATO

122. NATO conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties. For the most part they succeeded. On some limited occasions the Commission confirmed civilian casualties and found targets that showed no evidence of military utility. The Commission was unable to draw conclusions in such instances on the basis of the information provided by NATO and recommends further investigations.

5. Current situation in Libya

123. The interim Government has expressed a commitment to human rights and its concerns about torture, ill-treatment and other violations, though implementation of that commitment in practice has remained uneven. The interim Government will need considerable support from the United Nations and the international community in achieving this goal.

124. The deterioration of the legislative framework, judicial and national institutions generally during the Qadhafi era resulted in a judiciary that lacked the independence to hold security institutions accountable. The interim Government is gradually restoring the judiciary by reopening courts and recalling judges, but there still exists a lack of trained staff such as prosecutors, judicial police and forensic investigators. There has been some progress in the transfer of detainees to the control and authority, but many detainees remain under the control of individual brigades outside the framework of the law. Detainees often have limited or no access to families and legal counsel and are unable to challenge the legality of their detention or to lodge complaints about torture and ill-treatment.

125. The Commission found that the authorities are failing to hold accountable *thuwar* who have committed serious violations including unlawful killings and arbitrary arrests. That situation is symptomatic of a lack of equal implementation of the law and a serious obstacle to the achievement of the objective of full accountability for serious crimes.

126. The current Government has taken positive steps to establish new mechanisms for accountability including the creation of a National Fact-finding and Reconciliation Commission under the Transitional Justice Law and a National Council on Civil Liberties and Human Rights. The Libyan authorities will have to ensure that any future amnesty process under the amnesty law is in conformity with Libya's obligations under international law with respect to accountability.

VI. Recommendations

127. The Commission calls upon the interim Government of Libya to:

(a) Investigate all violations of international human rights law and international humanitarian law set out in this report and to prosecute alleged perpetrators, irrespective of their location or affiliation, while affording them all their rights under international law;

(b) Bring all remaining detainees under control of the Judicial Police or the Military Police as soon as possible;

(c) Charge detainees being held in connection to the conflict for their involvement in specific criminal acts that constitute serious crimes and release those against whom there is no such evidence;

(d) Ensure that conditions of detention comply with applicable international law, including proper treatment of detainees, access to lawyers and family, and the ability to lodge complaints of torture and ill-treatment;

(e) End all torture or ill-treatment of detainees and unlawful interrogation techniques;

(f) Secure all sites of alleged crimes identified in this report to prevent destruction or loss of evidence;

(g) Ensure that all evidence obtained as a result of torture is excluded as evidence in criminal trials;

(h) Encourage all parties involved in the conflict to divulge any information they have on missing persons and establish an independent investigation into the fate of all missing persons, irrespective of the missing person's role in the conflict;

(i) Take measures to stop and prevent further attacks against the Tawerghans and other targeted communities, facilitate the return of displaced communities in satisfactory conditions, and establish independent mechanisms to achieve reconciliation of these communities;

(j) Establish appropriate gender-sensitive psychological, medical, legal and social support services throughout the country; recruit and train female investigators and encourage and support the establishment of civil society organizations to provide support to victims of sexual violence;

(k) Establish public awareness campaigns through the media in support of victims of sexual violence;

(l) Take urgent steps to establish an independent judiciary;

(m) Ensure that all accountability mechanisms operate in accordance with international fair trial standards and impose only penalties that conform to international standards;

(n) Apply the law equally and ensure that alleged violations are investigated and prosecuted where appropriate, irrespective of the identity of the perpetrators;

(o) Create an integrated and comprehensive plan for enhancing the legal system and its accountability capacity;

(p) Ensure that any amnesty process conforms to Libya's obligations under international law by holding accountable all perpetrators of serious crimes;

(q) Take steps to ensure that persons alleged to have committed violations of human rights or international humanitarian law are excluded from positions in any security, military police, prison or judicial institutions;

(r) Consider the rights of victims in all mechanisms of accountability in accordance with international norms and standards;

(s) Ensure that the National Fact-finding and Reconciliation Commission undertakes a thorough assessment of the Qadhafi legacy to prevent a repetition of repressive practices; and

(t) Establish programs for the training for all officials including judicial, police, military and prison officials in international human rights law, in particular specialized training for the handling of sexual violence cases.

128. The Commission calls upon the NTC and the future Constituent Assembly to:

(a) Ensure that the future Constitution of Libya incorporates international human rights law defined in the human rights treaties ratified by Libya;

(b) Undertake legislative reform to incorporate international crimes into the Libyan Criminal Code and repeal any statutory limitations applying to such crimes; and

(c) Reform all laws to bring them into conformity with Libya's obligations under international law.

129. The Commission Calls upon the United Nations Support Mission in Libya to:

(a) Monitor the implementation of the recommendations set out in this report;

(b) Provide technical assistance to the government of Libya on meeting its international human rights law obligations, particularly those where shortcomings have been noted in this report; and

(c) Work with the interim Government on capacity strengthening programs for courts, prisons, police, prosecutors and defence lawyers, and coordinate the support of the international community for such programs.

130. The Commission calls upon NATO to:

(a) Conduct investigations in Libya to determine the level of civilian casualties, and review how their procedures operated during Operation Unified Protector; and

(b) Apply the "Non-Binding Guidelines for Payments in Combat-Related Cases of Civilian Casualties or Damage to Civilian Property (NATO 20 September 2010)" to civilian losses in Libya resulting from Operation Unified Protector, preferably in cooperation with NTC efforts to make amends for civilian harm across the country.

131. The Commission calls upon the International Community to:

(a) Take immediate steps to release funds of the Libyan government to enable it to implement the recommendations in this report and allocate some of those funds specifically for the establishment of an independent judiciary and the training of judicial, police, prison and other officials;

(b) Provide support to the Libyan authorities in developing their plan to enhance the legal system and in strengthening the capacity of the judges, prosecutors,

judicial police, national police, military police and prison officials, in particular in the development of specialist investigative and prosecution skills;

(c) Assist the judicial authorities to secure all major crime sites identified in this report to prevent destruction or loss of evidence; and

(d) Assist the Libyan authorities to obtain extradition of alleged perpetrators of serious crimes who may be in their territory, while ensuring that their basic rights are protected.

132. The Commission calls upon the Human Rights Council to establish a mechanism to ensure the implementation of the recommendations in this report.

133. The Commission calls upon the United Nations Secretary-General to ensure that, in its assistance to the Government of Libya in implementing the above recommendations, the United Nations agencies adopt a coherent and integrated approach.

134. The Commission calls upon the League of Arab States to assist, to the extent possible, in the implementation of the above recommendations.

135. The Commission calls upon the African Commission on Human and Peoples' Rights to establish a mechanism to monitor the implementation of the above recommendations, in particular measures taken to ensure longer term respect for human rights.

Annexes

Annex I

Full report of the International Commission of Inquiry on Libya

The full report of the International Commission of Inquiry to investigate all alleged violations of international law in Libya is available from [insert link here]

Annex II

Correspondance from NATO to the International Commission of Inquiry on Libya



LEGAL ADVISER
LE CONSEILLER JURIDIQUE

20 December 2011
OLA(2011)0145

Dear Judge Kirsch,

Thank you for your letter of 15 December, referencing Mr. Motala's letter of 11 November and asking when NATO might be in a position to respond to the questions posed in that letter. Your letter also enclosed several new questions.

NATO continues to work to gather information permitting an appropriate response to the questions in the 11 November letter. It is our hope and intent to be able to provide that response during January, as you have requested.

Allow me to note that many of the queries in the 11 November letter, and all or virtually all of those in the Annexure to your letter of 15 December, appear to involve issues of international humanitarian law. The mandate of the ICIL is to investigate alleged violations of international human rights law. In its Resolution 1970 (2011), the UN Security Council referred the Libya situation to the International Criminal Court (ICC); NATO has been in contact with the ICC in connection with the latter's investigation in response to the Security Council tasking. In light of the Security Council's formal request to the ICC, NATO anticipates addressing questions arising under international humanitarian law principally in that context.

Your 11 November letter requested a copy of an internal NATO "report of its investigations into allegations of NATO strikes amounting to indiscriminate attacks against civilians." I regret to inform you that we have been unable to confirm the existence of any such report. We would, of course, be prepared to renew our inquiries if you are able to provide us with further details that may assist us in determining the existence of such a document.

Yours sincerely,

Peter Olson
Legal Adviser

Judge P. Kirsch, Q.C.
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LEGAL ADVISER
LE CONSEILLER JURIDIQUE

OLA(2012)006
23 January 2012

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

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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 salvos 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. El-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

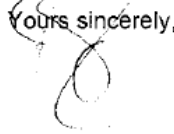
by the Commission, in light of the fact that regime statements were repeatedly shown to be incomplete, inaccurate, or based upon fabricated or non-existent evidence, we assume the Commission agrees that uncorroborated regime assertions, are not credible evidence as to the actual facts. We note in this 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,



Peter Olson
Legal Adviser

Judge P. Kirsch, Q.C.
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LEGAL ADVISER
LE CONSEILLER JURIDIQUE

OLA(2012)0014
15 February 2012

Dear Judge Kirsch,

Thank you for your letter of 3 February, 2012, which inquired about five additional sites struck during the course of NATO's Operation Unified Protector (OUP), and presented further questions relating to three sites discussed in our letter of 23 January. Your letter also commented on several other matters addressed below.

As we discussed when we spoke by telephone on 2 February, gathering and reviewing information of the sort requested in your letter requires considerable coordination. While we are replying to you more quickly than we were able to in response to your 15 December request, it was not possible to complete that work by the requested date of last Friday, 10 February.

Before turning to the specific incidents about which you inquired, I would like to address certain points of a more general character.

As you are aware, we retain concerns about some aspects of the Commission's application of its mandate from the Human Rights Council (HRC), which was given in the specific context of gross repression and manifest human rights violations committed by and against Libyans in the context of political protests in that country. That mandate is to "investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes perpetrated" and to make recommendations "all with a view to ensuring that those individuals responsible are held accountable."

NATO is in no doubt that the former regime committed serious violations of international law during the course of the internal conflict in Libya which emerged from its repression. We are not, however, persuaded that examination of the conduct of parties to the Libyan internal conflict implies expansion of the Commission's work to include "investigation" of NATO's actions giving effect to the mandate contained in UN Security Council Resolution 1973.

We understand that the Commission has been conducting a careful review of several incidents involving NATO about which it has had some concerns, and trust that the description of OUP policies and comments on specific incidents contained in our letter of 23 January have been of assistance to the Commission in that work. I was pleased the other evening to hear that, based on that review, the members of the Commission consider that NATO did not deliberately target civilians and did not commit war crimes in Libya. Such a view is of course fully consistent with our own firm belief as set forth in that letter which noted that not one of the targets struck was approved for attack, or was in fact attacked, if NATO had any evidence or other reason to believe that civilians would be injured or killed by a strike.

We would be concerned, however, if "NATO incidents" were included in the Commission's report as on a par with those which the Commission may ultimately conclude did violate law or constitute crimes. We note in this regard that the Commission's mandate is to discuss "the facts and circumstances of ... violations [of law] and ... crimes perpetrated."

We would accordingly request that, in the event the Commission elects to include a discussion of NATO actions in Libya, its report clearly state that NATO did not deliberately target civilians and did not commit war crimes in Libya.

We appreciate the preview of certain recommendations the Commission is considering including in its report, and we welcome the opportunity to offer comments on them.

As a general point, similar to the one just made, we doubt the appropriateness of including in the report recommendations relating to NATO. The Commission's mandate to make recommendations is made in the specific context of ensuring the accountability of those perpetrating crimes and violating international law – a category we believe it is clear does not include NATO.

With respect to the two specific recommendations anticipated in your 2 February letter, we would first recall the statement in NATO's letter of 23 January that OUP has been terminated and that NATO has no mandate to conduct any activities in Libya. As our letter acknowledged – and as since demonstrated by the Commission itself – a wide range of parties may and will gather information relating to strikes, and that information will in turn be given due consideration.

In addition, particularly as there have been very few claims for compensation associated with NATO actions during OUP, we see little rationale for a NATO-specific recommendation on compensation. There is no legal obligation to provide compensation for damage occurring in the course of lawfully-conducted military activities, nor is it the case that establishment of programs for compensation for such damage has become standard or expected practice. Any issues of compensation are accordingly questions of a political

character. It is in fact our understanding that the Libyan representative recently informed the Security Council that a commission is being formed to consider questions of civilian casualties and that his government plans to establish a mechanism to indemnify victims following its investigations. NATO has made clear to the government of Libya its desire and intent to be supportive of this process.

Allow me, finally, to address two possible misapprehensions with respect to NATO activities in Afghanistan. First, neither NATO nor ISAF has in fact established or conducts a compensation program in that country. Secondly, while there is important sharing of information between ISAF and UNAMA, the context of that information-sharing is highly specific – both ISAF and UNAMA have large and long-term presences on the ground, a major purpose of sharing information is to assure the physical security of UNAMA, and any sharing of information is done on the basis of specific operational requirements for such sharing and of institutional relationships and understandings that have been developed over the course of a decade of collaboration. There is no information-sharing agreement applicable to the Commission that would permit NATO to share classified information with it.

Individual incidents. The Commission has asked for comment on five new incidents, and asked further questions with respect to three addressed in our letter of 23 January. These are discussed below in the order found in the Commission's letter of 3 February. As before, the discussion of these individual incidents must be read in conjunction with the general information on targeting and strike execution provided in that letter. In short, however, not one of the targets struck was approved for attack, or was in fact attacked, if NATO had any evidence or other reason to believe that civilians would be injured or killed by a strike. Please note that a number of the incidents below are the subject of further assessment, which will take into account the further information provided by the Commission in its 3 February letter.

It should also be noted that most of the strikes referenced in the Commission's 3 February letter occurred in the later stages of the campaign, and in particular after the fall of Tripoli. The campaign at this stage was highly fluid and for tactical reasons the regime was using civilian rather than military structures in support of military action. The regime's conventional command and control in particular had been severely degraded and it relied increasingly on non-traditional/informal methods. Such methods did not involve the kind of dedicated structures, wiring, equipment and other infrastructure that would identify a command and control node as "military" in character.

1. 29 August (Bani Walid). This was a major command and control node which was reliant on non-traditional/informal methods to carry out that function. The site was actively controlling regime forces which were attacking civilians in the area. The full targeting procedure described in our 23 January letter was

applied in this case, including that no target was selected for attack, or in fact struck, if there was any reason to believe that civilian casualties would result.

2. 16 September (Sirte). This was a dynamic strike. OUP observed multiple military vehicles with substantial numbers of associated military personnel on the ground over an extended period. Those vehicles were engaging in continuing rocket fire against civilian areas, and authorization was granted to engage them once they were clear of civilians. The vehicles were not struck until they left the populated area where they had initially been observed, and had relocated to an area free of civilians and civilian structures. The two vehicles struck were sufficiently separated that a single precision-guided weapon of the type employed would have been insufficient to destroy them both.

3. Undated (Bani Walid). The only strike at this location took place on 9 September. Two SCUD missiles, which are vehicle-mounted, were stored at this building, which was not a permanent or purpose-built SCUD storage facility. On the basis of its standard targeting methodology as previously described, it was concluded that no civilians were at this isolated facility. It is not known whether the SCUDs were destroyed in the attack.

4. 9 September (Bani Walid). The only strike on this location took place on 5 October. This facility was a confirmed military facility in a walled compound, and was being used at the time of the strike as a command and control facility. On the basis of its standard targeting methodology as previously described, it was concluded that no civilians were at this isolated facility.

5. 10 October (Bani Walid). This was a building in an industrial compound that had been taken over for military purposes and was being used at the time as a command and control node. On the basis of its standard targeting methodology as previously described, it was concluded that no civilians were at this isolated facility.

6. 20 June (Surman). NATO's principal concern with this site was its functioning as a military command and control node, and it was that function that was struck. We remain confident of our information that this was a military site, that there was no evidence of a civilian presence and that all measures were taken to confirm that conclusion, and that the strike was executed in a manner designed to avoid any risk to transient civilians. The weapons storage facility to which the Commission refers was known to NATO, but that target was not engaged on the basis of its proximity to a mosque and school. NATO did not have access to contemporaneous ground observation from reliable neutral observers and cannot make a definitive statement with respect to the reports of civilian deaths.

7. 3 August (Zlitan). NATO information, as indicated in our earlier letter, is that this site was struck on 4, not 3, August. As stated previously, NATO identified this site as a senior regime commander's command and control node located within a residential property. As noted in other contexts as well, this target would not have been struck if NATO had any evidence or other reason to believe that a strike would injure or kill civilians.

8. 8-9 August (Majer). At the time of these strikes, these buildings had been identified as being used as a staging area for regime forces actively engaged in attacks on civilians and civilian-populated areas. It should be noted that at this point in the campaign regime forces, as well as the mercenaries augmenting those forces, often wore civilian clothing.

Naval and other ordnance. The Commission has also requested information on use of naval weapons. It should be noted that no naval weapons were used in any of the 14 incidents with respect to which the Commission has posed questions. During the course of OUP, approximately 470 naval rounds were fired. No cluster munitions, including CBU-107 or other passive attack cluster munitions, were used during OUP.

Leaflets and warnings to civilians. The Commission's military advisor has separately requested information on leaflets used to warn civilians of possible attacks. Copies of representative leaflets are being provided separately by electronic means. NATO used both physical leafleting and broadcast media to provide warnings, as well as to generally advise both regime forces and civilians on how to act to minimize risk, on literally hundreds of occasions throughout the campaign.

Please be assured that NATO appreciates and values the work of the Commission, and trusts that these comments will assist it in preparing its final report.

Yours sincerely,



Peter Olson
Legal Adviser

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Chair
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Leaflets dropped in Libya by NATO sent by NATO to the International Commission of Inquiry on Libya



Annex IV

UNOSAT imagery analysis

The UNOSAT imagery analysis is available at:
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A_HRC_19_68_AnnexIV.pdf

Annex V

Glossary of weapons used in Libya

Aerial bombs

Laser-Guided Bombs: NATO dropped 3644 laser-guided bombs during the conflict in Libya. The most common one documented by the Commission was the GBU-12 Paveway II 500lb bomb. NATO also informed the Commission it had also regularly used the GBU-24 Paveway III 2000lb bomb. These are precision-guided bombs directed to the target by a laser carried by the attacking aircraft. The pilot visually observes the target throughout the flight of the weapon, allowing them to alter the trajectory as necessary and ensure it hits the intended target.

GPS-Guided Bombs: NATO dropped 2844 GPS-guided bombs during the conflict in Libya. The most common bomb of this type documented by the Commission was the GBU-31 Joint Direct Attack Munition 2000lb bomb using the BLU-109 hardened penetration warhead. NATO also informed the Commission it had regularly used the GBU-38 Joint Direct Attack Munition 500lb bomb. GPS-guided bombs are directed to their targets using global positioning satellites and do not require the pilot to visually identify the target. The hardened warhead allows the munition to penetrate through concrete before exploding inside a structure.

Anti-tank weapons

RPG-7: The RPG-7 is an unguided, shoulder-fired rocket propelled grenade launcher with a 200m effective range. It has a variety of warheads, including anti-tank and anti-personnel.

M40 106mm recoilless rifle: The M40 fires a 106mm shell. The Commission found dozens of spent 106mm shells in Libya with HEAT (high-explosive anti-tank) and HESH (high-explosive squash head) warheads.

Assault rifles

The most common weapons used by the Libyan Army and the *thumar* were assault rifles, including the AK-47, FN-FAL, and the FN2000.

Machine guns

Vehicle-mounted heavy machine guns were ubiquitous during the war in Libya. The most common seen by the Commission were:

DShK 12.7x108mm machine gun: This was the most common heavy machine gun used by the Soviet Union during the Second World War, modernized in 1946, and common in Libya. It is a gas-operated heavy machine gun with a rate of fire of 600 rounds per minute and a 2000m effective range. The cartridge is 147.5mm in length.

KPV 14.5x114mm machine gun: This is a Soviet-designed heavy machinegun first entering service in 1949. It is a short-recoil operated heavy machine gun with a rate of fire of 600 rounds per minute and 3000m effective range. The cartridge is 155.8mm in length.

ZU-23 23mm Anti-aircraft cannon: This is a Soviet-designed anti-aircraft auto-cannon. It is a belt-fed auto-cannon with a rate of fire of 2000 rounds per minute and a 2.5km effective range.

Rockets

Type-63 multiple rocket launcher with 107mm rocket: This is a 12-tube rocket launcher manufactured by China and was one of the most common weapons used during the war in Libya by the *thumar* and the Libyan army. It fires a 107mm rocket with a maximum range of 8km.

BM-21 Grad with 122mm M21 rocket: This is a Soviet-designed vehicle-mounted rocket launcher firing 40 122mm rockets. It is an 'area-effect' weapon which means it is not designed to hit specific targets but rather to hit a general area. It has a rate of fire of two rockets per second and a maximum range of 20km. Cargo rockets designed to carry mines have a range of 30km.

SCUD-B: This is a tactical ballistic missile designed by the Soviet Union and entering service in 1964. The missile is 11.25m in length and requires a dedicated vehicle to transport and fire it. The Commission saw one MAZ-543 launcher with the rocket expended in Misrata. According to NATO there were three launched during the war, one targeting Misrata and two targeting Brega. NATO stated none of the launches were intercepted. The missile has a range of 300km and carries a 985kg warhead.

S-5: The S-5 is a 55mm unguided direct-fire air-to-surface rocket fired from pods carried by aircraft and helicopters. The Commission saw numerous S-5s carried by the *thumar* on the back of pickup trucks on improvised mounts using UB-32 and UB-16 rocket launchers. The rockets have a 4km range and are 1.4m long and carry a 5kg warhead.

SNEB: The SNEB is a French 68mm unguided direct-fire air-to-surface rocket. The Commission saw numerous SNEBs carried by the *thumar* on the back of pickup trucks on improvised mounts using MATRA rocket launchers. The range and length vary depending upon the warhead.
