



*Promoting a more transparent and accountable NATO*

## The UN Human Rights Council's report on civilian casualties in Libya

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### UN Commission of Inquiry says NATO conducted a “highly precise” campaign in Libya

Document: [International Commission of Inquiry on Libya Report](#)

#### The Council’s Findings

A UN commission investigating war crimes and human rights violations in Libya reported on 2 March that NATO “conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties”. Published by the UN Human Rights Council, based in Geneva, the 220-page report largely absolves NATO from blame for civilian deaths. (NATO-related extracts from the report are reproduced as an Appendix to this paper).

The three-member commission of distinguished jurists who carried out the investigation found “The vast majority of NATO airstrikes did not result in civilian casualties or collateral damage to civilian objects, even where there was a significant potential for civilian harm”. The commission also noted, however, that in a few cases it had “confirmed civilian casualties and found targets that showed no evidence” of any military function. The commission investigated 20 NATO airstrikes, and it found that in five of them, a total of 60 civilians died and 55 were wounded. The most serious airstrike, on the town of Majer in August 2011, killed 34 civilians and wounded 38.

NATO identified four of the five targets as command-and-control points or troop staging areas, but the commission said that it found no

physical evidence of this when it visited the sites and that witnesses denied that the five places had any military use.

The commission did not receive enough information from NATO to determine whether it had followed its own guidelines for avoiding civilian casualties when it processed the intelligence related to those sites before bombing them. “The commission is unable to determine, for lack of sufficient information, whether these strikes were based on incorrect or outdated intelligence and, therefore, whether they were

consistent with NATO’s objective to take all necessary precaution to avoid civilian casualties entirely,” the report said. It called upon NATO to conduct its own investigation “to determine the level of civilian casualties, and review how their procedures operated during Operation Unified Protector”.



(Human Rights Council - 19th Session - Judge Philippe Kirsch (left ) Chairman of Commission of inquiry on Libya speaks with Rolando Gomez ( right ) spokesman, Human Rights Council, during the press conference, 9 March 2012 – photo credit: UN Information Service, Geneva/ flickr)

The commission also found that Gaddafi’s regime had distorted the number of civilian casualties resulting from the air campaign. “A number of allegations against NATO investigated by the commission were either exaggerated or a deliberate attempt at misinformation,” the report

said. 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, it added.

The year-long investigation's main findings were that Gaddafi's regime committed both war crimes and crimes against humanity, while anti-Gaddafi forces were guilty of "serious violations", including war crimes.

## NATO and International Reaction

Oana Lungescu, the spokeswoman for NATO, said the organization had reviewed its target selection and data collected during the airstrikes. "This review process has confirmed that the specific targets struck by NATO were legitimate military targets selected consistently with the UN mandate, and that great care was taken in each case to minimize risk to civilians," she said in a statement reported in the [New York Times](#).

Hundreds of targets were rejected, and some strikes were aborted to avoid civilian casualties, she said, while noting that the Qaddafi government had often used civilian facilities to conduct military activities.

"The fact that observers were unable to detect evidence of military purpose or activity several months after the conflict cannot necessarily be taken to reflect the reality at the time of the strike," Ms. Lungescu said.

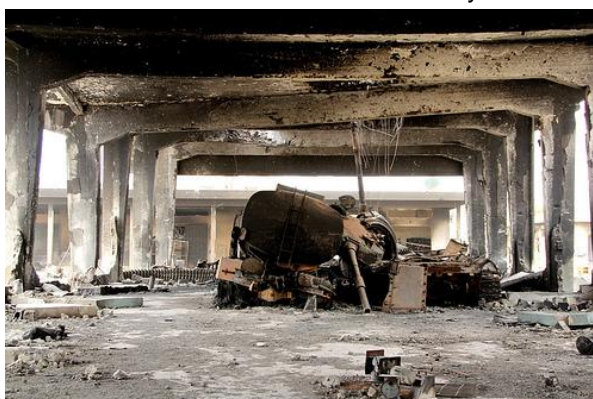
During his [monthly press briefing](#) on 5 March, NATO Secretary General Anders Fogh Rasmussen insisted the alliance had "fully co-operated" with the inquiry, adding it had declassified a "significant amount" of information for investigators. The report includes an annex with 16 pages of correspondence from NATO officials.

Russia and China both accused NATO of overstepping its Security Council mandate to protect civilians in Libya during the uprising and have strongly opposed any similar action in Syria. It was no surprise, therefore, that [Russia's response](#) to the report was to demand that NATO apologize for the civilian casualties in Libya. Russia's UN Ambassador Vitaly Churkin said "We expect that NATO will recognize the existence of civilian casualties, will excuse itself and say that it is prepared to pay the appropriate compensation". Similarly, China's deputy ambassador, Wang Min, noting that the commission said NATO airstrikes caused civilian casualties and again called for a UN investigation.

On March 12 [Russian Foreign Minister Sergei Lavrov](#) repeated the call for an investigation during a high-level UN Security Council meeting on the current situation in the Middle East. "The organizations or countries that volunteered to implement Security Council resolutions must give a full account of their actions to the Council. That applies to NATO also, which, as we all know, offered to secure a no-fly zone in Libya, but in reality engaged in massive bombings," Lavrov said. "It is sad that it is yet to begin any investigation following information about the civilian casualties caused by the massive bombings," he added. "We believe that the UN secretary-general should bring clarity to the matter by invoking the 2008 Joint Declaration on UN/NATO Secretariat Cooperation".

However, [UN leader Ban Ki-moon](#) endorsed the [report's findings](#) that NATO did not deliberately target civilians during its air strikes. "The secretary general is aware of the positions members of the Security Council have expressed on this issue," said UN spokesman Martin Nesirky, but added Ban "has made clear his view that the actions taken by the international community were consistent with the relevant

Security Council resolutions". "The secretary general called consistently during the fighting for every effort to be made to minimise harm to civilians. He notes the report's overall finding that NATO did not deliberately target civilians in Libya," Ban's spokesman said.



(Tripoli Street, Misrata's former fruit market, 22 May 2011- photo

credit: Internews Network/ flickr)

Non-governmental organisations have given a mixed reaction to the report. [Amnesty International](#), for example, echoed the criticisms of Russia and China by saying that NATO failed to properly investigate or provide compensation for civilian deaths caused by its air strikes "NATO officials repeatedly stressed their commitment to protecting civilians," said Donatella Rovera, a senior crisis adviser at Amnesty. "They cannot now brush aside the deaths of scores of civilians with some vague statement of regret without properly investigating these deadly incidents".

While Amnesty agreed that NATO had made significant efforts to minimise the risk of civilian casualties, through precision bombing and warning where strikes would occur, the rights group also said that inquiries should determine whether any civilian casualties resulted from a breach of international law, and if so, those responsible should be brought to justice.

Meanwhile, Oxford Research Group's Every Casualty Programme (ECP), which calls for all deaths caused by armed violence to be thoroughly recorded, released a statement on 20 March in which it said "In conjunction with Amnesty International's significant discovery of civilian casualties caused by NATO forces, the Commission's work comes into perspective as having made a valuable contribution towards the recording of casualties in that conflict". The ECP add that "NATO's 'battle damage assessment' methods involving aerial reconnaissance are an insufficient means of monitoring or recording civilian casualties". The ECP also praise the Commission's contribution to both the practice and principle of casualty recording, noting that it helped to fulfil "NATO's responsibility to protect civilians and to account for its actions. This responsibility is concerned with the mandate given to NATO under the terms of UNSC Resolution 1973, in addition to the guidelines prescribed under the Responsibility to Protect and the framework of the Protection of Civilians in Armed Conflict".



Commission, the fact that NATO did not employ cluster munitions (whereas it did in Kosovo).

(PM David Cameron, NTC Chairman Mustafa Abdul Jalil and French President Nicholas Sarkozy in Libya, 15 September 2011 – photo credit: PM's Office/ flickr)

The ECP concludes that "NATO has an obligation to properly investigate the human costs, with emphasis on civilian deaths, of Operation Unified Protector; to utilise these findings in a responsible way by making them inform future operations; to determine whether any civilian deaths resulted from breaches of international law; and to maintain accountability for civilian deaths through reparations, contributing towards conciliation with families of the dead". It calls on the Alliance to "more directly engage with the organizations willing to provide expertise, put feet on the ground, or otherwise assist and contribute to the recording of casualties. Only then can essentially unchallengeable claims such as that 'countless' civilians have been saved in Libya be evaluated against the reality of civilians lives that have, in fact, been lost".

## Conclusions

Assuming that the number of civilian deaths attributed to NATO airstrikes does not rise significantly above those identified in the UN report, it does indicate a proportionally low number of civilian casualties and collateral damage to civilian sites in Libya, as compared to

other NATO campaigns. In the bombing campaign in the former Yugoslavia, for example, NATO aircraft flew 38,400 sorties, including 10,484 strike sorties and approximately 500 civilians were killed during the campaign. In Libya, NATO aircraft flew 26,323 sorties, including 9,658 strike sorties, with probably less than 100 civilian deaths. This suggests improvements in NATO's targeting policy, the use of smarter and more accurate munitions and, as confirmed by the

The commission is to be congratulated in carrying out a detailed examination of many of the allegations of civilian casualties from NATO air strikes. By combining visual inspections, interviews with witnesses and victims, satellite imagery and correspondence with NATO, the Commission has been able to verify that the alliance's often-stated concern to avoid civilian casualties in Libya was for the most part matched in practice. NATO has a reasonably good story to tell in Libya, and it is to be congratulated for cooperating so fully with the Commission. Now the Alliance needs to address the Commission's remaining concerns And those of Amnesty International and the ECP) about carrying out further investigations and paying compensation to victims.

Other controversial allegations to do with NATO over-stepping what it was mandated to do in Libya— which was to protect the population, and to enforce an arms embargo and no-fly zone— were not part of the Commission's remit. To some critics, the no-fly zone, as planned and implemented (including the use of special forces, covert support and military training to the rebels, weapons air drops and suggested targeted assassination attempts on the regime leadership and Gaddafi himself), was designed to bring about regime change. These allegations will no doubt continue to be discussed in the months and years ahead, but in relation to the specific concerns about civilian casualties, NATO has been given a strong vote of confidence – but still needs to do more.

(Also see: [NATO Watch Briefing No.20: How good is NATO after Libya?](#) 8 September 2011)

## Appendix: Key NATO-Related Extracts from the UN Report

### Summary (p2)

The Commission concluded that North Atlantic Treaty Organization (NATO) conducted a highly precise campaign with a demonstrable determination to avoid civilian 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 Commission's findings (pp17-18)

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.

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. 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. 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.

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.

### Recommendations (p24)

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. (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.

### Full Report of the International Commission of Inquiry on Libya

#### Section on NATO (pp160-170)

603. On 17 March 2011, the United Nations Security Council adopted resolution 1973 (2011) 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 (Operation Harmattan), the United Kingdom (Operation Ellemy), and the United States (Operation Odyssey Dawn) began attacks inside Libya. On 24 March 2011, NATO assumed control of operations within the no fly zone, though individual NATO member states had control of the airstrikes by their own forces. On 31 March 2011, NATO assumed command of all offensive operations conducted by 18 states from NATO and the Middle East under the name Operation Unified Protector.

604. Between 31 March 2011 and 31 October 2011, NATO aircraft flew a total of 17,939 armed sorties in Libya: 17,314 using fixed-wing aircraft, 375 by helicopter, and 250 by unmanned aerial vehicles (UAVs) or drones. Airstrikes were of two types, deliberate (planned in advance) and dynamic (opportunistic strikes on targets that present themselves during the course of a mission).

605. NATO's aerial campaign in Libya was the first in history where a party to the conflict employed precision guided munitions exclusively. NATO employed 7,642 air-to-surface weapons, all of which were precision-guided: 3,644 laser-

guided, 2,844 GPS-guided, 1,150 precision-guided direct-fire weapons (such as Hellfire missiles), and four miscellaneous precision-guided munitions. NATO told the Commission approximately 470 naval rounds were fired. NATO did not provide a number of ship-launched Tomahawk missiles fired. NATO also said no cluster munitions or passive attack cluster munitions were used. NATO told the Commission that it had a standard of "zero expectation" of death or injury to civilians. NATO told the Commission 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. The delayed fusing allows an aerial bomb to penetrate through the roof and explode inside or underground, collapsing the buildings upon themselves. When this happens, the blast and fragmentation damage is contained, thus minimizing collateral damage and the potential to harm civilians.

606. NATO told the Commission that it also provided effective warning to the population throughout the conflict, including "location-specific warnings...in order to advise them to avoid areas likely to be struck." NATO provided the Commission with copies of leaflets NATO had distributed throughout Libya during the conflict. The leaflets directed civilians to avoid combat areas, to tune to a specific radio station for information, and told civilians NATO was conducting operations to protect civilians. The Commission also received copies of photographs of leaflets found in Libya.

607. During the second phase of the Commission's work, the Commission's military expert, a former head of high-value targeting with a NATO member state government, investigated a total of 20 NATO airstrikes in Libya. This included a visual inspection of each site; detailed crater analysis; analysis of ejecta (material thrown out by the blast); and, where available, examination of the remnants of the munition itself. The Commission also looked for military signatures, in other words evidence that the site had been used for a military purpose. This might include, for example, the remains of weapons stored there, or military equipment such as communications aerials. The Commission also conducted 34 interviews with victims and witnesses. There were four sites with reported instances of civilian casualties that were not investigated by the Commission due to time and security constraints. The Commission benefited from assistance from UNOSAT who provided satellite imagery to assist the Commission in determining if sites had clear military utility. Satellite imagery was not available for all dates. The Commission accepts that there may have been military utility before or after the images examined by the Commission. In those circumstances, the Commission requested clarification from NATO. Much of the evidence gathered by the Commission in relation to NATO strikes is of a technical nature and necessitates detailed explanation.

608. The vast majority of NATO airstrikes did not result in civilian casualties or collateral damage to civilian objects, even where there was a significant potential for civilian harm.

609. For example, from 24-25 May 2011 NATO aircraft struck the Bab-al-Aziziyah facility, a large military compound and barracks in central Tripoli used by Qadhafi as a residence and headquarters. Numerous multi-story buildings used by Qadhafi's security forces were destroyed. The collapsed buildings show damage consistent with 2000lb bombs using delayed fuses: some of the buildings show clear entry holes extending through multiple floors, indicating an aerial bomb with a delayed fuse had exploded inside or underground, collapsing the buildings upon themselves and thus minimizing collateral damage. Several of the security buildings destroyed were less than 300 meters from civilian apartment buildings, close enough to be at risk of collateral damage from the strikes. While civilian apartment buildings were well within the collateral damage radius of the attack, not even the glass on these apartment buildings was broken. Weapons appeared to impact at angles pointing away from civilian housing to ensure flying debris did not impact them. Finally, many strikes were at night. This meant fewer civilians would be on the street and reduced the likelihood of civilian casualties.

610. A number of NATO airstrikes, however, were the subject of allegations of civilian casualties, which the Commission investigated. Allegations of civilian casualties during the conflict came from the then Libyan government, which it alleged amounted to an indiscriminate attack on civilians, or media reports. Others were reported by witnesses during the Commission's field missions. Some of these claims were backed up by evidence subsequently gathered by the Commission. The Commission also investigated a number of sites to establish that NATO's claims on accuracy and use of precision-guided munitions were in fact accurate.

611. The Commission documented five airstrikes leading to a total of 60 civilians killed and 55 injured. The Commission also investigated two NATO airstrikes which damaged civilian infrastructure and where no military target could be identified.

612. Specific incidents will be dealt with below.

#### Applicable Law

613. The legal regime applicable to NATO's actions in Libya are based upon principles of international humanitarian law set out elsewhere in this report (see chap. I, sect. E). Principles of distinction, proportionality, precautions, humanity and military necessity can be found in multiple legal sources, including the Hague and Geneva Conventions. They form part of customary international law.

614. Attacks must distinguish between civilian and military persons and objects, with only the latter targeted. International law requires the one directing an attack to "take all feasible precautions" to ensure that the objective of the strike is indeed a legal one, and that the damage to civilians and civilian objects is minimized. The obligation extends for the

duration of the attack, requiring that it be cancelled or suspended if it becomes apparent that the target is not a military target or that its status has changed.

615. Under the rule requiring proportionality in attack, a party is required to forego any offensive where the incidental damage expected "is excessive in relation to the concrete and direct military advantage anticipated." Thus, where the military advantage is outweighed by the damage or death to civilians and/or civilian objects, the attack is forbidden. This rule applies despite the recognition that incidental injury to civilians - so-called "collateral damage" - may occur even when an attack is lawful. Collateral damage does not in itself render an attack unlawful according to the laws of war; rather, the damage is to be weighed in proportion to the significance of the military advantage that would be achieved in a successful attack.

616. As with "disproportionate attacks," a failure to take all feasible precautions does not per se mean that those killed during a strike were unlawfully killed. However, the killing of a protected person that could have been avoided if the attacker had undertaken all feasible precautions, is an unlawful killing.

#### Factual Findings i. Libyan Government claims

617. During the first visit of the Commission to Tripoli in April 2011, the Commission met with a Government health official who stated that 64 civilians had been killed by NATO bombardments. The Commission also received written reports from the Libyan authorities stating that strikes had resulted in the death of 500 civilians and 2,000 injured and that NATO had targeted schools, universities, mosques, and other civilian locations. According to the same sources, 56 schools and three universities were directly hit by these strikes. Furthermore, it was claimed that NATO airstrikes had resulted in the closure of 3,204 schools, leaving 437,787 students without access to education. The authorities did not provide any evidence of this at the time and the Commission was not in a position to assess the veracity of the information received. As stated in its first report, the Commission had not seen evidence either to suggest that civilian areas had been intentionally targeted by NATO forces, nor that it had engaged in indiscriminate attacks on civilians.

618. The Commission took account of subsequent claims by the Government in regard to civilian casualties, but testimony from former Government 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 some cases the Commission found the Libyan government claimed civilian casualties in airstrikes in areas where there had been no attacks at all. In one case, the Commission received a credible report of Libyan forces removing the bodies of children from a hospital morgue and took them to the site of a NATO airstrike.

#### Cases i. Majer

619. The single largest case of civilian casualties from a NATO airstrike took place in the town of Majer in the area of Al Huwayjat on 8 August 2011. On August 9 2011, Libyan state media claimed 85 civilians had been killed.

620. The Commission found that at approximately 11:30pm six buildings were struck. Four of the buildings were unoccupied. However, five women and seven children were killed in one building. Moments later, four men were killed in a second building. Neighbours and family members from the area, some who were attending evening Ramadan prayers at the local mosque, arrived at the site to evacuate wounded. After the rescuers arrived and had removed the four bodies from the second residential dwelling, another bomb struck, killing 18 rescuers. Victims estimated the time between initial strikes and the final restrike that killed rescuers as between 10 and 15 minutes. It is not clear whether the second strike was a restrike (a strike made shortly after the first in order to target military forces moving in) or simply a second strike to hit targets missed in the first.

621. The Commission conducted a site survey on 4 December 2011. It was able to identify bomb fragments from multiple GBU-12 Paveway II laser-guided bombs, as well as the guidance section for at least one GBU-12. There was no sign of the type of weapon debris or military signatures in the ejecta which might suggest the buildings were weapons storage facilities, communications hubs, or had any military function. The buildings struck appeared to have been residential dwellings. The Commission examined the remains of the vehicles driven by the rescuers and confirmed they were civilian-type vehicles with no provision for weapon mounts. The Commission conducted interviews of witnesses and survivors of the attack and reviewed hospital records of those killed and wounded in the strike. The Commission documented a total of 34 civilians killed and 38 wounded.

622. Bomb remnants show that the guidance system on at least one of the bombs used in this attack was more than five years past its warranty date (October 2005). NATO told the Commission, "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." GBU-12 bombs are guided to the target by the pilot using a targeting pod with an infra-red camera and laser designator. This means the pilot or pilots of the aircraft dropping the bombs in this strike would have had to observe the target throughout the attack. Whatever the legitimacy of the initial strikes, the Commission has seen no evidence to suggest that the rescuers were in military vehicles or were otherwise participating in hostilities. Nor has it seen any other evidence to suggest that the pilot might have had reason to positively identify the people as military targets.

623. According to NATO the buildings were "functioning as a troop staging area" and were "being used as a staging area for Government forces actively engaged in attacks on civilians and civilian-populated areas." When it examined the site, the Commission found no evidence of the buildings being used by the Qadhafi forces. Given that a troop staging area

would involve the presence of troops and almost certainly significant vehicle activity, the Commission asked UNOSAT to perform imagery analysis of the target area to see whether there were signs of such activity visible around the target at the time of the strike. Analysis of high-resolution GeoEye-1 satellite imagery was performed for 6 August 2011 (two days before the strike) and again for 9 August 2011 (the day after). Analysis of the imagery shows several concentrations of approximately 120 light trucks (but not identifiable military vehicles) in the area less than a kilometre from the targets on 6 and 9 August, but no activity at the site itself.

624. These observations are consistent with testimonies of witnesses interviewed by the Commission. Among those was one of the rescuers who came from the mosque after the attack, and removed the dead bodies of his aunt and her three children from one of the buildings. He told the Commission that both the houses and the rescuers were civilian.

625. The Commission found no evidence on the ground, or through satellite imagery analysis, that the site had a military purpose. On the basis of the information received by the Commission, it seems clear that those killed were all civilians. NATO's response to the Commission did not provide an adequate explanation of the military value of the target, nor an explanation of the second strike. On the basis of the information provided, the Commission is unable to make a determination as to the military rationale for the initial attack and subsequent decision to launch the second strike (or 'restrike') at Majer. i. Souq al-Juma

626. Three homes were destroyed during the targeting of what NATO described as a "military missile site," in Souq al-Juma in Tripoli, at approximately 1.30am on 20 June 2011.

627. On 2 December 2011, the Commission visited the site. From fragments of the bomb collected by family members, the Commission's military adviser was able to identify that one 500lb bomb had hit the site. According to NATO the bomb used was laser-guided which would mean the GBU-12 was the most likely weapon used. There was no sign of weapon debris or military signatures in the ejecta which might have confirmed the site had a military significance. The Commission conducted interviews of witnesses and survivors of the attack and reviewed hospital records of those killed and wounded in the strike as well as police reports filed after the strike. This evidence shows 5 civilians were killed and 8 were injured. Of the five deaths two were children; at least ten families were made homeless by the strike and were forced to relocate. The house in question was located about one kilometer south of the Umm Aitiwah Airfield. UNOSAT analysis of high-resolution satellite imagery for the target was done using multiple satellite images from the WorldView-1, WorldView-2, and QuickBird satellites. No obvious signs of military activity before the strike were observed in the satellite imagery on 10 June 2011, nor was anything visible after the strike which might suggest the houses had a military utility.

628. NATO first stated the houses were not the target of the attack and they may have been hit due to a weapon malfunction. Later, in a letter to the Commission, NATO said the intended target was the Tarabalus SA-2 Support Facility. However, NATO stated the weapon impact was not observed and NATO was unable to determine where it landed, though they acknowledge it was possible the errant bomb caused the casualties.

#### i. Zlitan

629. On 4 August 2011 at approximately 6:30am the home of a 39 year old teacher was struck by a NATO airstrike. The man's wife, son and daughter were all killed by the blast. His mother and son were wounded. The family home is adjacent to a military facility. Locals could not identify what it was specifically. Neighbours indicated there were rumours senior Qadhafi leaders such as Abdullah al-Senussi were using the facility during the conflict.

630. According to NATO, the home was identified as a Government senior commander's command and control node directing forces in the Zlitan area. NATO said the claim made by the Libyan government at the time of attack in relation to civilian casualties was "highly unlikely."

631. On 4 December 2011, the Commission senior military advisor conducted a site survey. Damage to the home is consistent with a strike by a 500lb precision-guided munition, either a GBU-12 or GBU-38. There was no sign of weapon debris or military signatures in the ejecta at the house. The Commission examined the remains of the buildings, looking for signs of command and control nodes such as communications equipment, military grade cabling, military-grade satellite and other communication dishes, and fragments or pieces of such equipment destroyed in the bombing. There were none evident. The satellite dish on the house had been a commercial television one. There was nothing to suggest a connection between the house and the adjacent Libyan military facility. The home was separate from the military facility and had no physical access to it. UNOSAT Analysis of high-resolution satellite imagery for the target was done using multiple satellite images. Pre-strike satellite imagery on 3 August 2011, the day before the attack, showed no obvious signs of military activity before the strike.

632. The Commission conducted interviews of witnesses and survivors of the attack. The owner of the house said he was sure the attack was a mistake but that no one had come to speak to him to explain why his family was killed. The evidence suggests NATO hit the wrong building, that those killed were civilians and the building served no military function.

#### i. Bani Walid

633. On 29 August 2011, at 3.30am two residential buildings in Bani Walid were struck by at least two bombs killing five civilians and injuring one: a man, his wife, son, and two daughters were killed. His daughter was dug from the rubble and survived, though she reportedly suffered brain damage.

634. According to NATO the site "was a major command and control node...actively controlling Government forces which were attacking civilians in the area." On 22 January 2012, the Commission's site survey located a tail fin showing the homes were struck by GBU-12 laser guided bombs. It found no sign of weapon debris or military signatures in the ejecta at the house which might suggest a military base or storage facility, nor signs such as communications equipment that would suggest the building was a command and control node. The Commission interviewed a number of witnesses, including family members, all of whom indicated the houses were civilians in nature. The witnesses denied to the Commission that the buildings were ever used for military purposes. UNOSAT satellite imagery of the compound for 22 May 2011, three months before the strike, showed hundreds of light trucks and possible light armoured vehicles in several areas of the city, but none closer than 125 meters northeast of the compound. There was no imagery available between 22 May 2011 and the date of the airstrike.

635. While further military activity may have occurred at the site subsequent to the images viewed, the Commission did not see evidence of any military purpose for hitting the buildings from its investigation on the ground. The location of vehicles in the area during a period of significant military activity does not indicate any relationship between those vehicles and this home. NATO provided no further explanation or military link to this home other than to identify it as a command and control node.

Surman

636. A compound housing the residence of Major General El-Khawaidi el-Hamedi and his family was bombed by NATO on the night of 20-21 June 2011. Libyan state Media claimed 19 civilians were killed.

637. On 24 January 2012 the Commission's senior military advisor visited the site. Inside the perimeter the Commission found two large mansions destroyed by aerial bombs consistent with 2000lb earth penetrators, likely to have been BLU-109 based upon the entry holes. The bombs detonated deep within the structures destroying them. A third building struck by a penetrator had partially collapsed. The use of BLU-109s kept the ejecta contained and spared possible collateral damage to the mosque and nearby school which were less than 200m from the buildings struck which were within the range for collateral damage from a 2000lb bomb. A tennis court was also hit by two smaller bombs. Subsequent media reports showed that civilian-type vehicles had been parked on the tennis court at the time of the strike. There was no sign of weapon debris or military signatures in the ejecta at the house; however according to witnesses interviewed by the Commission the Libyan military came to the site after the strikes to remove bodies and may have also removed military equipment.

638. There was some evidence of military usage of the compound. There was an old post office across the street from the compound that was destroyed, the damage being consistent with a strike by multiple bombs. According to locals it was used by the General as a communications relay. This claim is supported by the presence of a large communications mast still standing adjacent to the post office. A large hall opposite a mosque inside the compound was not attacked, but the Commission found ammunition storage cases inside and locals told the Commission it had been used as a barracks and weapon storage facility by the Qadhafi forces. NATO told the commission, "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." According to witnesses, the entire area was off-limits to locals during the conflict and was heavily guarded by the military and police. UNOSAT imagery analysis showed military activity in the area on 27 May 2011, the last date imagery was available prior to the strike. The Commission determined there were 13 civilians killed in the attack. The General was not killed.

639. The Commission is unable to conclude, barring additional explanation, whether such a strike, albeit one within a military compound, is consistent with NATO's objective to avoid civilian casualties entirely, or whether NATO took all necessary precautions to that effect.

i. Bani Walid

640. The Commission investigated two further airstrikes against civilian objects where there were no civilian casualties but where the Commission could not identify any military necessity for the attacks. The Commission notes the nature of the conflict during the strikes on these facilities was fluid and it is possible Qadhafi forces used these facilities as lodging or for some other transient purpose that would not leave adequate evidence behind for the Commission to find or that locals did not witness.

641. On 9 September 2011, NATO bombed a large complex in Bani Walid with over 35 buildings identified as a medical school by locals. The Commission investigation found the destroyed buildings contained burned school desks, books, and medical equipment consistent with this facility being a medical school. There were no military signatures in the craters or debris on the grounds. While there were some craters, not all buildings appeared to be destroyed by aerial bombs and the Commission found the remains of 68mm SNEB rockets at the site.

642. UNOSAT analysis of high-resolution satellite imagery from 4, 5 and 8 September 2011, the day before the strike, showed no evident military activity. There was military activity observed from four months before the strike, on 22 May 2011, when at least 100200 light trucks and possible light armoured vehicles were parked on the street directly to the west of the complex, stretching north to south. About 20 light SUV trucks are visible inside the complex on that date as well, though it is not possible to tell if the SUVs have a military or civilian function. While this number of vehicles could indicate the general area was being used as a staging point for Qadhafi forces at that time and subsequently, the



Commission saw nothing on the imagery or on the ground that would indicate the reason why the compound itself would have been struck four months after this. Local residents denied the compound had any military usage.

643. According to NATO, "this facility was a confirmed military facility in a walled compound, and was being used at the time as a command and control facility." NATO did not provide further evidence to support the contention this was a command and control facility and the Commission found nothing on the ground to support NATO's statement.

644. On 10 October 2011, two buildings in Bani Walid housing a tile factory were destroyed. The Commission found remnants of the guidance system and bomb fragments for a GBU-12 laser guided bomb in a crater. The owner of the factory and other witnesses denied it was used for military purposes. The buildings were filled with hundreds of broken floor tiles as well as six large tile-manufacturing machines that were destroyed in the attack. The Commission searched the site for evidence that it had been used by Qadhafi forces for military activity. There were no signs of secondary explosions in the factory buildings that would indicate ammunition or weapon storage, and none of the debris was military in nature. It did find a destroyed pickup truck outside the perimeter of the factory with a mount of the type used for a 23mm anti-aircraft cannon. The Commission could not determine when the vehicle had been placed there or whether it had been used by the Qadhafi forces. There were no other visible indications for why the factory may have been targeted.

645. UNOSAT analysis of multiple high-resolution satellite images throughout September 2011 and up to 5 October 2011, do not show military activity at the site.

646. According to NATO the site was "an industrial compound that had been taken over for military purposes and was being used at the time as a command and control node." Witnesses interviewed by the Commission denied this and the Commission found nothing besides the destroyed pickup truck to indicate any military presence at the factory. NATO provided no evidence to support the contention this was a command and control site.

#### i. Sirte

647. On 16 September 2011, in Sirte a dynamic airstrike destroyed two pickup trucks belonging to Qadhafi forces, killing 30 individuals gathered on the street. According to NATO, the military vehicles were firing into civilian areas and authorization was given to engage them when clear of the populated area. "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." Although the vehicles were a legal target they were engaged on the edge of Sirte within 30 meters of civilian structures.

648. According to witnesses a second bomb struck after a group of rescuers arrived, reportedly killing another 28 civilians, including children. The Commission determined the weapons used were GBU-12 laser guided bombs based on bomb guidance fins recovered at the site. The Commission's investigation showed those killed were in fact most likely armed civilian volunteers. The Commission was unable to come to a conclusion on the presence of non-combatants, as witness information was contradictory.

#### Conclusions

649. The Commission recognises the large numbers of sorties and the proportionally low number of civilian casualties in comparison to other campaigns figures show the campaign conducted by NATO was conducted with precision weapons and a demonstrated concern to avoid civilian casualties. The vast majority of airstrikes hit military targets outside of population centres and did not endanger civilians. For the few targets struck within population centres, NATO took extensive precautions to ensure civilians were not killed.

650. A number of allegations against NATO investigated by the Commission were either exaggerated or a deliberate attempt at misinformation.

651. Nevertheless the Commission found there were civilian casualties resulting from NATO's operations.

652. The Commission interviewed numerous witnesses at each site. While some may have had reason to claim combatants were civilians or deny a site had a military usage, particularly if they wished to distance themselves from the Government, the Commission found the cumulation of testimonies credible and supported by hospital records, including showing the dead were women and children.

653. On at least one occasion, NATO used munitions which had exceeded their warranty date. While the age of the munitions may not have affected the accuracy of the weapon used in this instance, there are significant potential consequences of using weapons whose precision-guidance has deteriorated over time.

654. The Commission is unable to understand NATO's characterization of four of five targets where the Commission found civilian casualties as "command and control nodes" or "troop staging areas" without further explanation. All of these sites were visited by the Commission and none showed evidence of such activity. Without further evidence to substantiate NATO's claims, the Commission cannot determine whether NATO took all feasible precautions to protect civilians at these sites. 655. The Commission is unable to determine, for lack of sufficient information, whether these strikes were based on incorrect or outdated intelligence and, therefore, whether they were consistent with NATO's objective to take all necessary precautions to avoid civilian casualties entirely.

**Conclusions (in relation to prohibited weapons) (p174)**

NATO did not employ cluster munitions, landmines or phosphorous.

**Correspondence from NATO to the International Commission of Inquiry on Libya (pp201-216)**

To: LEGAL ADVISER

20 December 2011

Dear Judge Kirsch,

Thank you for your letter of 15 December, referencing Mr. MotaJa'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.

sincerely.

Peter Olson  
Legal Adviser NATO

Judge P. Kirsch, Q.C.  
Chair  
International Commission of Inquiry on Libya  
United Nations

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 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, and are for convenience often treated as co-terminous, but it should be understood that the two are not, strictly speaking, co-extensive. While all NATO Allies participated in the approval and overall direction of OUP, not all played active operational roles. In addition, several non-NATO nations joined and participated in OUP which became, as a result, a NATO-led operation. NATO's supreme decision-making authority, the North Atlantic Council, exercised overall direction of OUP. The execution of that direction was the responsibility of the military chain of command consisting of the Supreme Headquarters, Allied Powers in Europe (SHAPE); its subordinates were Joint Force Command Naples which delegated the execution to Combined Joint Task Force Command OUP (in Naples), which in turn operationally commanded OUP and consequently commanded the tactical air operations headquarters at Poggio Renatico and the tactical maritime operations at Maritime Command Naples headquarters. 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" (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 (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 were 500-lb. or smaller in weight, 562 between 500 and 1000 lb., and 802 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 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-Grarg 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 Nail residence (Zlitan). This target had been identified as a regime senior commanders 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. Maier. The four buildings addressed in the questions relating to Maier 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 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 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.

sincerely,

Peter Olson  
Legal Adviser, NATO

LEGAL ADVISER

15 February 2012

Dear Judge Kirsch,

Thank you for your letter of 3 February, 2012, which inquired about the 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 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 commanders 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 (Maier). 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.

Peter Olson  
Legal Adviser, NATO

## **Annex V Glossary of weapons used in Libya (pp219-220)**

### 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 thuwar 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 thuwar 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 thuwar 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 thuwar on the back of pickup trucks on improvised mounts using MATRA rocket launchers. The range and length vary depending upon the warhead.

Ideas, feedback, suggestions? We want to hear from you. Please [contact us at NATO Watch](#) with any news and stories for the Observatory, as well as feedback or suggestions on this briefing.

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