



# Interpretation of Security Council Resolution 1973 on Libya

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What the rules of engagement are in Libya, and how far coalition forces are allowed to go in protecting the civilian population are highly controversial. This note looks briefly at some of the current questions.

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## 1 What does “all necessary measures” mean?

“All necessary measures” is clearly a broad authorisation. Similar phrases in the past (such as “all necessary means”) have in the past simply been code for the use of force. However, there are always limitations, both in the resolution itself and in general international law.

Every action taken under this authorisation is limited by the following aspects of the resolution:

- It must be aimed at those who put civilians and civilian occupied areas under threat of attack.<sup>1</sup>
- It must not amount to a “foreign occupation force”.
- It must be “necessary”. This probably does not mean that it has to be “essential” or “the only means possible”. The test is more likely to be that the use of force must be proportionate to achieving the objective specified by the resolution. The difficulty here is that judging this is very difficult for those who do not have military expertise or the requisite information.

## 2 Who are “civilians”?

The resolution offers protection to a wide category of people in Libya, even if they are or have been fighting. In humanitarian law, a “civilian” is “any person not a combatant”;<sup>2</sup> but the definition of combatant is narrow and does not cover rebel forces unless they:

- are under an effective command structure that enforces the international law of armed conflict; and
- distinguish themselves from the civilian population while they are attacking, or carry arms openly during each military engagement.

Moreover, the resolution authorises the use of force to protect not only civilians but also “civilian occupied areas”, and not just those actually under attack but also those under *threat* of attack. This means preventing attacks on towns and cities, whether those attacks are directed at civilians or even at what would ordinarily be legitimate military targets.

US General Carter Ham said that if a Libyan was defending his home with an AK-47 against government forces, he would be supported by the coalition, but if he was in a military vehicle or using heavy weapons, he would not. That distinction might not be obvious to a pilot in a fighter plane thousands of feet above Libya.

## 3 Why did coalition forces attack Libyan air defences right away?

Some have suggested that immediate attacks on Libya’s air defences were unnecessary, arguing that the Qaddafi regime could have been warned that a no-fly zone had been imposed. The coalition could then have acted only if the Libyan air force launched planes or Libyan air defences attacked coalition aircraft.

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<sup>1</sup> H“Libya: The legal case for deployment”,H *Guardian*, 21 March 2011

<sup>2</sup> HProtocol IH to the 1949 Geneva Conventions, 1977, article 50

The Qaddafi regime did immediately announce a ceasefire, which was greeted with disbelief by those who were pushing for military action. It could be argued that a greater attempt should have been made to ascertain whether the announced ceasefire was in any way genuine. The rebels could have been warned that to provoke government forces in an attempt to bring on western air support would not be acceptable. On the other hand, it could also be argued that this would provide time for government forces to capture Benghazi and that it would then be too late for the coalition to protect civilians as authorised by the resolution.

The idea that coalition forces would not need to degrade Libyan air defences first was floated before the Security Council passed its resolution. British Defence Secretary Liam Fox said in early March, as the merits of a no-fly resolution were debated, that it would not be necessary to destroy air defences unless the Libyan regime did not comply with a no-fly zone. He said:

You can say [to the Libyan leadership] that if your air defence radar locks on to any of our aircraft, we regard that as a hostile act and we would take subsequent action.<sup>3</sup>

The problem with this idea is that coalition governments would then be asking their armed forces to put the lives of their servicemen or women, and their aircraft, at risk. Libya's air defences were substantial and effective enough to bring down a rebel aircraft. Even after the action over the weekend of 19/20 March to degrade Libyan air defences, anti-aircraft ordnance was seen in large quantities over the skies of Tripoli.

It is possible that Qaddafi might have complied with the no-fly zone, but coalition planners may have come to the conclusion that he probably would not, and that the regime would prefer to bring down one coalition aircraft and then have its air defences destroyed than to have them destroyed immediately. The coalition therefore decided to act against Libyan air defences immediately, following the line suggested by the US defence secretary, Robert Gates.

#### **4 Can Libyan military assets be attacked if they are not attacking civilians?**

Libyan army units and Colonel Qaddafi's compound in Tripoli were attacked by coalition forces. Does that amount to taking sides in the conflict and aiming for regime change? The Security Council resolution does not authorise regime change.

The interpretation of the part of the resolution that authorises member states to act to protect civilians is difficult and has already become controversial. The paragraph states that the Security Council:

Authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council.<sup>4</sup>

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<sup>3</sup> "France backs Libyan opposition", *Financial Times*, 11 March 2011

<sup>4</sup> Operative paragraph 4, [HUN Security Council Resolution 1973](#), 17 March 2011

To take “all necessary measures” to protect civilians under threat of attack is a very broad provision and can be interpreted in a number of ways. It could be argued, for example, that it is impossible to protect civilians without destroying military units that are travelling towards civilian populated areas with intent to attack them.

If coalition forces waited until those military units had reached civilian populated areas and had started to attack them, the argument is that it would have been too late to act because civilians and their attackers would be intermingled and it would be impossible to attack military forces loyal to Qaddafi from the air without causing further civilian deaths.

The coalition justification for attacking a building in the Qaddafi compound in Tripoli was that it was a military command centre. The Qaddafi regime said that it was an administrative building.<sup>5</sup> Again, it could be argued that the most efficient way to protect civilians is to strike at Libya’s command and control systems, reducing the Libyan military’s capacity to strike civilian areas.

## **5 Should the coalition take sides?**

The idea that the coalition should not take sides and should confine itself to protecting civilians is reasonable. The response to this suggestion depends to an extent on whether the rebellion is viewed as a popular uprising being crushed by an oppressive dictatorship, or something closer to a civil war.

It is very difficult to be sure which of these descriptions fits the situation in Libya more closely. There are few estimates of the popular support enjoyed by Qaddafi or by the rebellion. Undemocratic leaders are not normally enthusiastic about opinion polls being held in their country.

While it is tempting to assume that any ruler with such an oppressive record who has been in power since 1969 must be broadly unpopular, that would be to ignore the tribal basis of Libyan society. Qaddafi is generally thought to have the broad support of certain clans, particularly in the west of the country, and to be opposed by others, particularly in the east.

Interestingly, the Security Council resolution hints at taking sides itself by mentioning Benghazi specifically and no other town.

If the rebel forces were to gain in strength to the point where they could inflict large-scale damage on a government-held town, inflicting collateral damage on the civilian population, it is not clear whether the coalition would intervene to prevent them.

The Libyan government claims that the coalition is providing close air support for the rebels to attack government forces. On 23 March, *BBC News online* carried the headline “Allies join fight for Libyan city of Misrata.” If the coalition is “joining the fight” for towns, this might be considered to be going beyond the protection of civilians that the resolution authorises. On 21 March the US commander of the operation, General Carter Ham said, “we do not provide close air support for the opposition forces”.<sup>6</sup>

## **6 Can the coalition target Colonel Qaddafi personally?**

Differences of interpretation surfaced about the likelihood of an attack on Colonel Qaddafi quite soon after the resolution was passed. On 20 March, Defence Secretary Liam Fox

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<sup>5</sup> “Coalition bombards Gaddafi’s command centre near his home” *Statesman*, 21 March 2011

<sup>6</sup> “Confused in Libya”, *Washington Post*, 23 March 2011

refused to rule out the possible targeting of Colonel Qaddafi. He also implied that the leader was a legitimate target but that attempts would not be made to attack him because of the likelihood of civilian casualties:

Well, there's a difference between someone being a legitimate target and whether you would go ahead with targeting. You would have to take into account what might happen to civilians in the area, what might happen in terms of collateral damage, we don't simply – with a gung–ho attitude – start firing off missiles.<sup>7</sup>

Foreign Secretary William Hague also refused to exclude the possibility.

The British military appeared to rule this out categorically. Asked about the possibility of targeting Qaddafi, Sir David Richards, Chief of the Defence Staff said:

Absolutely not. It is not allowed under the UN resolution and it is not something I want to discuss any further.<sup>8</sup>

US Defense Secretary Robert Gates also cautioned against broadening the terms of the resolution when asked about targeting Qaddafi:

The one thing that there is agreement on are the terms set forth in the Security Council resolution. If we start adding additional objectives then I think we create a problem in that respect. I also think it is unwise to set as specific goals things that you may or may not be able to achieve.<sup>9</sup>

## 7 Can the coalition send ground forces in?

The resolution excludes the possibility of a “foreign occupation force”.<sup>10</sup> Legally, that means that ground forces can be used as long as they do not exercise effective control over the territory.<sup>11</sup>

Asked whether he could guarantee that no ground forces would be used, Mr Cameron told the Commons:

What I can guarantee is that we will stick to the terms of the UN resolution, which absolutely and specifically rules out an occupying force. We have to be clear: we are not talking about an invasion; we are not talking about an occupying force; we are talking about taking action to protect civilian life, and I think that is the right thing to do.<sup>12</sup>

There is speculation that British Special Forces are on the ground in Libya, helping the Air Force to select targets and, it is reported, aborting one RAF mission because civilians were too close to the target. The government has denied the suggestion.<sup>13</sup>

On 3 April, Mr Hague clarified the government’s position:

We’re sticking very closely here to the United Nations resolution... which makes very clear there must be no foreign occupation of any part of Libya and we will stick to that.

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<sup>7</sup> “Target: Gaddafi Defence Secretary won't rule out controversial 'decapitation strategy'”, *Daily Telegraph*, 21 March 2011

<sup>8</sup> “Is Gaddafi a target? Cameron and military split over war aims”, *Guardian*, 22 March 2011

<sup>9</sup> “Objectives: UN resolution ambiguous on regime change, say lawyers”, *Guardian*, 22 March 2011

<sup>10</sup> Operative paragraph 4, HUN Security Council Resolution 1973H, 17 March 2011

<sup>11</sup> Eyal Benvenisti, H“Belligerent Occupation”H, *Max Planck Encyclopedia of Public International Law*, May 2009

<sup>12</sup> HC Deb 21 March 2011, c703

<sup>13</sup> “Longest mission since the Falklands”, *Times*, 21 March 2011

There have already been circumstances in which we've sent small special forces in to Libya. We rescued people from the desert a few weeks ago as you will remember through doing that. So circumstances can arise where limit, such limited operations take place, but there is going to be no large scale ground force placed in Libya by the United Kingdom.<sup>14</sup>

## 8 Can arms be sent to the rebels?

Resolution 1970 imposed an arms embargo on Libya,<sup>15</sup> as well as referring the situation to the International Criminal Court and imposing a travel ban and assets freeze on the family of Muammar Qaddafi and certain Government officials. It also proposed setting up a United Nations committee to monitor the sanctions imposed by the resolution.

The only exceptions to the otherwise general prohibitions on transfers of arms to Libya are for:

- items for “humanitarian or protective use”
- protective items taken to Libya by UN personnel or journalists
- “other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee”.<sup>16</sup>

All of the above would have to be approved by the committee. Some have suggested that the third general exception, for items as approved by the Libya sanctions committee, could be used to allow the arming of the rebels. Former Foreign Secretary Malcom Rifkind asked on 14 March:

Of course, we must recognise the legality of the arms embargo, but does the Prime Minister agree also that the terms of the arms embargo resolution prevent arms from being supplied to what is called the Libyan Arab Jamahiriya—in other words, to the Gaddafi regime—and that it is perfectly possible to supply arms or other equipment to those who are fighting that regime, especially as the resolution itself, through the appointment of a sanctions committee, allows that sanctions committee to provide arms sales to other groups in Libya if it thinks that appropriate?<sup>17</sup>

Mr Cameron's response was, “I am not sure it is an opinion that is shared by all other lawyers.”<sup>18</sup>

Mr Hague clarified the British Government's position on the 3 April:

We have taken no decision to arm the rebels, the opposition, the pro democracy people, whatever one wants to call them and I'm not aware of any of our allies taking the decision to do that. What we are engaged in is protecting the civilian population in Libya, which we have done with a lot of success... when people look at what we're doing in Libya they do have to look at what would be happening if we didn't do what we'd done over the last few weeks and it would have been a catastrophic situation.<sup>19</sup>

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<sup>14</sup> Foreign and Commonwealth Office, “Foreign Secretary discusses Libya and Cote d'Ivoire”, Press release, 3 April 2011

<sup>15</sup> Operative paragraph 9, *HUN Security Council 1970*H, 26 February 2011

<sup>16</sup> *Ibid.*

<sup>17</sup> HC Deb 14 March 2011, c30-1

<sup>18</sup> HC Deb 14 March 2011, c31

<sup>19</sup> Foreign and Commonwealth Office, “Foreign Secretary discusses Libya and Cote d'Ivoire”, Press release, 3 April 2011

The second resolution, 1973, did not change the terms of the arms embargo imposed by Resolution 1970, merely changing the enforcement mechanisms.

The UN Libyan sanctions committee has been set up. According to reports, Portugal's ambassador to the UN, José Morães Cabral was named as the chairman of the committee on 8 March.<sup>20</sup> It is not clear at the time of writing whether the committee has met.

The wording of the resolution, which refers specifically to protective and humanitarian items, could be interpreted by the committee as placing a limitation on the third, general authorisation for arms sales or transfers. If the committee interpreted the resolution in this way, arming the rebels with the approval of the committee could be a cumbersome method of transferring arms to the rebels. The committee might refuse to allow any such transfers.

## **9 What is the ultimate goal of the military action?**

Asked what he would consider a successful outcome to the military action, Mr Cameron told the House of Commons:

A successful outcome is the enforcement of the will of the UN, which is the ceasing of attacks on civilians. That is what we are aiming at. But let me be absolutely frank about this: it is a more difficult question, in many ways, than the question over Iraq, because in Iraq we had been prepared to go into a country, knock over its Government and put something else in place. That is not the approach we are taking here. We are saying that there is a UN Security Council resolution to stop violence against civilians and to put in a UN no-fly zone, and then the Libyan people must choose their own future. The point I would make is that they have far more chance of choosing their own future today than they did 24 or 48 hours ago.<sup>21</sup>

Beyond the immediate aim of protecting civilians, some commentators have said that it is not clear what the coalition's preferred outcome is. Of course, no-one doubts that coalition leaders would be happy if there were a "palace coup" and Qaddafi was removed from within the regime. A spokesman for the US State Department said on 21 March:

What we are trying to do is convince Gaddafi and his regime to step down from power . . . that remains our ultimate goal.<sup>22</sup>

However, if that does not happen, what does the coalition want to happen?

Qaddafi's ground forces are still much better trained and equipped than the rebels and there is a strong chance that he will hold on to power, at least in the western part of the country. The resolution does not call for regime change and the coalition could be faced with a situation where an extremely hostile Qaddafi regime, supported by sales from the country's western oil fields, could for years mount attacks on shipping in the Mediterranean, for example, or resume its policy of supporting terrorist groups that target western interests.

Even if the rebels manage to bring down the Qaddafi regime, it is not clear that they would be capable of administering the country or that the resulting regime would be better for the Libyan population, more in line with western ideals such as human rights, or more supportive of western interests.

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<sup>20</sup> "Portugal to head UN Libya sanctions committee", *AFP*, 6 March 2011

<sup>21</sup> HC Deb 21 March 2011, c706

<sup>22</sup> "Is Gaddafi a target? Cameron and military split over war aims", *Guardian*, 22 March 2011

In any case, many analysts think that the west's military engagement in Libya may not be short.<sup>23</sup>

## 10 General considerations

Whether a particular action is covered by this authorisation is likely to be a matter of fact in the particular circumstances:

Targeted attacks on senior Libyan officials might be justified if this is the only way to stop attacks on civilians. That would include an attack on Colonel Gaddafi himself. The government is acting prudently in not clarifying this now because to do so might limit its freedom of action later, or reveal just how far it is prepared to go.<sup>24</sup>

The use of force under this resolution must also comply with the general laws of armed conflict, so for instance any attack must be on a legitimate military target.

## 11 International reaction

### 11.1 Arab nations

There has been an unexpected level of support for action against the Qaddafi regime among Arab countries. On 22 February, the 22-member Arab League suspended Libya from the organisation, as Colonel Qaddafi threatened to track down protesters "house by house" and evidence of death squads and the use of foreign mercenaries mounted up.

On 12 March, the Arab League passed a resolution condemning Qaddafi's attacks on Libyan civilians and calling for the imposition of a no-fly zone. The league's support was crucial in persuading members of the United Nations Security Council, and particularly the US administration, to support the Security Council resolution that was finally proposed by Britain, France and Lebanon.

However, shortly after the meeting in Paris, after the attacks had begun, the Secretary General of the League, Amr Moussa, said that the military action was going too far:

What is happening in Libya differs from the aim of imposing a no-fly zone, and what we want is the protection of civilians and not the bombardment of more civilians<sup>25</sup>

Algeria called for an "immediate cessation" of the military action. The United Arab Emirates, which had been expected to contribute to the military action, decided to give humanitarian assistance only, although this was not necessarily a reaction to the level of military force used by the coalition.

The British government said that Mr Moussa's words had been badly translated and, after US, French and British diplomatic efforts including a meeting with UN Secretary General Ban Ki-Moon, another emergency meeting of the Arab League was held on Tuesday 22<sup>nd</sup>. After the meeting Amr Moussa appeared to re-iterate the league's support for the resolution: "We have no objection to this decision, particularly as it does not call for an invasion of Libyan territory," the Egyptian politician said.<sup>26</sup>

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<sup>23</sup> See for example the comments of Sir Oliver Miles, former British ambassador to Libya, "Libya, "we're in for the long haul"", *Channel 4 News*, 21 March 2011

<sup>24</sup> H"Libya: The legal case for deployment", *H Guardian*, 21 March 2011

<sup>25</sup> "Sarkozy Puts France at Vanguard of West's War Effort", *New York Times*, 21 March 2011

<sup>26</sup> "Arab support back on board, but consensus remains far from firm", *Independent*, 23 March 2011



On 23 March, after reports that Jordan would make “logistic contributions”, a Jordanian minister said that the kingdom supported the international community's efforts to protect civilians in Libya but would not take part in any military operation in the Libya.<sup>27</sup>

Support from the six-member Gulf Cooperation Council of Arab states seemed more solid. The GCC called for a no-fly zone in early March. On 22 March, a spokesman for the group said, “What is happening now is not an intervention. It is about protecting the people from bloodshed.”<sup>28</sup>

An internet poll in the *Jordan Times* put support for the international action in Libya at 63%, against 33% who opposed it,<sup>29</sup> although this type of self-selecting poll is not a very reliable guide to opinion.

## 11.2 Russia, China and Germany and others

On 20 March Russian Prime Minister Vladimir Putin was sharply critical of the coalition action, comparing the strikes against Libya to the invasion of Iraq and likening it to a “medieval call for a crusade.”<sup>30</sup> The remarks were later contradicted by President Dmitri Medvedev, who described them as “unacceptable”. The following day, the Russian defence minister Anatoly Serdyukov also called for a ceasefire during a meeting with US defence secretary Robert Gates.

On 22 March, China called for a ceasefire and suggested that the coalition had exceeded the limits of action authorised by the Security Council resolution. A spokeswoman said:

The U.N. resolution on the no-fly zone over Libya aimed to protect civilians. We oppose abuse of force causing more civilian casualties.<sup>31</sup>

Germany, which abstained from the Security Council vote on Resolution 1973 along with Russia, China, India and Brazil, has declared that it will not take part in the military action, while it is taking a lead in calling for stronger economic and other sanctions against the Qaddafi regime. In a statement to the Bundestag, Foreign Minister Guido Westerwelle said:

While it was understandable that some countries, for honourable motives, have chosen to support international military intervention in Libya, Germany has decided – after weighing up the risks involved – that no German soldiers will take part in any such operation.<sup>32</sup>

Mr Westerwelle is reported to have suggested in a European Council meeting that the attacks by the coalition exceeded the authorisation of the UN resolution.<sup>33</sup>

Germany, along with France and Turkey, has also opposed a stronger role for NATO in commanding the operation. It is reported that the French and German representatives walked out of a NATO meeting when their positions were criticised by the Secretary General of NATO, Anders Rasmussen.<sup>34</sup>

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<sup>27</sup> “Jordan insists no participation in Libya operation”, *Jordan Times*, 24 March 2011

<sup>28</sup> “Arab support back on board, but consensus remains far from firm”, *Independent*, 23 March 2011

<sup>29</sup> [Hhttp://www.jordantimes.com/?section=11](http://www.jordantimes.com/?section=11)

<sup>30</sup> “China Urges Quick End To Airstrikes In Libya”, *New York Times*, 23 March 2011

<sup>31</sup> “Allied strikes fail to halt attacks by Gaddafi loyalists”, *Washington Post*, 23 March 2011

<sup>32</sup> German Foreign Ministry website, Giving effect to the Security Council Resolution [accessed 24 March 2011]

<sup>33</sup> “Nato near to deal on control of military campaign”, *Financial Times*, 24 March 2011

<sup>34</sup> “U.S. Seeks to Unify Allies As Airstrikes Rock Tripoli”, *New York Times*, 23 March 2011

Germany also withdrew a number of warships in the Mediterranean from NATO control, so that they would not have to participate in policing the arms embargo.

The African Union's panel on Libya called on 20 March for an "immediate stop" to all attacks.<sup>35</sup> Brazil and India have also criticised the coalition strikes.<sup>36</sup>

## 12 Further Reading

- Library Standard Note SN/IA/5904, [No Fly Zone over Libya: Suggested Reading](#)
- Library Standard Note SN/IA/5908, [In brief: Parliamentary Approval for Deploying the Armed Forces](#)
- Library Standard Note SN/IA/5909, [The No-fly Zone over Libya- Military Aspects](#)
- Library Standard Note SN/IA/5911, [The Security Council's No-Fly Zone Resolution on Libya](#)

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<sup>35</sup> "African Union demands 'immediate' halt to Libya attacks", *Agence France Presse*, 21 March 2011

<sup>36</sup> "China Urges Quick End To Airstrikes In Libya", *New York Times*, 23 March 2011