

**MEMORANDUM**

by the President of the International Progress Organization on Security Council resolution 1973 (2011) and its implementation by a “coalition of the willing” under the leadership of the United States and the North Atlantic Treaty Organization

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On 17 March 2011 the United Nations Security Council adopted a binding resolution with the stated goal to protect civilians in the domestic conflict in the Libyan Arab Jamahiriya. Although the “concurring votes” of the permanent members are required under Article 27(3) of the UN Charter for all decisions on other than procedural matters, the decision, adopted without the consent of China and Russia, is considered legally valid since it has become customary among United Nations member states to treat abstention as consent.

In order to meet the requirement of Article 39 of the Charter for the imposition of coercive measures, including the use of force, the Council has determined that the “situation” of domestic conflict in Libya constitutes a threat to international peace and security. In contravention to the provisions of Articles 42ff of the Charter related to the collective enforcement of resolutions by the Council itself, operative paragraphs 4 and 8 of the resolution authorize all Member States, individually or through regional organizations or arrangements, to undertake “all necessary measures” for the protection of civilians and for the enforcement of a so-called “no fly zone” in the airspace of Libya.

It is obvious that the delegation of virtually unlimited authority to interested parties and regional groups – as has become customary since the Gulf War resolutions of 1990/1991 – is not only incompatible with the United Nations Charter, but with the international rule of law as such. Although the provisions of Articles 43ff of the Charter for the making available to the Security Council of armed forces and national air force contingents have remained dead letter and the Military Staff Committee has never become operational, the Security Council can under no circumstances authorize a use of force the extent and form of which is solely at the discretion of those parties that volunteer to intervene on behalf of the UN. The procedures outlined in the operative paragraphs of resolution 1973 (2011), and their implementation by the interested parties, including NATO, contradict the doctrine of

collective security which is the foundation of the provisions of Chapter VII of the United Nations Charter in several important respects:

1. The notion “all necessary measures” – which interested member states are invited to take “to protect civilians” (Par. 4) and “to enforce compliance with the ban on flights” (Par. 8) – is not only *vague* but also totally *undefined*. In a context of international power politics, imprecise terms will unavoidably be interpreted according to the self-interest of the intervening parties and, thus, can never be the basis of legally justified action. Such terms have often been used as pretext for a virtually unrestrained use of force.
2. The lack of a precise definition of the term “all necessary measures” makes it impossible, *a principio*, to ascertain the compatibility and commensurability of the adopted measures with the goals stated in the resolution. This effectively guarantees interested states and groups of states, as well as their political and military leaders, to act outside a framework of checks and balances, and with total impunity.
3. To “authorize” states to use “all necessary measures” in the enforcement of a legally binding resolution is an invitation to an arbitrary and arrogant exercise of power, and makes the commitment of the United Nations Organization to the international rule of law void of any meaning. The fact that the Security Council, using the phrase “all necessary means,” adopted the same approach earlier, namely in resolution 678 (1990), dealing with the situation between Iraq and Kuwait, does not justify the present action in the domestic conflict situation in Libya.
4. The interpretation of the term “all necessary measures” by two senior members of the British Government, shortly after the adoption of the resolution, is evidence of the problems caused by the use of an undefined term, and in particular of the abuses of power this invites. Both, the Secretaries of Defense and Foreign Affairs explicitly declined to exclude the targeted killing of the Libyan leader as one of the possible “measures” authorized under the text of resolution 1973 (2011). Although they did not repeat these views in later statements, and the British Prime Minister did not support their interpretation of “all necessary measures,” the Pandora’s box has now been opened.
5. The characterization of the resolution by the Prime Minister of the Russian Federation as “defective and flawed” insofar as it “allows everything” and “resembles medieval calls for crusades,” was very much to the point. Shocking as this assessment may be for the self-appointed guardians of mankind and representatives of the so-called “international community,” a procedure by which a country’s leadership is declared an international outlaw, and everyone

(state or regional group) is invited to join in the battle in whichever way he pleases indeed resembles the rationale of the crusades. However, a medieval *hostis* declaration has no room in modern international law. International vigilantism and a humanitarian free-for-all are elements of anarchy and belong in a pre-modern system of imperial powers, as it existed before the abrogation of the *jus ad bellum*.

6. In the context of Chapter VII enforcement measures, including the use of armed force, the formula “all necessary measures” effectively invites unilateral action by the self-appointed members of a “coalition of the willing,” something which not only gradually *subverts*, but *perverts* the United Nations’ rationale of collective security in the service of an undeclared imperialist agenda, hidden behind humanitarian motives such as those proclaimed under the slogan of the “Responsibility to Protect” (a set of principles adopted by the United Nations General Assembly in 2005, which seems to have replaced the earlier phraseology of “humanitarian intervention”).
7. The ban on the use of force according to Article 2(4) of the United Nations Charter will become totally meaningless if, by way of a Chapter VII resolution, every member state can effectively use force in pursuit of an abstract goal in a unilateral manner, and without any checks and balances.
8. The stated goal of the “protection of civilians” has been implemented by interested member states, first and foremost the former colonial powers in North Africa in tandem with the United States, in a way that has caused even more deaths among innocent civilians.
9. Contrary to the purposes of Chapter VII of the UN Charter, the implementation of resolution 1973 (2011) by interested parties has led to an increased threat to international security instead of containing it. What was essentially a domestic conflict, resulting from an armed uprising, has now become an international one. By intervening in a domestic conflict situation on the side of one party, the states that undertook to enforce the resolution, individually and through NATO, have further fuelled the conflict and brought about a situation that may lead to the disintegration of Libya, with the prospect of long-term instability in the entire North African and Mediterranean region.
10. The involvement of the North Atlantic Treaty Organization (NATO) as coordinating entity for the enforcement of the flight ban and, eventually, all military operations in Libya has further complicated the international dimension of the conflict. NATO is a mutual defense pact of European states, including Turkey, and two North American states. Even if in the disguise of

“crisis response operations” and noble humanitarian motives, offensive action in North Africa – outside the treaty area – will further threaten international peace and security. NATO’s involvement as a regional organization, albeit not representing the concerned Arab and North African regions, also testifies to the dangers of the general authorization formula in resolution 1973 (2011). NATO certainly represents a spectrum of interests that is totally different from that of the concerned region. In view of its composition and political agenda, it is totally inappropriate for the North Atlantic Treaty Organization to act as the exclusive enforcer of Chapter VII resolutions of the Security Council.

11. By deciding to “protect civilians” in Libya while not acting in comparable situations of uprisings in Bahrain and Yemen, the Security Council has obviously chosen a policy of double standards that seems to be determined by the strategic and economic interests of the intervening countries.
12. In an act of utmost hypocrisy, the intervening countries hide their vested interests behind the stated humanitarian goal of resolution 1973 (2011). Under the cover of the “Responsibility to Protect,” which the Secretary-General of the United Nations evoked as rationale of the resolution, an effectively unilateral use of force has taken hold, amounting to military measures that, as acts of war on the side of one party in a domestic conflict, go far beyond the stated goals of the resolution and are carried out with total impunity and without sufficient checks and balances. Due to the authorization formula of “all necessary measures” (or “all necessary means,” in resolution 678 [1990]) the Security Council has made itself a mere bystander. Because of the voting provision of Article 27(3) of the UN Charter, the authorization cannot be cancelled without the consent of those permanent members that have succeeded in inserting it into the resolution.
13. It is to be recalled that operative paragraph 6 of resolution 1970 (2011) by which the Security Council has referred the situation in Libya to the International Criminal Court (ICC), provides for a kind of “preventive impunity” for all officials and personnel from states militarily intervening in Libya that are not party to the Rome Statute, in so far as their nationals, in spite of the referral decision under Article 13(b) of the Statute, will not be subjected to the jurisdiction of the International Criminal Court. This approach, which amounts to an effective amendment of the Court's Statute in terms of its territorial jurisdiction, for which the Security Council has no authority, again reveals the predominance of political considerations over those of justice or human rights.

14. In line with the Security Council's tendency, since the end of the Cold War, to arrogate powers not given to it in the Charter, and to broaden its mandate as global "administrator of justice," resolution 1973 (2011) appears to have further widened the scope of action on the basis of Chapter VII so as to include the protection of the civilian population in situations of domestic conflict. However, if the Council aspires to be an enforcer of rights and an arbiter in domestic conflicts, it will have to abide by the basic principles of the rule of law, first and foremost the exclusion of arbitrariness in the enforcement of the law. As long as it encourages member states to act as they please, allowing them to further their own national interests in the disguise of enforcement action on behalf of the United Nations, the Security Council's practice will itself constitute a threat to international peace and security.
15. In view of the legal contradictions resulting from the authorization of the use of "all necessary measures" under Chapter VII resolutions of the Security Council, impacting on the very legitimacy of the world organization as an agent of collective security, the member states in the United Nations General Assembly should consider to seek an Advisory Opinion from the International Court of Justice according to Article 96(1) of the Charter.

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