

## Libya, NATO Intervention 2011

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**N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

### A. Libya: The Forgotten Victims of NATO Strikes

[**Source:** Report by Amnesty International, "Libya: The Forgotten Victims of NATO Strikes", AI INDEX: MDE 19/003/2012, 19 March 2012, available at: <https://www.amnesty.org/en/documents/MDE19/003/2012/en/>, footnotes omitted]

#### INTRODUCTION

[...]

[1] On 19 March 2011 several member states of the North Atlantic Treaty Organization (NATO), including the USA, the UK and France, launched a military campaign with air and naval strikes against Colonel Mu'ammar al-Gaddafi's forces. The strikes were launched pursuant to UN Security Council (UNSC) resolution 1973 (2011) of 17 March 2011, which authorized member states "to take all necessary measures (...) to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya" and introduced a "no fly zone" above Libya. The National Transitional Council (NTC), the emerging new authority which by then controlled eastern Libya, had called for and fully supported the imposition of a no-fly-zone and international military action against al-Gaddafi's forces.

[2] On 23 March 2011 allied forces announced they were in control of Libyan air space, after having disabled Libya's air force. Also on 23 March 2011 NATO decided to enforce the no fly zone and on 31 March 2011 it assumed control of all military operations conducted by its member states inside and around Libya under the name "Operation Unified Protector". According to NATO, the seven-month air and sea military campaign comprised more than 9,700 strike sorties and destroyed over 5,900 military targets.

[3] In the pursuit of its military objectives NATO appears to have made significant efforts to minimize the risk of causing civilian casualties, including by its use of precision guided munitions, and in some cases by conducting strikes at night and issuing prior warnings to inhabitants of the areas targeted. NATO officials have repeatedly stated their commitment to making efforts to avoid harming civilians in the context of "Operation Unified Protector".

[4] However, scores of Libyan civilians who did not directly participate in hostilities were killed and many more injured as a result of NATO strikes. Regrettably more than four months since the end of the military campaign, NATO has yet to address these incidents appropriately, including by establishing contact and providing information to the victims and their relatives about any investigation which might have been initiated.

[5] In January and February 2012 Amnesty International delegates visited several locations of NATO airstrikes in or near Tripoli, Zlitan, Sirte and Brega where civilian casualties had been reported. They inspected the damage and remains of munitions, interviewed survivors and other witnesses and obtained copies of death certificates of victims. Amnesty International has documented a total of 55 named civilians, including 16 children and 14 women, who were killed in airstrikes in Tripoli (5), Zlitan (3), Majer (34) Sirte (9) and Brega (4). Twenty other civilians were reportedly killed in NATO strikes in Brega (2), Surman (13) and Bani Walid (5) according to UN experts, international NGOs and journalists who also carried out on-site investigations. Additional incidents of civilian casualties have been reported to have occurred in circumstances where it has been difficult to distinguish between combatants and civilians. For example, Amnesty International was told by residents in Sirte that on 15 September 2011, NATO strikes killed several members of al-Gaddafi forces in their two vehicles, as well as more than 40 civilians, most of whom had rushed to the scene after the first vehicle was struck.

[...]

## **AIRSTRIKES ON HOMES**

[6] Dozens of civilians have been killed in NATO airstrikes on private homes in residential and rural areas where Amnesty International, UN experts, other international NGOs and journalists found no evidence of military objectives at the strike locations at the time of the strikes. In one incident, in Majer (Near Zlitan, west of Misratah), NATO claimed that the site was deliberately struck as a legitimate target, but failed to provide

evidence that the site was being used for any military purpose at the time it was targeted, in an attack that cost the lives of 34 civilians, including eight children and eight women. Amnesty International's investigations into this and other incidents indicate that private homes may have been struck by mistake - possibly due to wrong intelligence, erroneous GPS coordinates or weapons system malfunction. In another incident, in Sirte, relatives of an army officer, three women and four children, were killed in their home in an attack which seemingly targeted their visiting relative.

[7] Amnesty International is concerned that insufficient precautions were taken in attacks that targeted possible combatants staying at civilian homes. When planning an attack against a combatant, knowledge of the presence of several civilians inside the targeted house should rule out proceeding, as such circumstances are likely to result in an attack that is disproportionate. NATO should have applied particular high standards of precautionary measures when targeting civilian homes.

[...]

TRIPOLI, 19 JUNE 2011

[...]

[8] On 19 June 2011 at about 1.30 am the home of Mukhtar al-Gharari, located in a densely built-up area of the Souq al-Juma'a district of Tripoli, was struck, killing five family members and injuring eight others. [...] Surviving members of the family told Amnesty International that 18 family members were sleeping in the house at the time of the attack and that those who were killed had been sleeping on the upper floor.

[9] In a letter to the UN International Commission of Inquiry on Libya (ICIL) of 23 January 2012, NATO referred to the above incident and acknowledged the possibility that "an errant weapon had caused such casualties".

ZLITAN, 4 AUGUST 2011

[...]

[10] On 4 August 2011 at about 6.30am the home of Mustafa Naji al-Morabit, in Zlitan west of Misratah, was struck, killing his 37-year-old wife [...] and two of his three children [...] as well as injuring his 60-year-old mother [...]. According to information provided by Mustafa Naji al-Morabit to Amnesty International, a nearby house (approximately 50 meters away) had been used, until 1 August 2011, for meetings by military officers. Because they feared that the nearby house may be attacked by NATO, Mustafa Naji al-Morabit and his family had not been sleeping in their own home. They remained in the house during the day as it was common belief that NATO strikes were carried out at night. As opposition fighters were closing in on the area, the owner of the nearby house and others who had been meeting there fled by 2 August 2011, leaving the

front gate wide open – a sign that they were not going to return. The al-Morabit family decided that it was therefore safe to return to their home and slept in their home for the first time on the night between 2 and 3 August 2011. The night passed without incident and the nearby house remained abandoned and the al-Morabit family again slept in their home the following night (between 3 and 4 August 2011), but the house was struck in the early hours of that morning.

[...]

[11] In its 15 February 2012 letter to the ICIL, NATO referred to the above incident stating that the site was in fact struck on 4 August 2011, because it had been identified as “a senior regime commander’s command and control node located within a residential property”. Based on its examination of the site, interviews with witnesses and satellite images the ICIL found that “evidence suggests NATO hit the wrong building (and) that those killed were civilians”. Amnesty International reached the same conclusions.

MAJER, 8 AUGUST 2011

[...]

[12] On the evening of 8 August 2011 two houses were struck in Majer (near Zlitan, west of Misratah). Munitions remnants found at the site contain the marking: “for MK82 bomb”, an air-delivered munition which, according to Amnesty International’s information, was used by participating forces in Operation Unified Protector in numerous other strikes. According to members of the family who survived the attack, 34 civilians, including eight children and eight women, were killed and several were injured in three separate attacks.

[13] The first strike was launched shortly after 11pm and killed five women and seven children in the home of Ali Ali Hamed Gafez, where his immediate family and other relatives displaced by the conflict were staying.

[...]

[...]

[14] A subsequent strike, shortly after, killed 18 men, including several family members, who rushed to the house [...] to rescue the victims. Surviving members of the Gafez and al-Ja’arud families told Amnesty International that they had not been aware of the presence of any persons or of any activities near their homes which might have explained the attacks.

[15] According to NATO’s Operational Media Update one military facility and one communication system were hit in the vicinity of Zlitan on 8 August 2011. In a media interview several days after the incident, the commander of the NATO operation was quoted as justifying the strikes on allegedly legitimate targets “that contained mercenaries, a command centre and 4x4 vehicles modified with automatic weapons, rocket

launchers or mortars". He further denied claims of the Libyan authorities that 85 civilians were killed in the incident, but acknowledged that he could not rule out that the strikes caused civilian casualties.

[16] In a 15 February 2012 letter to the ICIL, NATO referred to the above incident stating that "these buildings had been identified as being used as staging area for regime forces". Based on its examination of the site as well as satellite images of the area during the period of attack, the ICIL found "no evidence (...) that the site had a military purpose. Amnesty International reached the same conclusions.

SIRTE, 16 SEPTEMBER 2011

[...]

[17] On 16 September 2011, at about 6pm several strikes were carried out on a large apartment building, comprising some 90 apartments, in Sirte. At least two residents were killed in two apartments in different parts of the building. [...] [A] mother of two, was killed as she, her husband [...] and their two young daughters were in their apartment on the fifth floor of the building. The two girls and their father sustained light injuries. Another resident [...] was killed in the strikes. His father [...] told Amnesty International that it is not clear whether other residents were killed in the strike, as it has not been possible to establish how many residents were in the building at the time of the strikes. Many residents had fled the building in the days prior to the strike and the others, as well as many of the city's inhabitants, fled after the attack (the city remained under siege until the capture and killing of Colonel al-Gaddafi in the town's outskirts on 20 October 2011). Most residents had still not returned by February 2012, when Amnesty International visited the area. The bodies of the two victims were only recovered in mid-January 2012.

SIRTE, 25 SEPTEMBER 2011

[...]

[18] On 25 September 2011 at about 4am, an airstrike against the home of Salem Diyab, in Sirte, killed four children and three women [...]. It is not clear whether another relative, Mosbah Ahmed Diyab, a Brigadier-General in al-Gaddafi's forces who lived in another area of the city, was in the house at the time of the attack. According to surviving relatives he had visited earlier that evening and may or may not have been in the house at the time of the NATO attack. If this civilian house was targeted because it was believed that Mosbah Ahmed Diyab was present, NATO should have made sure it had information on the presence of any civilians there. The fact that at least seven civilians were in the home should have been reason enough to cancel or delay the attack out of concern that it would have been disproportionate.

## **APPLICABLE LAW**

[19] NATO's military actions in Libya had to comply with the rules of international humanitarian law (IHL)

applicable in international armed conflict. IHL contains the rules and principles that seek to protect anyone who is not directly participating in hostilities: notably civilians and anyone, including those who were previously participating in hostilities, who are wounded, have surrendered or been captured, or otherwise incapacitated. It sets out standards of humane conduct and limits the means and methods of conducting military operations. Its central purpose is to limit, to the extent feasible, human suffering in times of armed conflict.

[20] The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are among the principal IHL instruments. Many of the specific rules included in these treaties form part of customary IHL and are thus binding on all parties to any type of armed conflict, including on armed groups. Violations of many of these rules can constitute war crimes. All of the principles and rules cited in this briefing are part of customary international law and are binding on all parties to an armed conflict.

[21] The following fundamental principles of IHL (which have been codified in Protocol I of 1977 as specific rules governing the conduct of hostilities) appear particularly relevant for assessing the civilian casualties caused by NATO strikes, namely:

(1) The *principle of distinction* requires that the parties to a conflict “shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives” (Article 48, Protocol I). Article 51(2) spells out unambiguously that the “civilian population as such as well as individual civilians, shall not be the object of attack.” In addition to direct attacks on civilians, IHL also prohibits indiscriminate attacks, which are those “of a nature to strike military objectives and civilians or civilian objects without distinctions,” (Article 51(4), Protocol I).

(2) The *principle of proportionality* prohibits disproportionate attacks which are those “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” (Article 51(5), Protocol I).

(3) The *principle of precaution* requires that “constant care must be taken to spare the civilian population, civilians and civilian objects” (Article 57(1), Protocol I); and that “all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects” (Rule 15, Customary IHL Study, Vol I; Rules, ICRC).

[22] Article 57(2) of Protocol I specifies necessary precautions including that: everything feasible must be done to verify that targets are military objectives; means and methods of attack must be selected with a view to minimizing harm to civilians and civilian objects; the proportionality of a planned attack must be assessed; an attack must be cancelled or suspended if it becomes apparent it is wrongly-directed or disproportionate;

and effective advance warning must be given of attacks which may affect the civilian population, unless circumstances do not permit. Where it is unclear whether an object is used for military purposes, "it shall be presumed not to be so used." (Article 52(3), Protocol I).

[23] Carrying out direct attacks on civilians, indiscriminate attacks resulting in death or injury to civilians, or damage to civilian objects, or a disproportionate attacks (i.e. knowing that the attack will cause excessive incidental civilian loss, injury or damage in relation to the concrete and direct military advantage anticipated) constitute war crimes. (Rule 156, Customary International Humanitarian Law, Volume I: Rules, ICRC).

## **CONCLUSION**

### **NATO must be transparent about investigations and provide adequate reparations.**

[24] Amnesty International is concerned that no information has been made available to the families of civilians killed and those injured in NATO strikes about any investigations which may have been carried out into the incidents which resulted in death and injury.

[25] On 5 March 2012 Amnesty International wrote to NATO requesting information on any steps taken to investigate the incidents documented above and any other reports where it appears that NATO attacks resulted in the death of, and injury to, civilians. Further the organization called on NATO, if these investigations have not yet taken place, to take all necessary measures to ensure that independent, impartial and thorough investigations are conducted without further delay, that the findings be publicly disclosed, and that adequate reparation be afforded to all victims of any violations and their families.

[26] On 13 March 2012 NATO responded to Amnesty International stating that "While NATO did everything possible to minimize the risk to civilians, in a complex military operation that risk cannot be reduced to zero. NATO deeply regrets any harm that may have been caused by those air strikes". The letter did not provide any information about the specific attacks raised by Amnesty International in its letters or details of any investigation into deaths of civilians. Furthermore, NATO appeared to suggest that it had limited means and responsibility to conduct investigations into reports of civilian casualties caused in NATO strikes. The letter states that NATO "has had no mandate to conduct any activities in Libya following OUP's (Operation Unified Protector) termination on 31 October 2011". However, NATO did not take any steps to conduct on site investigations into reports of death and injury of civilians resulting from its strikes in areas which had come under the control of the new Libyan authorities (the NTC) prior to 31 October 2011 and which were thus safely accessible. All the survivors and relatives of those killed in NATO strikes interviewed by Amnesty International said that they had never been contacted either by NATO or by the Libyan NTC.

[27] Moreover, the end of its mandate to conduct operations in Libya does not prevent NATO from investigating the conduct of its own forces, notably the bases on which orders were given to launch specific attacks, the measures taken to verify the accuracy of the information it received about the targets and the



precautions taken to minimize the potential risk to civilians.

[28] In its letter, NATO also contends that the Libyan authorities “have the primary responsibility for responding to any possible local request for investigations and claims”. However, the responsibility of the Libyan authorities to conduct investigations into suspected violations that occurred in its jurisdiction does not absolve NATO members of their obligation to redress any violations of IHL that its forces have committed, including by paying compensation to the victims as required by Article 91 of Protocol I. NATO cannot fulfil this obligation without properly investigating attacks in which civilians were killed or injured.

[29] NATO should clarify which measures it took to ensure adherence to the rules of IHL in carrying out these particular attacks, particularly with regard to distinction, proportionality and precaution. Wherever sufficient admissible evidence of any violations of IHL is found, those responsible should be brought to justice.

[30] The NTC, for its part, should also promptly initiate its own investigation into all reported cases of killings and injury to civilians which resulted from NATO strike so as to ensure justice and reparation for victims and their families.

[31] The stated purpose of NATO’s military operations in Libya, which were carried out at the request of and with the full support of the NTC, was to protect the civilian population from grave human rights violations which were being perpetrated by the former regime with impunity. It is imperative that both NATO and the NTC take the necessary measures to ensure that there is no impunity for any violation of international humanitarian law which may have been perpetrated in the course of NATO’s operations. To this end the necessary investigations must be carried out without further delay.

[...]

## **B. Report of the International Commission of Inquiry on Libya**

[Source: Report of the International Commission of Inquiry on Libya, A/HRC/19/68, 8 March 2012, Human Rights Council, Nineteenth Session, Agenda item 4, Human rights situation that require the Council's attention, available at:

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf>, footnotes omitted]

### *Summary*

[1] In emergency session, the Human Rights Council on 25 February 2011 established the International Commission of Inquiry on Libya and gave it the mandate “to investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes



perpetrated and, where possible, to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable”.

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

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

[4] 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.

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

[...]

### **III. The Commission's findings**

[...]

#### **H. North Atlantic Treaty Organization**

##### **1. Introduction**

83. On 17 March 2011, the United Nations Security Council adopted resolution 1973 which authorized “all

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

## **2. Findings**

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

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

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

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

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

## **3. Conclusions**

89. The Commission found NATO did not deliberately target civilians in Libya. For the few targets struck

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

[...]

## **V. Assessment and findings**

### **1. Introduction**

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

[...]

### **4. NATO**

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

[...]

## **Discussion**

### **A. Classification of the conflict and applicable law**

1. (*Document A, paras [1]-[2], [31], Document B, paras [2]-[4], and 83*) How would you classify the conflict in

Libya in 2011? Who were the parties to the conflict? Was it an international or a non-international armed conflict? Did the NTC's consent to the military intervention matter for classification?2. (*Document A, paras [1]-[2], Document B, para. [83]*) When did France, the United Kingdom and the United States become parties to the conflict? Did their participation internationalize the conflict? Did NATO become a party to the conflict on 31 March 2011? Can an international military alliance such as NATO become a party to a conflict? What was NATO's role in the conflict?3. Since NATO is not a party to the Geneva Conventions and their Additional Protocols, is it nevertheless bound by IHL? If yes, why? Since NATO members are not all bound by the same IHL instruments, how is it possible to determine which instruments are applicable to NATO? Is NATO only bound by IHL rules applicable to all its members? Or is NATO, as an international organization, only bound by customary IHL?4. (*Document A, paras [19]-[23]*) How did Amnesty International classify the conflict? What law, in the opinion of Amnesty, is applicable in this case? Why do you think they concluded this? Do you agree?

### **B. NATO's airstrikes**

5.

a. (*Document A, paras [6]-[8], [10], [13], [14], [18], Document B, para. 88*) How would you define the notion of 'military objective'? What conditions need to be fulfilled for something to be considered a military objective? Can a civilian home ever be a legitimate military objective? If, as NATO told the Commission, (*Document B, para. 88*) "the regime was using civilian rather than military structures in support of military action", would this make any civilian house a military objective? Particular houses? Under what circumstances could such houses be attacked? (P I, Arts 51(5)(b), 52(2); CIHL, Rules 8, 14)

b. (*Document A, para. [6], Document B, para. 88*) How could one find evidence for the fact that a house constituted a military objective eight months after an attack has taken place?

6. Are airstrikes only lawful if there is "zero expectation" of death and injury of civilians? Does the fact that civilian deaths and the destruction of civilian property were caused automatically mean that IHL was violated? What fundamental principles applied to all NATO airstrikes in this situation? (P I, Arts. 48, 51(5)(b), 52, 57; CIHL, Rules 1, 7, 14-21)

7. (*Document A, paras [8]-[9]*)

a. Was the strike in Tripoli on 19 June 2011 lawful under IHL? Does the fact that the home was located in a densely built-up area influence your answer? The time of the attack? What additional information, if any, would you need in order to make a proper assessment of this incident?

b. Is it a violation of IHL if, as NATO claims, "an errant weapon" did indeed cause these casualties? A war crime? Incidental damage? How would you define incidental damage? What obligation could possibly have been violated? (P I, Art. 57; CIHL, Rules 15-21).

8. (*Document A, paras [10]-[11]*)

a. Was the house that had been used for meetings by military officers until August 1 2011 a legitimate military target? On 1 August 2011? 2 August 2011? 4 August 2011? ICIL and Amnesty International reached the conclusion that NATO hit the wrong building. If their conclusions are correct, is such a 'mistake' prohibited under IHL? Are there any legal consequences for such an error? What obligation could possibly have been violated? (AP I, Art. 57; CIHL, Rules 15 and 17).

b. According to the information in paragraph [11], the people using the nearby house had fled on the 2 August, leaving the house empty by the time NATO struck. Could NATO have known that the targets were no longer present in that area? Due to the fact that the gate had been left open? What does IHL require NATO

to do before an attack in order to make sure that the target is still a lawful one under IHL? (P I, Art. 57; CIHL, Rules 15 and 18).

9. (*Document A, paras [12]-[16], Document B, para. 89*)

a. Based on the information available, how would you determine whether the first strike launched after 11 pm was legitimate? The second strike that was launched shortly after? Was NATO under any obligations to ensure that information about rescuers at the scene factored into the decision to launch the second strike? (P I, Art. 57; CIHL, Rules 15, 18 and 19).

b. There are discrepancies between the information provided by civilians and the opinions of ICIL and Amnesty International in paragraph [14], and the information provided by NATO in paragraph [15]. Does IHL prohibit attacks in cases of doubt about the nature of the target (P I, Art. 52(3))?

10. (*Document A, para. [17]*) Does the time and place of the strike in Sirte on 16 September 2011 influence your answer on whether this attack violated IHL? Could the fact that many people had fled the area prior to the attack indicate that NATO had appropriately warned the civilians in the area? Would an attack be lawful if NATO had informed the local civilians prior to the attack with leaflets and radio broadcasts and, despite these warnings, some civilians decided to stay? Would NATO have to make sure that not one civilian was still living in that area for the strike to be lawful? Or is it a civilian's 'own fault' if he or she decides to stay?

11. (*Document A, paras [18], [21]-[23]*) Was the attack on the house in Sirte on 25 September 2011 lawful under IHL? If the Brigadier-General in al-Gaddafi's forces was present? If he was not present? Would NATO have to be 100% sure that he was in the house to launch the strike? If NATO knew that he was present but also knew that several civilians were in the house at the same time, would the attack still be lawful? Do you agree with Amnesty International's conclusion that the presence of at least seven civilians in the house at the time of the attack rendered it disproportionate? (P I, Art. 51(5)(b); CIHL, Rule 14).

12. (*Document A, paras [3], [22], Document B, paras 84, 122*) What precautions did NATO take in "Operation Unified Protector"? Do you agree that NATO showed a "demonstrable determination to avoid civilian casualties"? Are NATO's efforts to be judged by reference to the Operation as a whole, or are evaluations to be made on a case-by-case basis? (P I, Art. 57; CIHL, Rule 15)(*Document A, paras [8]-[9]*)

### **C. Investigation of possible breaches**

13. (*Document A, paras [24] – [26]*) Is NATO under obligation to provide information about any investigation proceedings to families of those killed in airstrikes? Must the results of those investigations be disclosed publicly? Must the victims be informed of the results? What aims would such public disclosure fulfil? If IHL does not prescribe such an obligation of transparency, on what could it be based? Is NATO obliged to provide reparation to victims of airstrikes and their families? (GC I, Art. 49; GC II, Art. 50, GC III, Art. 129, GC IV, Art. 146; AP I, Art. 85, 91; CIHL, Rule 150)

14. (*Document A, paras. [27], [30]*) Amnesty International suggests that NATO should investigate the conduct of its own forces - do you agree? Is there a legal basis for concluding that this should be so? Who should be responsible for conducting such investigations? Individual Member States who took part in the operation? All NATO Member States? The NTC, as suggested in para. [30]? (GC I, Art. 49, 50; GC II, Arts 50, 51; CIHL, Rule 158)

15. (*Document A, para. [29]*) Amnesty International states that "wherever sufficient admissible evidence of any violations of IHL is found, those responsible should be brought to justice". Who would you consider responsible? The individual soldiers carrying out the attacks? The commanders planning them?

### **D. Miscellaneous**

16. (*Document A, para. [19]*) Can a civilian life really be weighed against an important military advantage? Is this a question of IHL? If we consider that IHL's "central purpose is to limit, to the extent feasible, human suffering in times of armed conflict" is IHL merely a means of containing damage?

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