

Abuse of UN Processes in Security Council Actions against Libya

by Ronda Hauben

Part I – Journalists Question Security Council Support for Rebel Group

At the April 4 press conference marking the beginning of the Colombian Presidency of the Security Council for April, Nestor Osorio, the Colombian Ambassador to the United Nations was asked what on the surface would seem an unusual question by one of the journalists. The journalist said:¹ “In the wake of Security Council Resolution 1973 [authorizing military action against Libya–ed] are we to expect a more aggressive and proactive posture on the part of the Security Council in supporting rebel groups?”

The journalist gave several examples of such rebel groups as the IRA in the U.K., ETA in Spain and perhaps the Corsican rebels in France. Another journalist added the example of the FARC in Colombia.

The question referred to the fact that with SC Resolution 1973, the UN Security Council had taken on to support an armed insurgency fighting against the government of a member nation of the UN.

The Colombian Ambassador responded that SC Resolution 1973 had not been adopted to support the rebels in Libya, but a rebel group which started out as civilians who had now become the core of the armed rebellion. The reason the Security Council had taken up the issue of Libya, he said, was because a member of the Security Council, Lebanon, had brought the issue to the Security Council. Ambassador Osorio added that the Arab League had asked for concrete action from the Security Council on Libya.

Is it, as Ambassador Osorio proposed, that the issue of Libya was taken up by the Security Council because Lebanon, a member of the Security Council, brought the issue to the attention of the other members? Is it that the Security Council was just deferring to the expertise of the Arab League, which the Colombian Ambassador presented as the relevant regional organization with respect to Libya?

The Colombian Ambassador’s remarks raise the question of how the Security Council made the decision to approve SC Resolution 1970 against Libya, the first of two resolutions on the issue. Was it as the Colombian Ambassador claimed because of a recommendation from the appropriate regional group, or was there a more complex process at work? Also, significantly in this situation, there were actually two conflicting recommendations to the Security Council from two groups, one from the Arab League, which is not a geographical regional group but is organized on some other basis, and the other from the geographic regional group that Libya is part of, from the African Union.

What were the factors that influenced the Security Council decisions first, to pass Security Council Resolution 1970 authorizing stringent sanctions, including a referral of Libyan officials to the International Criminal Court (ICC) and then, subsequently, to pass SC Resolution 1973, which authorized a no-fly zone and other military action? Ultimately these decisions set the basis for the NATO military alliance to join with the armed insurgency fighting against the government of Libya.

While it is difficult to determine the specific underlying reasons for Security Council action, this article will demonstrate that the explanation provided to journalists at the Colombian press conference differs significantly from the actual sequence of events that occurred at the Security Council with respect to Libya. By failing to account for the actual sequence of events that occurred,

the Colombian Ambassador's response left unanswered the critical question. How had the Security Council come to authorize military action against a member nation of the United Nations, in support of an armed insurgency against the government of that nation? Such a course of action is clearly contrary to the UN Charter provision not to intervene in the internal affairs of a member nation of the UN (Article 2 Section 7).

Part II – How the Issue of Libya was Brought to the Security Council

Looking back at the sequence of events by which the issue of Libya was brought to the Security Council, leads to an important observation. It was not a Security Council member nation which started this process. Nor was it the Arab League. Rather it was a party that one could argue had no legitimate basis to speak at the United Nations, especially not to the Security Council.

This party, was, by that time, the former Chargé d'Affaires to the United Nations for the Libyan Arab Jamahiriya, Ibrahim Dabbashi. Dabbashi had taken the unusual actions of first announcing to the press that he had defected from representing the government of Libya at the UN, and then requesting an emergency meeting of the Security Council about the situation in Libya. His request to the Security Council began a process which, in less than a week, resulted in passing the stringent sanctions against Libya and the referral of its officials to the ICC that are included in SC Resolution 1970. SC Resolution 1970 then set the stage for SC Resolution 1973 passed three weeks later which authorized military action against Libya.

February 21 is an important date in this set of events. It is on February 21 that Dabbashi announced his defection from the service of the government of Libya at the United Nations. While an appropriate course for a defecting government official from a country would be to resign his official position as a Deputy Ambassador for Libya at the United Nations, this is not what happened.

It is also on February 21 that another important event occurred, though not at the UN. Another Libyan official, Nouri al Mesmari, officially announced his defection from his Libyan government position. Living in France under the protection of the French government, he gave an interview to the French newspaper *Liberation* about his defection.

What is significant about Mesmari's action is that his defection puts Dabbashi's defection in a broader context. A widely circulated article in the Italian newspaper *Liberio*, an article which has not been refuted or denied, provides this context.² Mesmari left Libya in October 2010 for Paris, four months before the alleged suppression of demonstrations cited as one of the pretexts for the NATO aggression against Libya. Mesmari had been an important Libyan official with vast knowledge of and contact with the foreign service officials of Libya and vast knowledge of Libya's contacts with government officials in other countries.

Liberio reported that after Mesmari went to Paris in October 2010, he was in contact not only with French foreign intelligence officials, but also with elements of the Libyan opposition. His actions help to shed light on the events in Libya in February 2011. Learning about some of the activities Mesmari was part of between October 2010, and February 2011, several commentators propose that Mesmari, along with other opposition activists, and officials in the French intelligence, helped to foment the uprising in Benghazi that took place in February 2011.³

Unlike the Egyptian non violent protests, the uprising in Benghazi very quickly became an armed uprising against the government of Libya. Western media accounts of this rebellion, and Arab news media like Aljazeera, reported a series of unverified allegations by those involved in the rebellion itself, with little or no evidence presented to verify the accuracy of the reports. To this date, there is no evidence for the widely reported "use of mercenaries" or "bombing his own people."⁴

Mesmari was granted protection by the French government. In his February 21 interview with the French publication *Liberation* about his defection, he accused the Libyan government of genocide. He gave no evidence to support his claim.

Similarly, when Dabbashi held a press conference at the Libyan Mission to the UN on February 21, he claimed that the Libyan government was guilty of genocide. He, too, offered no evidence for his allegations. He called for the overthrow of the Libyan state headed by Muammar Gaddafi. Similarly, the lawyer for the Libyan mission spoke to journalists at the February 21 press conference. He indicated to journalists that he was from Benghazi. He, too, called for the overthrow of Gaddafi, the long time head of the Libyan state (a position called 'Guide').

Following is the content of the letter that Dabbashi, as a defector from the official government of Libya, sent to the Security Council. The letter is dated February 21, 2011:⁵ "In accordance with Rule 3 of the provisional rules of procedure of the Security Council, I have the honour to request an urgent meeting of the Council, to discuss the grave situation in Libya and to take the appropriate actions."

The letter is listed as an official document of the Security Council, and given the document identification symbol S/2011/102, dated February 22, 2011.

It is worth noting that Rule 3 of the Security Council's Provisional Rules of Procedure provides for a member nation of the United Nations to request a meeting.⁶ Under Rule 3, Dabbashi, as a defecting Deputy Ambassador of Libya, was not entitled to take part in any Security Council procedures, especially not to request a meeting of the Security Council to take punitive action against the government he has defected from and is seeking to overthrow.

Monday, February 21 was an official UN holiday (Presidents' Day in the U.S.) and the United Nations was not open. On the next working day at the UN, on Tuesday, February 22, the Security Council held a closed meeting on the situation in Libya, under the title "Peace and Security in Africa – Libya".⁷ At the meeting the Security Council heard a report on developments in Libya from Lynn Pascoe, the Under Secretary General for Political Affairs at the UN. In addition to the 15 members of the Security Council, 74 other nations of the UN were present at the closed meeting without any right to vote. So was Dabbashi.

The Libyan Ambassador to the UN, Abdel Rahman Shalgham also attended the February 22 Security Council meeting, along with Dabbashi. In informal comments after the meeting, Shalgham indicated that he had been in contact with a relative in Tripoli and was told that the alleged atrocities that the media was claiming had happened in Tripoli were not true. Similarly, speaking to the press, he indicated that he had been in contact with government officials in Tripoli who said that they, too, disputed the claims of atrocities taking place in Tripoli and planned to invite journalists from Al Arabiya and CNN to see for themselves that the allegations were inaccurate.⁸

After he made his presentation to the Security Council, Under Secretary General for Political Affairs, Lynn Pascoe spoke to the press at a stakeout. He was asked if he had any evidence of atrocities in Tripoli. He responded that the UN people on the ground there had no such direct evidence.⁹

Describing the February 22 closed meeting of the Security Council, the Reuters News Agency said that most of the Libyan delegation had defected. Reuters reported that the Security Council met at the request of Dabbashi, who "was no longer working for the Libyan government". It would appear to be a serious breach of UN protocol for a defecting official who had formerly been the representative of a nation that is a member of the UN, to be able to request a Security Council meeting and to have the Security Council grant the meeting and allow the defecting official to

participate in the meeting. Similarly, to allow the defecting diplomat to make unverified allegations at the meeting against the government of a UN member nation would only compound the serious violation of the UN Charter represented by this abuse of UN processes.

Here is the Reuters report:¹⁰ “UNITED NATIONS | Tue Feb 22, 2011 4:42pm GMT (Reuters) – The U.N. Security Council held closed-door discussions on Tuesday on the crisis in Libya, with Western envoys and Libya’s own breakaway delegation calling for action by the 15-nation body.... The council met at the request of Libyan Deputy Ambassador Ibrahim Dabbashi, who along with most other staff at Libya’s UN mission announced on Monday they were no longer working for leader Muammar Gaddafi and represented the country’s people. They called for Gaddafi’s overthrow.”

Taking into account Mesmari’s activities with French intelligence officials and Libyan opposition figures, there is the basis to assume that there were powerful forces acting behind the scenes at the UN supporting Dabbashi’s activities and encouraging the Security Council to allow this abuse of its processes.

Part III – False Media Reports about Libya

Among the media reports at the time were unverified allegations that Libyan government planes were shooting at civilians in Tripoli and that there were many dead in various parts of Libya. Also there were reports that Gaddafi had fled to Venezuela. Gaddafi and the Libyan government disputed these reports, with a video demonstrating Gaddafi was in Libya. This video was shown around the world demonstrating the inaccuracy of the false allegations being made about Libya. Also, the Libyan media disputed that there had been any such shooting of civilians from planes in Tripoli. Later Russian media provided reports of Russia’s surveillance of aircraft activity of Libya during this period. That surveillance did not show any firing from aircraft.¹¹

Despite having defected, Dabbashi continued to have access not only to the Security Council processes, but also to official UN press stakeouts to speak to reporters as if officially the representative of a member nation of the UN. At these press stakeouts Dabbashi attacked the Libyan government, accusing it of genocide, without offering any proof for his claims. He also continued to call for the overthrow of the government of Libya.

Then on Friday, February 25, the Libyan Ambassador to the UN, Abdel Rahman Shalgham announced his defection and denounced the Libyan government during a Security Council meeting.

The President of the Security Council invited the defecting Ambassador to take part in the meeting under Rule 37 of the Security Council’s Provisional Rules of Procedure. Rule 37 specifies that it is a member nation that can be invited to participate. A defecting Ambassador or diplomat has no basis to take part in a UN Security Council meeting. The Rule reads:¹² “Rule 37 Any Member of the United Nations which is not a member of the Security Council may be invited, as the result of a decision of the Security Council, to participate, without vote, in the discussion of any question brought before the Security Council when the Security Council considers that the interests of that Member are specially affected, or when a Member brings a matter to the attention of the Security Council in accordance with Article 35 (1) of the Charter.”

An Ambassador who defects, by that act, is ceasing to represent the UN member nation. According to the rules of protocol (2005) online at the UN website, once an Ambassador ceases to represent his member nation, one would expect him to submit his resignation to the Secretary General. Thus it is not appropriate for him to be invited to take part in a Security Council meeting under Rule 37 of the Provisional Rules of Procedure of the Security Council. This Rule applies to

an official representative of a member nation of the UN, not to someone who claims that he no longer represents that nation. Following is the relevant section of the rules of protocol.¹³

“Section X Termination of Service at Permanent/Observer Missions: Permanent Representative Before relinquishing his/her post, a Permanent Representative/Observer should inform the Secretary-General in writing and, at the same time, communicate the name of the member of the mission who will act as Chargé d’Affaires a.i. pending the arrival of the new Permanent Representative/Observer. It is of special importance to note that a Chargé d’Affaires a.i. cannot appoint himself and can hold this function only after being appointed by the Permanent Representative/Observer or by the Ministry of Foreign Affairs of the State concerned.”

It would appear to be outside the procedure provided for by Security Council rules for a defecting Ambassador to be part of a Security Council meeting as the representative of the government he claims he no longer represents, and denouncing the member nation he has defected from.

At the Security Council meeting on February 25, UN Secretary General Ban Ki-moon spoke to the Security Council about the situation in Cote D’Ivoire and Libya. In his remarks on Libya, the Secretary General claimed he was basing his reports on accounts from “the press, human rights groups and civilians on the ground.” He acknowledged that there was no conclusive proof for his allegations, but dismissed this lack of verifiable information by saying that action should be taken along with efforts to get more reliable information. This action is contrary to other situations where the Secretary General recognized the need for an impartial fact finding group and appointed such a group to obtain the needed information to determine what course of action to take to promote a peaceful settlement of the situation.

After the Secretary General presented his unverified allegations, the defecting Libyan Ambassador was called on to speak. By February 25, Shalgham, too, had defected. (One could imagine that pressure for his defection may well have been a fear of the referrals to the ICC of Libyan officials being planned by some Security Council members.)

Contrary to an earlier promise to journalists that if he no longer supported the Libyan government, he would resign, Shalgham did not formally resign. Instead, he continued to use Security Council processes to encourage the Security Council to impose sanctions and ICC referrals on the government of Libya.

In his presentation to the Security Council meeting on Friday, February 25, Shalgham made a virulent denunciation of the Libyan government, complete with analogies to Hitler. Shalgham ignored the conflicting accounts of what was happening in Benghazi and instead painted a picture of peacefully demonstrating civilians unjustly subjected to a massacre.¹⁴ Shalgham presented no proof for his allegations nor was he asked to present any. Instead, he was consoled by the Secretary General and members of the Security Council, with several Security Council members, embracing and comforting him.

The following day, Saturday, February 26, a day long emergency meeting was held at the Security Council. While the Security Council was discussing a resolution about Libya, Shalgham is reported to have sent a letter to the Security Council to influence the votes of its members.

One journalist offered the following as the content of the letter Shalgham sent to the Security Council:¹⁵ “With reference to the Draft Resolution on Libya before the Security Council, I have the honour to confirm that the Libyan Delegation to the United Nations supports the measures proposed in the draft resolution to hold to account those responsible for the armed attacks against the Libyan Civilians, including through [sic] the International Criminal Court.”

According to journalists waiting outside the Security Council meeting on Saturday February 26, some Security Council members indicated that their aim was to induce more defections of Libyan officials by including referrals to the International Criminal Court (ICC) in the Security Council resolution they were proposing. This is using the ICC as a political tool rather than as a means of punishing actual crimes.

Libya is not a member of the treaty creating the ICC. Though the UN Charter provides for the Security Council to create tribunals it has no provision to force a nation not a member of a treaty organization creating a tribunal to be subject to its jurisdiction. When Security Council members are asked under what authority they refer a national of a state not a member of the ICC to its jurisdiction, they cite a provision in the ICC treaty. But a provision of the ICC treaty cannot be substituted for some provision of the UN Charter. No provision of the UN Charter has been cited as providing the authority for the Security Council referrals of non treaty members to the jurisdiction of the ICC.

Late in the day, on Saturday February 26, the Security Council passed Resolution 1970, imposing strong sanctions against Libya and referring Gaddafi and several others to the ICC. No proof of any wrongdoing was presented and no reference was made to any investigation into the allegations.

When the French Ambassador Gérard Araud explained why he voted in favor of SC Resolution 1970, he referred back to Shalgham's "moving statement" at the meeting on Friday Araud said:¹⁶ "Yesterday, the Permanent Representative of Libya (sic) made to this Council a moving appeal for assistance. France welcomes the fact that the Council has today unanimously and forcefully responded to that appeal."

In explaining his vote in favor of Security Council Resolution 1970, the Indian Ambassador explained that he was not inclined to support the referral to the ICC, but he was responding to the letter sent to the Security Council by Shalgham urging the Council to do so. The Indian Ambassador said: "(W)e would have preferred a calibrated and gradual approach. However, we note that several members of the Council, including our colleagues from Africa and the Middle East, believe that referral to the Court would have the effect of an immediate cessation of violence and the restoration of calm and stability. The letter from the Permanent Representative of Libya (sic) of 26 February addressed to you, Madame President, has called for such a referral and strengthened this view. We have therefore gone along with the consensus in the Council."

Similarly the Nigerian Ambassador explains: "We have taken into consideration the letter dated today from the Permanent Representative of Libya (sic) supporting the measures as we have proposed."

The Brazilian Ambassador also refers to the appeal by the defecting Ambassador in explaining her vote for Sec. Council Resolution 1970: "In our deliberations today, Brazil paid due regard to the views expressed by the League of Arab States and the African Union, as well as to the requests made by the Permanent Mission of Libya to the United Nations."¹⁷

At the meeting, Dabbashi was given the floor to speak on behalf of Libya. Dabbashi denounced Gaddafi and thanked the Security Council members for granting his request for harsh measures against Libya and members of its government.

The Secretary-General as the last speaker on the Security Council agenda, spoke about how he welcomed the sanctions and saw them as a means for a new governance regime in Libya. He said: "The sanctions that the Council has imposed are a necessary step to speed the transition to a new system of governance that will have the consent and participation of the people."

This sequence of events can only be seen as a violation of the Security Council's obligations

under the UN charter. The provision of the Security Council rules used to invite the defecting former Libyan government officials into Security Council meetings were provisions providing for officials representing the government of Libya to speak. The defecting officials were now former government officials and as such had no authority to speak for the official government of Libya, and no authority to appear at Security Council meetings as officials of Libya.¹⁸

The actions of such officials were not the actions of a member government. Unspoken was the process of how they had defected and through what arrangements with U.S. and other western government agencies they had gained the ability to remain in the U.S. and to participate in Security Council procedures. The Security Council was providing support and aid to members of a group attempting to carry out a coup against the government of Libya. Such an action is contrary to the obligations of the UN Charter requiring the non-intervention in the affairs of member nations.

The Security Council supported these defectors acting to overthrow the government of Libya. Also it failed to make any effort to initiate an independent investigation of what was happening in Libya. Apart from the biased western or Qatar supported media reports (reports from Aljazeera only represented the Libyan opposition viewpoint when it reported on the Libyan conflict.), the Security Council did not seek out any other source of information. UN personnel in Libya were not requested to investigate the allegations.

No legitimate Libyan government official was invited to take part in Security Council proceedings. When the Libyan government tried to appoint legitimate government officials to replace the defector delegation, the U.S. government would not approve the visa requests for the replacement delegates, in violation of the Host Country obligations of the U.S. In this way, the U.S. prevented the Libyan government from being able to present its case before the Security Council.

By March 3, 2011, the Spokesman for the Secretary General acknowledged that the Secretary General had received notice from the Libyan government withdrawing the credentials of Dabbashi and Shalgham.¹⁹ Yet for a period of time, they had continued to speak to reporters at the official Security Council stakeout and their statements to the press were covered by the UN media services and were treated as official Libyan government statements available at the UN Security Council website.

Eventually the access of the two diplomats was converted from diplomatic passes into courtesy passes granted at the discretion of the Secretariat so they could continue to have access to the UN, but on a more restricted basis than the official diplomatic access.

When some journalists questioned the grounds on which these defector diplomats continued to have access to official UN and Security Council procedures such as requesting a meeting of the Security Council, the spokesman for the Secretary General said that someone who has presented credentials to the Secretary General is the representative of a nation.²⁰ Disagreeing with the Spokesman's response, one journalist pointed out that the "Request for a meeting of the Security Council normally is by request from Member States, not from Ambassadors sitting in missions. Ambassadors ask for a meeting of the Council on the basis of a letter from the Foreign Ministry and, in this case, presumably there is no such letter emanating from the Foreign Ministry of Libya. So, on what basis, legal basis, is the Security Council meeting?" asked the journalist.

Instead of acknowledging the accuracy of the explanation that it is member nations that are represented at the Security Council, not an Ambassador, particularly not an Ambassador who has defected, the Spokesperson for the Secretary General answered: "I think you know what I am going to say...ask the Security Council. Next question."

Part IV – Libya Prevented from Presenting its Case at the UN

While the defecting Libyan diplomats have been supported and protected to have continual access to United Nations facilities, the opposite has been the case for the Libyan government.

One good example of this departure from protocol obligations is demonstrated by two documents. The first is Security Council Resolution 1970 (S/RES/1970(2011)).

The document states in its opening statement:²¹ “Taking note of the letter to the President of the Security Council from the Permanent Representative of the Libyan Arab Jamahiriya dated 26 February 2011.” (S/Res/1970(2011),p.1)

The problem of acknowledging this letter this way in the body of Resolution 1970 is that on February 25, the former Libyan Ambassador to the UN, Abdel Rahman Shalgham had informed the Security Council that he had defected.

By February 26 he no longer represented the Libyan government. Consequently there was no basis for the Security Council to refer to a letter from him, as a letter from the Permanent Representative of the Libyan Arab Jamahiriya

The Security Council should have found a way to hear from a member of the government of Libya, rather than substituting a defector Ambassador and his delegation for the official delegation of Libya.

Despite several efforts of the government of Libya to appoint a new Ambassador to replace the defector Ambassador and his staff members who had defected, neither the UN nor the U.S., the host country of the UN, acted in accord with their obligations to make this possible.

A letter from the Libyan government dated March 17 was sent to the Security Council President. It appears that this letter was not made an official document of the Security Council. Yet this letter provided the Libyan government explanation of what was happening. According to Article 32 of the UN Charter, the Security Council has an obligation to hear from member nations. The relevant portion of Article 32 states: “Any member of the United Nations which is not a member of the Security Council...if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to that dispute.”²²

This would be true as well, for a state which is not a Member of the United Nations.

The picture the Libyan government presents in the communication to the Security Council is one where there is an armed confrontation between armed insurgents and the State Authorities.²³

This is a different description of the situation than any of the members of the Security Council publicly considered on February 26 when the Security Council passed Resolution 1970 or on March 17 when it passed Resolution 1973.²⁴

In the letter of March 17, Libya explains that what is happening is a confrontation between terrorist groups and the State Authorities. It cites Libyan Law No. 38 of 1974, article 1, as the basis for the armed forces of Libya to “maintain security, if the general safety of the ‘Republic’ or any part of it so requires.” The letter explains that “Libyan army camps that have been attacked have taken no violent action against the armed attackers until the latter have brandished their weapons.” This is in conformity with Libyan law, the letter notes.

The letter explains that “Article 2 of the same law provides that orders to fire may be given in the following circumstances: (a) If any member of forces is attacked. (b) If rebels refuse to restore order, after having been warned and given the opportunity to do so. (c) If rebels carry out an armed attack against persons or property.”

The letter from the Libyan government describes how the government is fulfilling its responsibility to protect Libyan residents and citizens by confronting the armed insurgents.

The letter also says that Resolution 1970 and the draft of Resolution 1973, the resolution being considered for adoption on March 17, and subsequently adopted, “exceed the mandate” of the Security Council.

The letter says that “what is at issue is not a conflict between two States, as provided for in article 24 of the Charter of the United Nations.” The Council therefore has no authority to adopt resolutions in such cases. The Charter, the letter explained, “provides that States shall refrain from the threat or use of force against the territorial integrity of any State.”

Also in the letter, Libya referred to the mission to Libya by the African Union that was planned for March 20 to negotiate a political solution. The letter called the adoption of resolutions under Chapter VII premature, until an evaluation of the situation had been made by the African Union.

The Security Council made no mention of the letter or the points it raised when it went ahead and passed Resolution 1973 on the evening of March 17.

Only an AP article mentioned that there was such a letter and referred to some of its contents, including the challenge Libya presented to the section of Resolution 1970 referring Gaddafi and his family members to the International Criminal Court (ICC).²⁵

After the March 17 Security Council meeting, the U.S. and then NATO began bombing Libya.

A letter dated March 19 from the government of Libya has been made one of the documents of the Security Council. In the letter the Foreign Minister refers to previous letters that he sent to the Security Council which are not found in Security Council records. In the March 19 letter, he writes:²⁶ “In my previous letters to you, I emphasized that an external conspiracy was targeting Jamahiriya and its unity and territorial integrity. I pointed out that the Security Council had been drawn into implementing this conspiracy by its adoption of Resolution 1970 (2011) and 1973 (2011) under which a ban was imposed on all aviation in the airspace of the Libyan Arab Jamahiriya. By taking this decision,” the March 19 letter explained, “the Security Council has paved the way for military aggression against Libyan territory. France and the United States have bombarded several civilian sites, thereby violating all international norms and instruments, most notably the Charter of the United Nations, which provides for non-intervention in the affairs of member states.”

Libya asked the Security Council to hold an emergency meeting “in order to halt this aggression, the purpose of which is not to protect civilians, as is purported, but rather to strike civilian sites, economic facilities, and sites belonging to the Armed Peoples on Duty.” The UN Security Council discussed this request at a meeting on Monday, March 21 and decided not to grant the Libyan government’s request.

As of February 21, the Libyan government has been deprived of the ability to have a representative to the UN. In March, when the Libyan government tried to appoint another Ambassador, the U.S. government did not grant a visa.²⁷

Instead the defecting diplomats continue to have access to the UN and to use their presence at the UN to attack the legitimate government of Libya.

An article published by *Al Ahram*, is unusual in that it presents an account of some of the abuse of Security Council procedures that occurred in passing Resolutions 1970 and 1973 against Libya. The article was written by Curtis Doebbler, the American Human Rights lawyer. Doebbler writes:²⁸ “The West focused its propaganda machinery on the UN with a vengeance. And it was no mere ordinary propaganda campaign but a full-blown orchestration of history for the books. First, Libyan diplomats were induced and threatened to step down from their positions and promised that

if they supported the opposition they would be ‘taken care of.’ This resulted in the Libyan diplomats at the UN not only resigning, but doing so and still maintaining a type of diplomatic status that allowed them to advocate on behalf of the armed rebels who were challenging the government of Libya for control of their country.”

Doebbler continues: “This was accomplished by the spurious actions of UN Secretary General Ban Ki-moon, who issued special passes to the former Libyan diplomats after their government had withdrawn their credentials. Bypassing the UN General Assembly’s Credentials Committee and well-established protocol, the UN secretary-general for the first time in the world body’s history personally favoured one side in what was by now a civil war.”

Among Security Council members there have been a number of complaints that the resolution they allowed to pass (1973) did not authorize the kind of NATO bombing of Libya in support of the rebels that has been carried out. Because of the veto power of the U.S., France and the U.K., the Security Council appears to have no means of oversight over NATO to stop what they believe to be an abuse of Security Council processes.

In the context of the sequence of events that took place at the Security Council in February and March, the question asked at the press conference in April, “...are we to expect a more aggressive and proactive posture on the part of the Security Council in supporting rebel groups?” is about a serious change. The precedent set by the Security Council’s supporting an armed insurgency against the government of a UN member nation is a significant and dangerous precedent. It is an important issue to be seriously examined.²⁹

Notes

- 1) I. K. Cush of Global Breaking News, Press Conference for the Colombian Presidency, April 4, 2011
<http://www.unmultimedia.org/tv/webcast/2011/04/press-conference-nestor-osorio-colombia-president-of-the-security-council.html>
- 2) “French plans to topple Gaddafi on track since last November” by Franco Bechis
<http://www.voltairenet.org/article169069.html>
- 3) See the account in Libero of Nouri al Mesmari’s defection and connections with foreign intelligence forces.
<http://iamaghanaian.com/index.php?do=/news/reports-suggest-french-intelligence-encouraged-anti-gaddafi-protests/> and
<http://forum.prisonplanet.com/index.php?topic=204415.0;wap2>
- 4) “‘Airstrikes in Libya did not take place’ – Russian military,” News, Russia Today (RT) Moscow, March 1, 2011. RT report was made by journalist Irina Galushko.
<http://www.youtube.com/watch?v=iytgO0tscSI>
Radio Netherlands, “HRW: No Mercenaries in eastern Libya”, March 2, 2011
<http://margotbworldnews.com/WordPress/wp-content/Mar/Mar5/NoMercenariesE.Libya.html>
- 5) Ibrahim Dabbashi, Letter to Security Council dated February 21, 2011, S/2011/102, February 22, 2011
<http://daccess-ods.un.org/access.nsf/Get?Open&DS=JOURNAL%20NO.2011/42&Lang=E>
- 6) Provisional Rules of Procedure of the Security Council refers to Article 35 of the Charter referring to ‘nations that are Members of the UN’ or ‘nations that are not Members of the UN’. Nowhere does it provide for defecting officials to request a meeting of the Security Council.
- 7) Closed meeting Security Council, no notes but the occurrence of the meeting is noted as 6486th meeting (closed) Peace and security in Africa Feb. 22, 2011
<http://www.un.org/Docs/journal/En/20110223e.pdf>
- 8) Video by Nizar Abboud of UN Ambassador of Libya, Shalgam, Feb. 22, 2011
<http://www.youtube.com/user/NizarAbboud#p/search/0/fKhMUSHwtrA>
English responses begin at approx. 1:53.
- 9) B. Lynn Pascoe, “Informal comments to the media by B. Lynn Pascoe, Under-Secretary-General for Political Affairs, on the situation in Libya,” Feb. 22, 2011

<http://www.unmultimedia.org/tv/webcast/2011/02/b-lynn-pascoe-on-the-situation-in-libya.htm>

10) “UN Security Council Discusses Libya Crisis”. Reuters, Feb. 22, 2011

<http://uk.reuters.com/article/2011/02/22/us-libya-un-council-idUKTRE71L4T920110222>

11) See note 4 above.

12) Provisional Rules of Procedure Security Council Rule 37

<http://www.un.org/Docs/sc/scrules.htm>

13) Manual of Protocol, United Nations Protocol and Liaison Service

http://www.un.int/protocol/10_12.html

14) Abdel Rahman Shalgham at the Security Council 6490th meeting, Feb 25, 2011, United Nations S/PV.6490

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/PV.6490&Lang=E>

15) Letter Shalgham sent to Security Council as quoted on Inner City Press blog

<http://www.innercitypress.com/banros1libya022611.html>

16) Gérard Araud at the Security Council, 6490th meeting, Feb 26, 2011, United Nations S/PV.6491

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/PV.6491&Lang=E>

See this transcript for other statements at that meeting quoted in the text.

17) The reference to the African Union was mistaken. The African Union called for dialogue and was opposed to the sanctions and referral to the ICC before the Security Council took its votes on Resolutions 1970 and 1973. See for example, Ruhakana Rugunda, “African Union Statement on the NATO Invasion of Libya: It’s Time to End the Bombing and Find a Political Solution in Libya”

<http://www.counterpunch.org/rugunda06222011.html>

18) See for example International Labour Conference, 5C, Provisional Record, 100th Session, Geneva, June 2011, Reports on credentials, Second report of the Credentials Committee, Representation of Libyan Arab Jamahiriya

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_156839.pdf

19) March 3, 2011, Daily Press Briefing by the Office of the Spokesperson for the Secretary-General

<http://www.un.org/News/briefings/docs/2011/db110303.doc.htm>

20) Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, February 22, 2011

<http://www.un.org/News/briefings/docs/2011/db110222.doc.htm>

21) Security Council Resolution 1970

[http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1970%20\(2011\)&Lang=E](http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1970%20(2011)&Lang=E)

22) United Nations Charter Article 32 can be found in Chapter 5 at:

<http://www.un.org/en/documents/charter/chapter5.shtml>

23) Letter sent to Security Council dated 17 March 2011 from Secretary of the General People’s Committee of Foreign Liaison and International Cooperation of the Libyan Arab Jamahiriya to President of the Security Council. (English translation of document previously circulated in Arabic).

24) Ronda Hauben, “UN Security Council March 17 Meeting to Authorize Bombing of Libya all Smoke and Mirrors”, March 30, 2011

<http://blogs.taz.de/netizenblog/2011/03/>

25) Edith Lederer, “UN Rejects Emergency Meeting Sought by Libya,” AP, March 22, 2011

<http://newsinfo.inquirer.net/1264/un-rejects-emergency-meeting-sought-by-libya>

26) Letter dated 19 March 2011 from the Secretary of the General People’s Committee for Foreign Liaison and International Cooperation of the Libyan Arab Jamahiriya addressed to the President of the Security Council, S/2011/161

<http://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/270/02/pdf/N1127002.pdf>

27) Turtle Bay blog “TurtleLeaks: No visa, no entry! How the U.S. bars diplos from the U.N.”

http://turtlebay.foreignpolicy.com/posts/2011/05/04/turtleleaks_no_visa_no_entry_how_the_us_bars_diplos_from_the_un

28) Curtis Doebbler, “Libya: Who wins?”, *Al Ahram*, 7 – 13 April 2011, Issue No. 1042

<http://weekly.ahram.org.eg/2011/1042/op7.htm>

29) According to General Assembly Resolution 396(V), December 1950, Recognition by the United Nations of the Representative of a Member State, when a controversy arises with more than one authority claiming to be the government of a Member State, it becomes a question for the General Assembly to consider in light of the purposes and principles of the Charter of the UN and the circumstances of each specific case. See

<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/059/94/IMG/NR005994.pdf>

or

<http://www.un.org/documents/ga/res/5/ares5.htm>

