

US WILLING TO BOMB LIBYA TO MAINTAIN UN CREDIBILITY, BUT NOT ALLOW AN “OFFICIAL” VISIT TO BRADLEY MANNING

By my count, the OLC memo retroactively authorizing the bombing of Libya mentions the importance of UN or UN Security Council credibility nine times, including these two extended discussions.

In prior opinions, this Office has identified a variety of national interests that, alone or in combination, may justify use of military force by the President. In 2004, for example, we found adequate legal authority for the deployment of U.S. forces to Haiti based on national interests in protecting the lives and property of Americans in the country, preserving “regional stability,” and maintaining the credibility of United Nations Security Council mandates. Memorandum for Alberto R. Gonzales, Counsel to the President, from Jack L. Goldsmith III, Assistant Attorney General, Office of Legal Counsel, Re: Deployment of United States Armed Forces to Haiti at 3-4 (Mar. 17, 2004) (“2004 Haiti Opinion”), available at <http://www.justice.gov/olc/opinions.htm>. In 1995, we similarly concluded that the President’s authority to deploy approximately 20,000 ground troops to Bosnia, for purposes of enforcing a peace agreement ending the civil war there, rested on national interests in completing a “pattern of inter-allied cooperation and assistance” established by prior U.S. participation

in NATO air and naval support for peacekeeping efforts, "preserving peace in the region and forestalling the threat of a wider conflict," and maintaining the credibility of the UNSC. Proposed Bosnia Deployment, 19 Op. O.L.C. at 332-33. And in 1992, we explained the President's authority to deploy troops in Somalia in terms of national interests in providing security for American civilians and military personnel involved in UNSC-supported humanitarian relief efforts and (once again) enforcing UNSC mandates. Military Forces in Somalia, 16 Op. O.L.C. at 10-12.2

[snip]

The second important national interest implicated here, which reinforces the first, is the longstanding U.S. commitment to maintaining the credibility of the United Nations Security Council and the effectiveness of its actions to promote international peace and security. Since at least the Korean War, the United States government has recognized that "[t]he continued existence of the United Nations as an effective international organization is a paramount United States interest." Military Forces in Somalia, 16 Op. O.L.C. at 11 (quoting Authority of the President to Repel the Attack in Korea, 23 Dep't St. Bull. 173, 177 (1950)). Accordingly, although of course the President is not required to direct the use of military force simply because the UNSC has authorized it, this Office has recognized that "maintaining the credibility of United Nations Security Council decisions, protecting the security of United Nations and related relief efforts, and ensuring the effectiveness of United Nations peacekeeping operations can be

considered a vital national interest’” on which the President may rely in determining that U.S. interests justify the use of military force. Proposed Bosnia Deployment, 19 Op. O.L.C. at 333 (quoting Military Forces in Somalia, 16 Op. O.L.C. at 11). Here, the UNSC’s credibility and effectiveness as an instrument of global peace and stability were at stake in Libya once the UNSC took action to impose a no-fly zone and ensure the safety of civilians—particularly after Qadhafi’s forces ignored the UNSC’s call for a cease fire and for the cessation of attacks on civilians. As President Obama noted, without military action to stop Qadhafi’s repression, “[t]he writ of the United Nations Security Council would have been shown to be little more than empty words, crippling that institution’s future credibility to uphold global peace and security.” Obama March 28, 2011 Address; see also Obama March 21, 2011 Report to Congress (“Qadhafi’s defiance of the Arab League, as well as the broader international community . . . represents a lawless challenge to the authority of the Security Council and its efforts to preserve stability in the region.”). We think the President could legitimately find that military action by the United States to assist the international coalition in giving effect to UNSC Resolution 1973 was needed to secure “a substantial national foreign policy objective.” Military Forces in Somalia, 16 Op. O.L.C. at 12. [my emphasis]

Never mind that the Administration felt no need to bomb Cote d’Ivoire to maintain the credibility of the resolutions regarding that country, the Obama Administration just bombed another country in the name of “credibility” of the UN. While the Administration’s stated

concerns about credibility focus on the UNSC, it extends (according to this memo) to the UN's effectiveness generally, the UN's security, and its relief efforts.

That's interesting, because the UNHCR explains that in order for its Special Rapporteur on Torture to retain credibility, he must have unmonitored access to detainees. (See the Guardian for more on this.)

"Since December 2010, I have been engaging the US Government on visiting Mr. Manning, at the invitation of his Counsel, to determine his current condition," the human rights expert said. "Unfortunately, the US Government has not been receptive to a confidential meeting with Mr. Manning."

The UN Special Rapporteur on Torture, as part of the methods of work for his mandate, requires unimpeded access to all places of detention, where he can hold private, confidential and unsupervised interviews with detainees. The requirement of a private, confidential and unsupervised interview is a standard practice of the Rapporteur's mandate and ensures the credibility of any interviews that an independent expert holds with detainees or persons who allege that they have been subjected to torture and ill-treatment.

"I have since last year on several occasions raised serious concern about the conditions of detention of Mr. Manning, who since his arrest in May 2010, has been confined to his cell for twenty-three hours a day at the Marine Corps Brig, Quantico, Virginia. I have also urged the authorities to ensure his physical and mental integrity," said Mr. Méndez.

[snip]

“Even though I have not received an official answer from the Brig Commander, Mr. Manning’s counsel has learned that the request for an official visit has been denied,” Mr. Méndez said.

“Presumably, the alternative is a ‘private visit’, the difference between the two is that the latter takes place in the presence of a guard, while an official visit may be unmonitored.”

On Friday, April 8, the Special Rapporteur held a conversation with high authorities in the Departments of Defense and State. Those officials confirmed that Manning could ask to see the Special Rapporteur if he so wished and in that case the US Government would have no objection to a ‘private visit,’ meaning a visit that is monitored by prison officials.

“I am deeply disappointed and frustrated by the prevarication of the US Government with regard to my attempts to visit Mr. Manning. I understand that Pfc Manning does not wish to waive his right to an unmonitored conversation with me,” the human rights expert said. “My request for a private, confidential and unsupervised interview with Manning is not onerous: for my part, a monitored conversation would not comply with the practices that my mandate applies in every country and detention center visited. In fact, such forms of interview have been used by the Special Rapporteur in, at least, 18 countries over the last 6 years.” [my emphasis]

But the Obama Administration has given Special Rapporteur Juan Mendez the same kind of run-around they gave Dennis Kucinich, and then ultimately refused to comply with the standard practice.

Apparently, our “national interest” in the

credibility of the UN extends only so far as it allows us to bomb other countries, but not so far as it might expose our own treatment of detainees to independent evaluation.

Update: Title changed to get the type of visit correct.