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Adopting Resolution 2240 (2015), Security Council Authorizes Member States to Intercept Vessels off Libyan Coast Suspected of Migrant Smuggling

7532nd Meeting (AM)

The Security Council this morning decided to authorize Member States for a period of one year to inspect vessels on the high seas off the coast of Libya that they had reasonable grounds to suspect were being used for migrant smuggling or human trafficking from that country.

Adopting resolution 2240 (2015) with 14 votes in favour and one abstention by Venezuela, and acting under Chapter VII of the Charter of the United Nations, the Council further decided to authorize Member States to seize vessels that were confirmed as being used for migrant smuggling or human trafficking from Libya. Member States, acting nationally or through regional organizations were authorized to use all measures in confronting migrant smuggles or human trafficking in full compliance with international human rights law. However, the Council also underscored that the authorizations did not apply with respect to vessels entitled to sovereign immunity under international law.

The Council called upon Member States acting nationally or through regional organizations engaged in the fight against migrant smuggling and human trafficking to inspect on the high seas off the coast of Libya any unflagged vessels that they had reasonable grounds to believe had been, were being, or imminently would be used by organized criminal enterprises for migrant smuggling or human trafficking from Libya, including inflatable boats, rafts and dinghies.

The Council further called for Member States to consider ratifying or acceding to, and for States parties to effectively implement the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

The Council took those actions as it deplored the continuing maritime tragedies in the Mediterranean Sea that had resulted in hundreds of casualties and noted with concern that such casualties were in some cases the result of exploitation and misinformation by transnational criminal organizations that facilitated the illegal smuggling via dangerous methods for personal gain and with callous disregard for human life.

After the vote, the representative of the United Kingdom said that sadly, the migration crisis was one of the greatest challenges of the current generation. Since June, European Union naval forces had worked to alleviate the human tragedy on the high seas off the coast of

Libya. “We must not allow callous people-smugglers to profit from despair”. The adopted resolution would only be a small part of the solution as the root causes of the crisis, which included poverty, armed conflict and extremist groups such as the Islamic State in Iraq/Sham (ISIS/ISIL) must also be addressed.

The representative of France said the purpose of the text was to provide member States of the European Union the necessary legal guarantees to conduct operations under the second phase of the European Union’s naval operation, “Operation Sophia” which commenced on 7 October. The text sets out precisely the circumstances under which the use of force could be used while protecting the migrants.

Explaining his country’s abstention from the vote, the representative of Venezuela said the problem was being tackled in an “erroneous” manner. The possibility of applying the Charter’s Chapter VII to a humanitarian situation was a “serious mistake”, setting a dangerous precedent that the Council had established through a back door and usurped from the General Assembly’s purview.

The representative of Chad said the text had taken into account the legitimate concerns expressed by African countries. He emphasized the need to conduct the naval operation with full respect for international law and respect for migrants and expressed the hope that the authorization for the use of force would not give rise to expansive interpretations, as had happened in the past.

Libya’s representative also stressed that addressing the crisis must be done with respect for international law, as well as respect for the sovereignty of States and non-interference in national affairs. European operations should be carried out in coordination between the European Union and countries affected. He reminded the Council that that Tripoli and its ports, from which boats smuggling migrants departed, was still controlled by militias while Libyan authorities, with very little resources, were still fighting terrorism to restore Government institutions.

The representatives of Malaysia, Russian Federation, China, Chile, Jordan, United States, Lithuania and Spain also spoke after the action.

The meeting began at 10:19 a.m. and ended at 11:20 a.m.

Statements after Action

MATTHEW RYCROFT (United Kingdom) said that sadly, the migration crisis was one of the greatest challenges of the current generation. Since June, European Union forces had worked to alleviate the human tragedy on the high seas off the coast of Libya. The European Union Naval Force ATALANTA (EU NAVFOR) now been authorized to begin interceptions on the high seas. Any smuggler stopped would be arrested. “We must not allow callous people-smugglers to profit from despair”, he stated, stressing that the authorization would be used solely to smugglers. Migrants would be taken to Europe. Such efforts would save lives. In order to end the crisis, all needed to work collectively to put an end to the drivers of the tragedy. That required countries to address the root causes, which included conflict and

tackling extremist groups such as the Islamic State in Iraq and the Levant/Sham (ISIL/ISIS). The adopted resolution would only be a small part of the solution.

MAHAMAT ZENE CHERIF (Chad) said the resolution had been the object of intense negotiations. He welcomed the flexibility and understanding shown by Council members by taking into account the legitimate concerns expressed by African countries. He expressed hope that the authorization granted by the resolution would only be used to confront criminal networks and not violate the rights of migrants. He also stressed the need to conduct the naval operation with full respect for international law and respect for migrants and that the use of armed force would not give rise to expansive interpretations, as had happened in the past. Root causes such as poverty and conflict of the crisis should be addressed. It was crucial that the European Union work with all its partners, including countries of origin and transit and with regional organizations.

RAMLAN BIN IBRAHIM (Malaysia) underscored that the text called for action to stop human smugglers and traffickers while prioritizing the safety and security of migrants. Malaysia was prepared to receive 3000 refugees from Syria. He noted that the current challenge posed by networks of smugglers also applied to South East Asia, adding that the implementation of the resolution would provide many countries with the necessary support. It was also critical that the root causes of poverty and violence must be addressed without delay.

RAFAEL DARÍO RAMÍREZ CARREÑO (Venezuela), stressing that “people are trying desperately to reach safer destinations”, condemned criminal groups that had taken advantage of such despair. However, the humanitarian crisis could not be tackled solely through a military approach, justified by a fight against organized crime. He had abstained in the vote because the problem was being tackled in an “erroneous” manner. The possibility of applying the United Nations Charter Chapter VII to a humanitarian situation was a “serious mistake”. It was setting a dangerous precedent that the Council had established through a back door, usurped from the General Assembly’s purview. The complexity of the problem required a comprehensive approach that transcended the purely military and security approach that some States had promoted. The root causes that forced people to make a dangerous journey must be examined.

He went on to say that beyond fighting criminal activity, the text aimed to prevent people from reaching a safer destination through imposing “a policy of walls” that separated rich countries from seeing the tragedy of those afflicted by war. Those people’s human rights must prevail above a concept of security that endangered victims. The human tragedy of migrants, which should be addressed through the Assembly’s democratic approach, had at its root causes the military interventions in Iraq, Libya and Syria. The small arms and light weapons trade and chaos provoked by the intervention in Libya had led to other problems throughout Africa. “This resolution only looks at a minute part of the problem,” he said, adding that he would have liked to have had a broader discussion, with the involvement of the African Union, as well as other regional and subregional actors.

EVGENY T. ZAGAYNOV (Russian Federation) supported the resolution, aware of the need for measures to save lives. Resolving the crisis would be unlikely without addressing the root causes of migration, notably through working with countries of origin and transit, as well as partners at the international level to create an effective response mechanism. Countries implementing the resolution were expected to strictly comply with international law,

including the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and to ensure migrants' security. Any expansive interpretation of the text was unacceptable, as it already provided for clear requirements. Measures sanctioned by the text should be in line with specific situations, and only as part of addressing those entities involved in illegal smuggling and human trafficking. The top priority was ensuring the safety of those on board. Highlighting the plight of asylum seekers, he welcomed that the text provided for a monitoring mechanism, saying the Russian Federation would closely monitor all actions with regard to vessels in that region.

LIU JIEYI (China) said he had voted in favour of the resolution with hope that it would help find a "proper" solution to the situation. He also expressed hope States would implement the text in a comprehensive and accurate manner, respecting the independence, sovereignty and territorial integrity of the countries concerned, and prioritizing the safeguarding of life. The causes of illegal migration were complex and he urged an integrated approach focused on poverty, social unrest and conflict as the among the root causes. Communications with regional and subregional organizations were important.

FRANÇOIS DELATTRE (France) said the purpose of the text was to provide member States of the European Union the necessary legal guarantees to conduct operations under the second phase of the European Union Naval Force Mediterranean, also known as Operation Sophia, which started on 7 October. The text sets out precisely the circumstances under which the use of force could be used while protecting the migrants. The text was only a part of the response to the crisis.

CRISTIÁN BARROS MELET (Chile) said human trafficking and migrant smuggling were punishable acts that should be resolved under international and international humanitarian law. The root causes needed to be tackled by the United Nations system. The Organization must ensure that States could act to address the humanitarian demands and sanction conduct that violated human dignity. The use of force was authorized in exceptional circumstances and for a limited period of time, which should always be taken within the legal framework of the Law of the Sea.

DINA KAWAR (Jordan) stressed that the resolution must not be understood to authorize bypassing legal principles and international refugee law must be an integral part of the resolution. Recalling that 20 per cent of her country's population consisted of refugees, she said the resolution must not be used as a shield to violate principles of international law. The use of force must be limited in scope, because use of force against non-State actors was not a part of the international legal rules to resort to force.

SAMANTHA POWER (United States) said 2,988 people had died crossing the Mediterranean this year, according to the International Organization of Migration (IOM). Today's resolution aimed to address one dimension of the refugee crisis, authorizing the European Union to play a more robust role vis-à-vis ships originating from Libya and those seeking to exploit them for human smuggling. The scale of the crisis required speaking to the remaining challenges, especially filling the gaps in meeting the needs of the rescued. Nearly 530,000 people had arrived in Europe this year alone and States were obliged to protect the rights of those on their territories, including migrants and refugees. The United States had committed to admitting 70,000 people this year, and 80,000 next year, as well as providing an additional \$419 million in relief for Syrians.

RAIMONDA MURMOKAITĖ (Lithuania) said predator smuggling and trafficking networks continued to spread new cycles of death. The resolution had sent a strong message to those seeking to profit from human suffering by enabling life-saving actions that safeguarded victims' human rights. The European Union's Operation Sophia was one of many steps the bloc was taking to respond to the crisis. In such work, cooperation with African and Middle East countries was essential. She said that Lithuania looked forward to the European Union-African Union meeting in Malta to build cooperation between the two regions, including on return policies. Recalling the root causes driving people from their homes, she cited conflict, the breakdown of governance, oppressive regimes, rampant corruption and systematic human rights violations. It was vital to tackle those problems.

U. JOY OGWU (Nigeria), as a party to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, welcomed the adoption of the resolution and supported measures to combat trafficking. She condemned the smugglers' endangerment of and utter disregard for human life, as demonstrated in their activities on the Mediterranean Sea, as well as the maltreatment of migrants in transit and destination countries, which violated international humanitarian law and international refugee law. The humane treatment of all migrants must be ensured. Fighting transnational organized crime required international cooperation, especially information exchange. Origin, transit and destination countries must cooperate on that and other issues. The text had sent a strong message to smuggling and trafficking networks that such behaviour would no longer be a path for profit. She expressed hope it would serve as a model for other regions.

ROMÁN OYARZUN MARCHESI (Spain) spoke in his national capacity, underscoring that almost 3,000 people had lost their lives crossing the Mediterranean. The European Union Operation Sofia captured the spirit of the endeavor that had brought countries together today: to save lives. The resolution was an initial step to tackle the challenge. For its part, Spain had seen exploitation of thousands of people in Mediterranean and had pioneered a comprehensive response, engaging in "excellent" cooperation with Morocco, Mauritania, Algeria and other countries. It had been among the first countries involved in the Rabat and Khartoum processes. Spain would again show its commitment at an upcoming meeting in November, he said, expressing hope for the formation of "a Government of harmony" in Libya.

IBRAHIM O. A. DABBASHI (Libya) said the resolution met the wishes of the European Union and took into account the concerns of Libya and other African countries. His Government could not extend its authority to the whole country and control its extensive borders. Addressing the crisis must be done with respect for international law, as well as respect for the sovereignty of States and non-interference in national affairs. European operations should be carried out in coordination between the European Union and countries affected, in particular in the exclusive economic zones of the countries.

However, he warned against misuse of the resolution to conduct illegal fishing in waters under Libyan authority. He also pointed out that militias were controlling Tripoli and its ports from which the boats transporting migrants departed. Libyan authorities, with very little resources, were fighting terrorism and seeking to extend their authority throughout the country's whole territory. Stating that he trusted that the current dialogue would lead to a national Government, he announced that yesterday, agreement had been reached on a new President. He hoped that a new Government might be able to restore Libya's institutions in the capital, a necessary component towards reducing the flow of illegal migrants.

Resolution

The full text of resolution 2240 (2015) reads as follows:

“The Security Council,

“Recalling its press statement of 21 April on the maritime tragedy in the Mediterranean Sea,

“Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Libya,

“Recalling that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982, sets out the legal framework applicable to activities in the ocean,

“Reaffirming also the United Nations Convention against Transnational Organized Crime (UNTOC Convention) and its Protocol against the Smuggling of Migrants by Land, Air and Sea, as the primary international legal instruments to combat the smuggling of migrants and related conduct, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UNTOC Convention, as the primary international legal instruments to combat trafficking in persons,

“Underlining that, although the crime of smuggling of migrants may share, in some cases, some common features with the crime of trafficking in persons, Member States need to recognise that they are distinct crimes, as defined by the UNTOC Convention and its Protocols, requiring differing legal, operational, and policy responses,

“Deploing the continuing maritime tragedies in the Mediterranean Sea that have resulted in hundreds of casualties, and *noting with concern* that such casualties were, in some cases, the result of exploitation and misinformation by transnational criminal organisations which facilitated the illegal smuggling of migrants via dangerous methods for personal gain and with callous disregard for human life,

“Expressing grave concern at the recent proliferation of, and endangerment of lives by, the smuggling of migrants in the Mediterranean Sea, in particular off the coast of Libya and *recognizing* that among these migrants may be persons who meet the definition of a refugee under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto,

“Emphasizing in this respect that migrants, including asylum-seekers and regardless of their migration status, should be treated with humanity and dignity and that their rights should be fully respected, and *urging* all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable, *stressing also* the obligation of States, where applicable, to protect the human rights of migrants regardless of their migration status, including when implementing their specific migration and border security policies,

“Reaffirming in this respect the need to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach,

recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability,

“Further recalling the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue,

“Expressing further concern that the situation in Libya is exacerbated by the smuggling of migrants and human trafficking into, through and from the Libyan territory, which could provide support to other organised crime and terrorist networks in Libya,

“Mindful of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations,

“Underlining the primary responsibility of the Libyan Government to take appropriate action to prevent the recent proliferation of, and endangerment of lives by, the smuggling of migrants and human trafficking through the territory of Libya and its territorial sea,

“Mindful of the need to support further efforts to strengthen Libyan border management, *considering* the difficulties of the Libyan Government to manage effectively the migratory flows in transit through Libyan territory, and *noting* its concern for the repercussions of this phenomenon on the stability of Libya and of the Mediterranean region,

“Welcoming support already provided by the most concerned Member States, including Member States of the European Union (EU), taking into account inter alia the role of FRONTEX and the specific mandate of EUBAM Libya in support of the Libyan Government, and by neighbouring States,

“Acknowledging the European Council statement of 23 April 2015 and the press statement of the African Union Peace and Security Council of 27 April, which underlined the need for effective international action to address both the immediate and long-term aspects of human trafficking towards Europe,

“Taking note of the Decision of the Council of the European Union of 18 May 2015 setting up ‘EUNAVFOR Med’ which underlined the need for effective international action to address both the immediate and long-term aspects of migrant smuggling and human trafficking towards Europe,

“Taking further note of the ongoing discussions between the EU and the Libyan Government on migration related issues,

“Expressing also strong support to the States in the region affected by the smuggling of migrants and human trafficking, and *emphasizing* the need to step up coordination of efforts in order to strengthen an effective multidimensional response to these common challenges in the spirit of international solidarity and shared responsibility, to tackle their root causes and to prevent people from being exploited by migrant smugglers and human traffickers,

“Acknowledging the need to assist States in the region, upon request, in the development of comprehensive and integrated regional and national strategies, legal frameworks, and institutions to counter terrorism, transnational organised crime, migrant smuggling, and

human trafficking, including mechanisms to implement them within the framework of States' obligations under applicable international law,

“*Stressing* that addressing both migrant smuggling and human trafficking, including dismantling smuggling and trafficking networks in the region and prosecuting migrant smugglers, and human traffickers requires a coordinated, multidimensional approach with States of origin, of transit, and of destination, and further *acknowledging* the need to develop effective strategies to deter migrant smuggling and human trafficking in States of origin and transit,

“*Emphasizing* that migrants should be treated with humanity and dignity and that their rights should be fully respected, and *urging* all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable,

“*Bearing* in mind the obligations of States under applicable international law to exercise due diligence to prevent and combat migrant smuggling and human trafficking, to investigate and punish perpetrators, to identify and provide effective assistance to victims of trafficking and migrants and to cooperate to the fullest extent possible to prevent and suppress migrant smuggling and human trafficking,

“*Affirming* the necessity to put an end to the recent proliferation of, and endangerment of lives by, the smuggling of migrants and trafficking of persons in the Mediterranean Sea off the coast of Libya, and, for these specific purposes, acting under Chapter VII of the Charter of the United Nations,

“1. *Condemns* all acts of migrant smuggling and human trafficking into, through and from the Libyan territory and off the coast of Libya, which undermine further the process of stabilisation of Libya and endanger the lives of thousands of people;

“2. *Calls on* Member States acting nationally or through regional organisations, including the EU, to assist Libya, upon request, in building needed capacity including to secure its borders and to prevent, investigate and prosecute acts of smuggling of migrants and human trafficking through its territory and in its territorial sea; in order to prevent the further proliferation of, and endangerment of lives by, the smuggling of migrants and human trafficking into, through and from the territory of Libya and off its coast;

“3. *Urges* Member States and regional organisations, in the spirit of international solidarity and shared responsibility, to cooperate with the Libyan Government, and with each other, including by sharing information about acts of migrant smuggling and human trafficking in Libya's territorial sea and on the high seas off the coast of Libya, and rendering assistance to migrants and victims of human trafficking recovered at sea, in accordance with international law;

“4. *Urges* States and regional organisations whose naval vessels and aircraft operate on the high seas and airspace off the coast of Libya, to be vigilant for acts of migrant smuggling and human trafficking, and in this context, *encourages* States and regional organisations to increase and coordinate their efforts to deter acts of migrant smuggling and human trafficking, in cooperation with Libya;

“5. *Calls upon* Member States acting nationally or through regional organisations that are engaged in the fight against migrant smuggling and human trafficking to inspect, as permitted under international law, on the high seas off the coast of Libya, any unflagged vessels that they have reasonable grounds to believe have been, are being, or imminently will be used by organised criminal enterprises for migrant smuggling or human trafficking from Libya, including inflatable boats, rafts and dinghies;

“6. *Further calls upon* such Member States to inspect, with the consent of the flag State, on the high seas off the coast of Libya, vessels that they have reasonable grounds to believe have been, are being, or imminently will be used by organised criminal enterprises for migrant smuggling or human trafficking from Libya;

“7. *Decides*, with a view to saving the threatened lives of migrants or of victims of human trafficking on board such vessels as mentioned above, to authorise, in these exceptional and specific circumstances, for a period of one year from the date of the adoption of this resolution, Member States, acting nationally or through regional organisations that are engaged in the fight against migrant smuggling and human trafficking, to inspect on the high seas off the coast of Libya vessels that they have reasonable grounds to suspect are being used for migrant smuggling or human trafficking from Libya, provided that such Member States and regional organisations make good faith efforts to obtain the consent of the vessel’s flag State prior to using the authority outlined in this paragraph;

“8. *Decides* to authorise for a period of one year from the date of the adoption of this resolution, Member States acting nationally or through regional organisations to seize vessels inspected under the authority of paragraph 7 that are confirmed as being used for migrant smuggling or human trafficking from Libya, and *underscores* that further action with regard to such vessels inspected under the authority of paragraph 7, including disposal, will be taken in accordance with applicable international law with due consideration of the interests of any third parties who have acted in good faith;

“9. *Calls upon* all flag States involved to cooperate with respect to efforts under paragraphs 7 and 8, and *decides* that Member States acting nationally or through regional organisations under the authority of those paragraphs shall keep flag States informed of actions taken with respect to their vessels, and *calls upon* flag States that receive such requests to review and respond to them in a rapid and timely manner;

“10. *Decides* to authorise Member States acting nationally or through regional organisations to use all measures commensurate to the specific circumstances in confronting migrant smugglers or human traffickers in carrying out activities under paragraphs 7 and 8 and in full compliance with international human rights law, as applicable, *underscores* that the authorizations in paragraph 7 and 8 do not apply with respect to vessels entitled to sovereign immunity under international law, and *calls upon* Member States and regional organisations carrying out activities under paragraphs 7, 8 and this paragraph, to provide for the safety of persons on board as an utmost priority and to avoid causing harm to the marine environment or to the safety of navigation;

“11. *Affirms* that the authorisations provided in paragraphs 7 and 8 apply only with respect to the situation of migrant smuggling and human trafficking on the high seas off the coast of Libya and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under UNCLOS, including the general

principle of exclusive jurisdiction of a flag State over its vessels on the high seas, with respect to any other situation, and *further affirms* that the authorisation provided in paragraph 10 applies only in confronting migrant smugglers and human traffickers on the high seas off the coast of Libya;

“12. *Underscores* that this resolution is intended to disrupt the organised criminal enterprises engaged in migrant smuggling and human trafficking and prevent loss of life and is not intended to undermine the human rights of individuals or prevent them from seeking protection under international human rights law and international refugee law;

“13. *Emphasises* that all migrants, including asylum-seekers, should be treated with humanity and dignity and that their rights should be fully respected, and urges all States in this regard to comply with their obligations under international law, including international human rights law and international refugee law, as applicable;

“14. *Urges* Member States and regional organisations acting under the authority of this resolution to have due regard for the livelihoods of those engaged in fishing or other legitimate activities;

“15. *Calls upon* all States, with relevant jurisdiction under international law and national legislation, to investigate and prosecute persons responsible for acts of migrant smuggling and human trafficking at sea, consistent with States’ obligations under international law, including international human rights law and international refugee law, as applicable;

“16. *Calls* for Member States to consider ratifying or acceding to, and for States Parties to effectively implement the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

“17. *Requests* States utilising the authority of this resolution to inform the Security Council within three months of the date of adoption of this resolution and every three months thereafter on the progress of actions undertaken in exercise of the authority provided in paragraphs 7 to 10 above;

“18. *Requests* the Secretary-General to report to the Security Council eleven months after the adoption of this resolution on its implementation, in particular with regards to the implementation of paragraphs 7 to 10 above;

“19. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authority provided in this resolution for additional periods;

“20. *Decides* to remain seized of the matter.”