



CHATHAM HOUSE

Chatham House, 10 St James's Square, London SW1Y 4LE  
T: +44 (0)20 7957 5700 E: [contact@chathamhouse.org.uk](mailto:contact@chathamhouse.org.uk)  
F: +44 (0)20 7957 5710 [www.chathamhouse.org.uk](http://www.chathamhouse.org.uk)

Charity Registration Number: 208223

## Middle East and North Africa Programme: Workshop Report

# Libya's Future: Towards Transition

May 2011

The views expressed in this document are the sole responsibility of the author(s) and do not necessarily reflect the view of Chatham House, its staff, associates or Council. Chatham House is independent and owes no allegiance to any government or to any political body. It does not take institutional positions on policy issues. This document is issued on the understanding that if any extract is used, the author(s)/ speaker(s) and Chatham House should be credited, preferably with the date of the publication or details of the event. Where this document refers to or reports statements made by speakers at an event every effort has been made to provide a fair representation of their views and opinions, but the ultimate responsibility for accuracy lies with this document's author(s).

## Introduction

This paper is a summary of a roundtable discussion on 'Libya's Future: Toward Transition' held at Chatham House on 12 May 2011.

Possible scenarios for Libya's future that were discussed included:

1. A negotiated end to the regime later in the year under terms that allow for the safe exit of Gaddafi and his family.
2. The regime collapses under popular and economic pressures, with the opposition taking over. Political roadmap established based on the vision of the future laid out by the Libyan Transitional National Council in the Rome meeting on 6 May.
3. Stalemate: Tripoli regime recovers some or all of its losses, and the opposition is unable to make headway. This stalemate could include a de facto separation between the east and west.

The discussion also covered included Libya's energy economy, the NATO-led operation, the role of regional actors, the international legal framework, and politics in both Tripoli and Benghazi.

Key findings that emerged were:

- The NATO-led operation in Libya is perceived as lacking clear military aims.
- The rebels would like to see the coalition step up its operation, but the question of 'boots on the ground' is divisive. However it is unclear whether the current air operation will be sufficient to tip the balance in favour of the rebels and avoid a stalemate.
- Prospects for a negotiated ceasefire are as yet distant, although a ceasefire (negotiated or imposed) is likely to do the most to improve the humanitarian situation.
- Humanitarian actors are concerned that there is an attempt to combine humanitarian and political/military objectives, which could hinder the delivery of aid.

## The Chatham House Rule

'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed'.

## **Parties to the conflict, energy and aid**

### **The military campaign and the coalition forces**

Questions arose over whether there is a clear military strategy, either on the ground or outside the country, as well as whether a military solution to the crisis in Libya is feasible. Is the 'end goal' to the military action to strangle Tripoli, to establish a civilian protectorate in the East, to topple the Gaddafi regime, or all three?

It may be the case that the international community has limited means for maximalist aims, and that there is a disconnect between the degrees of pressure being applied and the overall objectives of the campaign. The UN Security Council Resolution does not provide for a clear military solution, and the Council is unlikely to authorize further action. Additionally, despite calls by the rebels to increase NATO operations, hitting more targets or directly targeting Gaddafi could split the coalition.

Fighting so far has either been around water supply and main oil installations in the east, and to the area south of Tripoli through which oil and water supplies pass. If one side succeeded in cutting off oil and water supplies to the other, this might tip the scales in its favour. As such the rebels are keen for NATO to do more to protect oil stations.

Concerns were expressed that there appeared to be little 'Phase IV' (the military term for post-combat operations) planning by the coalition forces, and although the Transitional National Council's (TNC) roadmap may remedy this, the UN transition plan is not in the public domain.

### **The rebel forces: developments in Benghazi**

There are many positive steps towards state-building being taken in Benghazi, including the creation of new institutions, newspapers, magazine, television stations and civil society organizations. The rebels are winning diplomatic battles abroad and winning friends. However, participants disagreed over the degree of support for the TNC in the streets of Benghazi, and highlighted the problems associated with lack of service provision, particularly policing. Some projects in Benghazi have recently been established by international justice organizations working on police and detention issues identified by the TNC.

Concerns were also expressed over possible fragmentation in the military command in Benghazi, diverging from a unified professional structure.

Charismatic leaders detached from the military process can lead to forms of warlordism – if military commanders have more autonomy, and disagree about strategy, they may seek to take independent action. It is important that this does not lead to fragmented military forces in attempts to establish constitutional government and there needs to be an emphasis on ensuring a comprehensive civilian supremacy.

However, the evidence for this fear of personality-driven military leaders and armed forces splitting into militias was questioned. While there have been reports of disagreements and weapons heading to voluntary militias in the east, this does not yet point to mounting factionalism. External actors also need to reflect on the impact of their relationships with the rebel forces – UK officers are handing out body armour and radio sets, and in doing so will be shaping military structures and affecting military capabilities.

### **The Transitional National Council in Benghazi**

The TNC was formed remarkably rapidly given the political conditions of Gaddafi's Libya, where political parties were banned and there was no active civil society. The TNC and a number of local councils were established within ten days of the conflict beginning. The council initially consisted of a small executive team focusing on foreign affairs and military matters, and it has now expanded, recently taking on members focusing on education, the environment, civil society and other areas.

One of the TNC's most urgent problems is its financial position, and the rebels said they only had enough money to cover 40% of April and May costs. Germany has proposed setting up account with the UN into which to transfer \$6bn of the regime's frozen assets would be transferred. Until now the TNC has received no official donations from foreign governments (although the Kuwaiti government has pledged a donation).

A 'temporary financial mechanism' was formed when the new Libya contact group met in Rome on 5 May. This mechanism relies on donations take from countries on the understanding that when the Gaddafi regime falls the money will be returned from frozen assets. The mechanism is due to start working in late May and a team from the IMF is due to be appointed to manage the process. Dr Ahmed Sharif of Benghazi University has also been appointed as the head of the Transitional National Council's central bank, to work in cooperation with the British and the Qataris.

## **Neighbours, the African Union and the Arab League**

Arab support for the rebels is forthcoming from some places, such as Kuwait and Qatar, but it is quiet. Libya's immediate neighbours are even more politically ambivalent or 'hands off', partially because of their own domestic issues and concerns for their own citizens still in Libya. The supply lines in Algeria are crucial to Libya, and more international pressure should be put on its neighbours to help tighten the noose around the Gaddafi regime. There are daily stories of Gaddafi trying to get fuel from Tunisia, and being stopped by normal Tunisian people (by blocking the roads) rather than the Tunisian government.

There is also a limited amount of international pressure on sub-Saharan states such as Chad to cease contributing mercenaries, although Mali has succeeded in trying and prosecuting mercenaries who went to Libya. The African Union (AU) may be well positioned to push on negotiations; however its commitment is not clear.

## **Libya's energy economy**

Libya's GDP is expected to contract by at least 25% in 2011, as oil production, which accounts for 89% of Libya's revenue, is in decline. Prior to the uprising, Libya was producing 1.6m barrels: the assumption is that this will fall to 500,000, although output will start to recover slowly from July. However, the oil sector is very dependent on foreign companies and workers.

In terms of oil exports, one shipment has left the east since April under a deal brokered by Qatar Petroleum, in which the TNC was able to ship 1m barrels of oil to China, probably worth around \$120m and, according to the media, the rebels have been able to receive payment. This was a one-off transaction but does have the potential to be replicated.

However Benghazi's financial prospects took a huge knock after the attack on the crucial oil-pumping facility at al-Boster on 21 April. If the TNC cannot export oil, this will have a serious impact on its finances and the international community cannot substitute for it in perpetuity.

## **The humanitarian situation**

Humanitarian organizations are still operating in Libya and reports suggest that the International Red Cross is getting improved access with every week. While supplies of medical equipment are getting through, the migration issues are still huge. Concerns were expressed with regards to the use of sanctions – it is very difficult to isolate their impact and they may compound aspects of

the conflict such as problems accessing fuel, water, food and medical treatment.

There were also concerns that humanitarian assistance may be used as a tool for political objectives. There is a feeling among humanitarian actors that there is an attempt to combine humanitarian and political/military objectives, which could hinder the delivery of aid. If humanitarian actors are not perceived to be neutral they could be put at risk – the recent attack on the UN compound in Tripoli is an example of this.

A number of agencies have commented in private that they have felt under pressure to have access to military support for aid delivery – something which they have refused until now. The European Union has recently adopted a Council decision<sup>1</sup> that signalled its willingness to deploy military force in order to deliver humanitarian aid if requested by the UN. The single aid organization operating in Misrata has not needed security until now, and feels that it would be more risky to have security.

The military and humanitarian situation remains dire in a number of areas, particularly Misrata and Jabal Nefusa where many people have fled to Tunisia or remain stuck on the border. Some would like to see the international community work harder on tackling the humanitarian situation and increase NATO air strikes against Gaddafi troops shelling these areas.

---

<sup>1</sup> See: Council Decision 2011/210/CFSP on a European Union military operation in support of humanitarian assistance operations in response to the crisis situation in Libya (EUFOR Libya) accessible via <http://www.consilium.europa.eu/showPage.aspx?id=2079&lang=en>

## Legal frameworks

### Legal frameworks applying to the conflict in Libya

Three blocks of legal framework currently apply in Libya: sanctions, referral to the International Criminal Court (ICC) and other means of addressing human rights abuses, and authorization of the use of force by the UN Security Council.

Security Council Resolution 1973 (2011) authorized the use of force in Libya for three purposes:

1. the protection of civilians and civilian populated areas under threat of attack,
2. the enforcement of the no-fly zone, and
3. the inspection of vessels and aircraft to enforce the arms embargo.

Resolution 1973 does not authorize regime change, in contrast to some other cases such as that of Côte d'Ivoire.

The arms embargo could pose a problem with regard to the legality of arming the opposition, but equipment solely to protect the population (e.g. protective vests) is probably not precluded, since Resolution 1973 allows 'all necessary measures' to protect civilians. The position is not clear.

The other legal constraints in place include international humanitarian law, which also applies to NATO forces. Only military objects can be targeted (objects which by their nature or use make an effective contribution to military objectives), and only military actors can be targeted and not civilians. The TNC has expressed its willingness to adhere to humanitarian law, and a Libyan NGO has worked on guidelines, compatible with international humanitarian law with regard to targeting and detention of captured personnel.

The TNC is frustrated that NATO is not paying enough attention to the regime's fuel supply, but discussing a wider embargo or blockade might lead back to the question of NATO's primary aim in Libya: is it regime change or protecting the civilian population?

It appears that there is a certain degree of tension between the aims of the NATO operation as laid out in Resolution 1973 – to protect civilians, and enforce a no-fly zone and an arms embargo – and what various internal and external actors intend it to be. Key external players, including both the British and the Turkish prime ministers, have made clear that there is no future for

Gaddafi in Libya, and it has been suggested that regime change is an implicit aim of Resolution 1973. But without a clear, explicit military aim the NATO operation could flounder.

## Human rights

The African Commission on Human Rights has taken up the issue of large-scale human rights violations in Libya before the African Court on Human and Peoples' Rights. The court has issued provisional measures against Libya, demanding that the regime should 'immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the African Charter on Human and Peoples' Rights or of other international human rights instruments to which it is a party'<sup>2</sup>.

The UN Human Rights Council has created a commission of inquiry, which consists of three independent experts. They have visited Libya and will report their findings to the council in mid-June. The commission has also been cooperating with the International Criminal Court prosecutor.

## International Criminal Court proceedings

By Resolution 1970 adopted in February, the UN Security Council referred the situation in Libya to the International Criminal Court (ICC), after which the prosecutor conducted a preliminary examination into the jurisdiction of the court. It has been concluded that there are reasonable grounds to believe that crimes against humanity have been and continue to be committed in Libya.<sup>3</sup> On the basis of the preliminary examination the prosecutor has requested Pre-Trial Chamber 1 to issue arrest warrants against Muammar Gaddafi, his son Saif Gaddafi and intelligence chief Abdullah Al-Senussi.<sup>4</sup>

If the chamber accepts the prosecutor's request there will be a problem of arrest and extradition. Resolution 1970 determined that the Libyan authorities should fully cooperate with the ICC, and by law the territorial government has

---

<sup>2</sup> See African Commission on Human and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahiriya, Order for Provisional Measures, accessible via: <http://www.african-court.org/en/news/record/datum/2011/03/30/communiquede-presse-ordonnance-prescrivante-des-mesures-provisoires-a-lencontre-de-la-libye/>

<sup>3</sup> See First Report of the Prosecutor of the International Criminal Court to the Security Council pursuant to UNSCR 1970 (2011) 04.05.2011, accessible via <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/icc0111/reports%20to%20the%20unsc/first%20report%20of%20the%20prosecutor%20of%20the%20international%20criminalcourt%20to%20the%20un%20security%20council%20pursuan>

<sup>4</sup> See Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi, accessible via: <http://www.icc-cpi.int/NR/exeres/D13CF33C-D29E-4093-A519-00B4BCC54FA7.htm>

the first responsibility to arrest. Unsurprisingly the Libyan regime has not responded to the ICC's requests. The TNC has indicated it will cooperate with the ICC, and this has been noted in the prosecutor's report.

### **Peace versus justice**

The decision to refer the situation to the ICC is problematic owing to the possible repercussions on the political situation. While many are hoping that the Gaddafi regime will crumble internally, one view is that the ICC arrest warrants may discourage resignations from the regime. The question often posed in situations where arrest warrants are issued for people who remain in power – as with Sudan's Omar al-Bashir, for example – is whether peace or justice should come first.

Article 16 of the Rome Statute setting up the ICC allows the UN Security Council to adopt a (renewable) resolution asking the court to suspend proceedings for a year. The AU has previously requested this in respect of Sudan and Kenya, although the Security Council did not respond. However the AU has not made such a request with respect to Libya. It was the first body to publish any ruling on Gaddafi, and it is likely to be cooperative in the Gaddafi case.

There is a particular issue in this case as the ICC proceedings are coupled with a travel ban and the no-fly zone: there is a risk that Gaddafi will feel he has his back to the wall and will have less motivation to agree to negotiations. But there are clear exceptions to the travel ban, which allows travel where the sanctions committee or a state acting in an emergency determines that travel would further the objectives of peace and stability (para. 15 of Resolution 1970). It is also the case that many African countries have not signed up to the ICC and Gaddafi may assess that he will still be able to evade prosecution if he leaves Libya.

Although UK Secretary of State for Defence Liam Fox has stated that Gaddafi leaving would be the best solution for Libya, there could be a risk that once abroad he will be able to continue to cause problems for Libya, for example fomenting rebellion from Chad (from where many of his mercenaries have been recruited). His track record of recruiting mercenaries – allegedly increasing recruitment in order to foment trouble in neighbouring Egypt and Tunisia – is an indicator that even if he leaves Libya he could still be a problem for the country in future.

## Conclusion: prospects for transition

### Prospects for ceasefire and negotiation

Many argue that the swiftest way to protect civilians in Libya would be to impose a ceasefire as soon as possible. Turkey's expanded roadmap for Libya (presented at the meeting of the Libya contact group in Rome on 5 May) notes the importance of avoiding a protracted conflict, ensuring humanitarian aid and finding the possibility of a political solution. The Special Envoy for the UN Secretary General has been trying to encourage mediation as noted in his recent report, but does not currently have sufficient leverage.

Prospects for a negotiated ceasefire seem distant: there is a lack of trust between the two sides and both still think they can win. Each side has set a number of preconditions for agreeing to a ceasefire that cannot currently be met, such as Gaddafi stepping down. One solution might be for the international community to impose a ceasefire, and launch peace talks under the aegis of the UN (as proposed in a recent paper by Ricardo Alcaro<sup>5</sup>). This would require a UN peacekeeping presence to enforce the ceasefire.

However in the analysis put forward by some Libyans opposed to Gaddafi, there is no possibility for ceasefire due to the nature of the regime's grip on power. In this view, the Gaddafi regime is only able to stay in power by using force against the mass of the people in Tripoli. This analysis suggests that the conflict is not a civil war but rather the regime pitted against the people. A ceasefire would immediately lead to a mass popular insurrection against Gaddafi.

A political strategy to isolate Gaddafi and encourage other members of the regime to defect could also be important in order to increase the likelihood of the regime crumbling internally and agreeing to a ceasefire. One option proposed by the rebels is to increase the number of loyalists placed on the travel ban list, as the regime is still managing to send envoys abroad.

### Mediation and supervised transition

If the conditions were to be created for negotiations it is not clear who might emerge as best placed to mediate between the regime and the TNC. Options could include the AU, the EU, the Arab League, the UN, Turkey or a specific multinational group. As Libya is a problem for the international community as

---

<sup>5</sup> <http://www.iai.it/pdf/Doc/Al/iaiw1109.pdf>

a whole it seems logical that a multinational group should take on the role of mediator, but such groups can be unwieldy and face management issues.

Proposals for a 'supervised transition' would face a number of obstacles. While the UN has many different forces with different remits, in general it prefers to engage in peacekeeping; negotiators need to establish a peace to be kept before such an operation can start. Peace enforcement is a very complex operation and needs a lot of planning – this option for Libya may already be put in doubt by the apparent lack of Phase Four planning taking place.

If such a scenario was reached, there may be no incentive for the regime to change, as in the case of Côte d'Ivoire. However if Gaddafi's position in Tripoli is dependent on being able to deploy the military to repress civilians, that would imply that he would never accept a peacekeeping force.

Some scepticism was expressed as to NATO's ability to finish off Gaddafi's military capability from the air. While in March NATO stated that the destruction of the regime's military capability would be a matter of days or weeks, it now seems that the more likely outcome is stalemate. It may take a ground operation to avoid that outcome. However, given that Resolution 1973 does not authorize 'boots on the ground', there will need to be a significant change in conditions before such an operation is considered. Russia and China are also likely to object.

### **Sanctions: an effective alternative?**

Both the east and the west of the country are already affected by sanctions. EU and UN (Office of Assets Control – OFAC) sanctions specifically target members of the regime or and state institutions, such as the national oil corporation and the national bank. This means that foreign companies are unable to enter into transactions with these entities. In a recent and crucial development, OFAC has allowed companies to deal with the TNC in the east, in both transactions and production of oil, which it is hoped will become a source of vital funds.

Sanctions have affected the regime's ability to access international reserves (in January this was estimated to be \$108bn) and it has ordered banks to re-circulate old currency and has set limits of bank withdrawals (at around 1000 dinars per month). At the same time, the regime has tried to buy support by doubling pensions and increasing public-sector salaries, and it is unclear where the funds for this are coming from.

The arms embargo includes a ban on the provision of armed mercenary personnel, but the influx of mercenaries into Libya is reportedly still a problem. More generally the arms embargo has proven difficult to fully enforce, particularly because neighbouring states are either too weak to enforce it or because they lack the political will to do so.

At the moment it is unclear how the sanctions regime could be tightened so as to further diminish Gaddafi's military capabilities. Fuel is one option, but as this is an essential commodity for civilians as well as the military and fuel sanctions could have a harmful knock-on effect on the humanitarian situation.

For the time being the regime does not appear to have any shortage of money, and it is still able to import fuel. Trucks are crossing into Tunisia to purchase it and tankers are loading fuel tanker to tanker in international waters before returning to Tripoli. The Zawiya refinery is still operating at 50–60% capacity, and there is also domestic production from the Ras Lanuf refinery. It has also been alleged that Libyan tankers have docked in Tunis, suggesting that putting pressure on neighbouring countries could be a way to limit the regime's fuel supply.

Sanctions can hurt the wider civilian population as well as the regime that is being targeted. They may also encourage the general population to rally round the regime, as has been the case in Iran. They are unlikely to be a decisive tool in bringing down Gaddafi.

### **Timeframe for departure**

For the time being Gaddafi retains a tight grip on the east, and he has a significant fighting force. He is giving volunteers a lot of money to fight, and exploiting regional differences to inflame civil war. While the regime may yet collapse – and there are some more high-profile defections expected in the coming weeks – if it does not and Gaddafi declares a ceasefire, the TNC will have no choice but to negotiate. However the TNC is not prepared at the moment to consider a negotiated ceasefire (as opposed to a unilateral ceasefire on the part of the regime) or to drop the condition requiring Gaddafi's departure from power.

The question of foreign ground forces is highly divisive, although UN peacekeepers might be accepted for enforcing a negotiated agreement or ceasefire. The UN has a good deal of credibility with the TNC thanks to Resolution 1973, and could be a good candidate to act as mediator.

## **About the Libya Working Group**

The Libya Working Group is a core project of the Middle East and North Africa Programme at Chatham House, convened by Associate Fellow Sir Richard Dalton. It aims to identify, analyse and discuss scenarios for political transition, state building and economic reconstruction in Libya.

Meetings take the form of multi disciplinary roundtable discussions, held under the Chatham House Rule, bringing together experts from a wide range of backgrounds and sectors for a free and frank exchange of ideas. This project seeks to widen the framework of political debate on Libya, leading to innovative policy recommendations which influence critical policy decisions.