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## About this Series

Op-Med is an ongoing series of opinion pieces on topical issues in Mediterranean politics from a transatlantic perspective. The series brings together European, North American, and southern Mediterranean experts through the German Marshall Fund–Istituto Affari Internazionali strategic partnership. The series examines key questions surrounding the political, societal, and economic evolution of specific Mediterranean countries as well as the broader regional and international dynamics at play in the Mediterranean region as a whole.

## Post-Election Libya: Stuck in Transition

by Wolfgang Mühlberger

Two years after the February 17 revolution, and one year after the first free elections in more than six decades, the hopes and expectations of Libyans for a brighter future remain high. Yet, following the abrupt demise in October 2011 of the *Jamahiriyya* — the political system created by Gaddafi — there is still a fundamental need to replace this idiosyncratic and oppressive system with a broadly accepted authority, legitimate institutions, and safety for all citizens. In other words, a new consensual social contract is urgently needed. Understandably, the architects of such a daunting task — the General National Congress (GNC) and its government, the cabinet of Prime Minister Ali Zeidan, who has been in office since October 2012 — are facing numerous challenges, and often need to reconcile diametrically opposed interests, be they regional, tribal, or communal.

The proper sequencing and prioritization of constitutional and security-related issues will be essential for the success of the on-going state-building project. In addition to the steps set out by the transition roadmap, an institutionalized approach to national reconciliation is necessary in order to forge

a national identity and create a general atmosphere of stability. Fundamental questions related to the nature of the state (whether, for example, it should be federal or centralized), the political role of religion, and the orientation of the economic system will doubtless be debated in the run-up to the constitutional proposal.

From a transatlantic perspective, Libyan stability is closely intertwined with broader regional stability. Control over the proliferation of weapons, limiting border porosity and unlawful migration, pre-empting the creation of a terrorist hub in southern and north-eastern Libya, and supporting the state in de-fragmenting the security sector should therefore receive quick and sustained action. At the same time, external support for nascent Libyan institutions, as provided for example by the European Union's Border Assistance Mission (EUBAM Libya) requires functional counterparts and cannot work in an institutional vacuum or against a background of conflicting competencies.

## Post-Revolutionary Libya: Political Transformation Between a Rock and a Hard Place

The post-conflict situation in Libya is marked by delicate and slow political transition, the continuing lack of a state monopoly over force, and flaring tensions in the backbone of the economy, i.e., the oil and gas sectors.

The road map for political transition set out in March 2011 by the National Transitional Council (NTC) in Benghazi and subsequently adopted and partially implemented by the GNC has yet to complete the drafting of a constitutional proposal, on the basis of which the election of a first regular parliament, called the National Congress — in faint remembrance of the Gaddafi-era institutions — can go ahead. This said, the challenges ahead are many.

The GNC recently passed a sweeping law aimed at excluding former regime officials from public office for the next ten years. As a consequence, the semblance of political stability in the interim bodies has been shaken to the core. A first victim, the president of the GNC, Mohamed Megarief, who is the head of the National Front Party and, ironically, a long-time opponent of Gaddafi's regime, had to step down in June. The effects of the law could outdo the de-Baathification policy implemented by the United States following the 2003 occupation of Iraq. Due to its vague wording,<sup>1</sup> it allows long-time opponents of the regime to be targeted, and has the potential to deprive the bureaucracy and the security sector of much-needed talent. The sole advantage of the law, in terms of transitional justice, is that it institutionalizes revenge, allows the physical aspect of retribution to be circumvented, and should prevent “extra-legal” decisions. On the other hand, it was passed with the threat of force, thus highlighting the political implications of the on-going security atomization, including the underlying Islamist interests of the Muslim Brotherhood, Salafists, and even jihadists.

All in all, political transformation seems to have been almost totally paralyzed since elections took place in July 2012 and the first regular, even though still transitional, government was sworn in that October. The decision on how to proceed with the drafting of the constitution has

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been postponed *ad aeternam* — and reminds observers of Libyan affairs of a similar procrastination in the *Jama-hiriyya*.<sup>2</sup> In February 2013, the GNC eventually decided to proceed with elections to set up a constitutional committee, instead of choosing its 60 members from among the GNC deputies. However, a whole list of prerequisites, such as an electoral law and the definition of electoral districts, not to mention the vetting of candidates, is still pending. Since the legitimacy of the new democratic bodies is fundamentally linked to progress in all these matters, further deferrals could raise questions about the representativeness of the GNC, and could preface a breakdown in the political transition as set out in the roadmap.

Given the slow pace of the constitutional process, the polity has started to distrust the functionality of the newly elected bodies. Facing a weak and increasingly distrusted administration, militias will be even more likely to stick to their guns in order to keep their options open. This may in turn further embolden armed groups, in particular those with an Islamist background, to play a decisive role and prepare the ground for yet further interference in politics — especially when non-consensual issues related to the constitution arise.

### Militias: Turning into a Trojan Horse?

Even though armed groups from various backgrounds and origins toppled the Gaddafi regime, their reluctance to disarm and to reintegrate their fighters into civilian life poses an increasing existential threat to the elected political bodies. In the security field, the continuing abundance of rogue militias presents a serious issue as regards public safety, and challenges the role of the state as the sole legiti-

<sup>1</sup> Article 1 of Law No. 13 on Political and Administrative Isolation is composed of two sections: the first clearly defines the professional positions that lead to exclusion, while the second sets out loose categories related to “behaviour that corrupted life” that also lead to exclusion.

<sup>2</sup> A constitutional declaration was promulgated in 1969 shortly after Colonel Gaddafi's coup, but never achieved the status of a fully-fledged constitution, even though his son Saif al-Islam tried to push for the elaboration of a final text in the face of considerable opposition.

mate provider of security. Even though the Ministries of Defense and the Interior have both set up umbrella bodies to integrate former militias — the Libya Shield and the Supreme Security Council (SSC), respectively — the affiliation of the former revolutionary fighters (*thuwwar*) remains opaque to say the least. Ideally, the Libya Shield and the SSC need to be slowly disintegrated to create new loyalties toward the state, replacing the previous allegiance to unit commanders. If not, their integration into state-controlled structures could turn out to be no more than token. At the same time, the existence of an army worth its name is a precondition for such a step. Whether the creation of a national guard, an idea currently debated in the GNC, could be a solution to the problem of reintegrating the former revolutionaries is an open question. In the current constellation of weak or fledgling institutions, it would risk increasing the fragmentation of the security sector, in turn further undermining the state's monopoly over the use of force.

Underscoring the problems of insubordination and parochial interests, the chief of staff, Youssef Mangoush, recently had to resign over escalated popular conflict with an Islamist armed group led by a former rebel commander, Wissam bin Hamid, which left more than 30 people dead.

Lately, the oil and gas sector, a crucial part of state revenue, has been hit hard by protests and strikes, which have led to plant closures and a serious drop in production. Furthermore, tensions between tribal militias and the government over the out-sourcing of oil field protection to local tribes led to an armed attack against a department of the Ministry of Defense in the capital, which quickly escalated into a shoot-out among militias based in the same district. Since youth unemployment and the lack of economic opportunities were triggers for the Libyan uprising, the diversification of the economy away from oil and gas remains a priority in order to create sufficient jobs and to reduce expectations of redistribution from a patrimonial state. In an emerging participatory system, the old formula of buying acquiescence no longer works. An economic system compatible with political participation therefore needs to emerge. Attracting investors, Libyan or foreign, by creating a suitable legal environment should be considered a priority, and could help to reduce state dependence on the oil industry.

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#### **The Transatlantic Perspective: Responsibility, Interests, and Activities**

Whereas lessons learned from Iraq and the lack of a heavy foreign military footprint at the end of hostilities avoided an externally imposed “de-Baathification,” a similar process has recently been initiated by local political and paramilitary actors through the political isolation law described above. Calls for the resignation of Prime Minister Zeidan indicate that those who pushed the law through the GNC by non-democratic means are now also demanding the right to monopolize its interpretation. Every additional day that young men continue to carry guns as members of armed groups increases the difficulty of forging a monopoly on the part of the state over the use of force. If they continue to exert political pressure and increasingly play an economic role (from smuggling to drug-trafficking), the militias, which played such an invaluable role in toppling Gaddafi, might turn out to be a Trojan horse, incapacitating the nascent state structures. It is therefore equally in the interests of the transatlantic partners to support the political process and focus on security-related issues such as the disarming, disbanding, and reinsertion (DDR) of militias.

The involvement of the international community in Libya is mainly based on NATO's support for civilians in the Libyan civilian war of 2011, the role of UNSMIL (UN Support Mission in Libya) as the central coordinator of foreign activities in the post-conflict setting, and, more generally, on the response of both the West and the neighboring countries to the overall security implications of the Arab Spring. From this perspective, the transatlantic partners not only share a set of common goals, but also bear a certain responsibility for the outcome of the Libyan transition.

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Western efforts to implement the doctrine of Responsibility to Protect (R2P) in Libya helped to set in motion a process, the shaping of which is in the core interests of these same players. Responsibility is thus to be understood less as a moral issue than in terms of first-hand, solid objectives: stopping illegal immigration, in particular in view of potential infiltration by terrorist cells, and re-establishing stability, both politically speaking and in terms of hard security, in the southern *cordon sécuritaire* of the European Union, which includes Libya's neighbors in the Sahel.

EUBAM Libya, with its training and technical assistance functions, represents a first concrete step to improve control over Libya's highly porous land borders, which stretch more than 4,000 kilometers. On the other hand, Prime Minister Zeidan's recent request to the Secretary-General of NATO, Anders Fogh Rasmussen, for support in building military units from scratch, i.e., a National Guard under his command, should also be taken into consideration. However, thought should be given to the type and structural organization of such a force so as to ensure that it provides a real value-added for the flimsy security sector, over and above the issue of the non-conducive institutional framework with missing or unclear competencies. NATO should therefore only act on the basis of a comprehensive national security doctrine, and should avoid creating new armed units on the fringes of the Ministry of Defense.

The UN's activities in Libya are divided between those of the Security Council and the Tripoli-based UNSMIL. A Security Council committee is monitoring the implementation of the sanctions regime (travel ban, asset freeze, and arms embargo), while UNSMIL activities are mainly directed toward democratization, the rule of law, and support for DDR. Notably absent from the scene are regional organizations such as the African Union (AU) and the Arab League. Whereas the AU still has to find a solution for the lack of financing from Libya (Libya was a major contributor to its budget until 2011), the Arab League could play a role by fostering a much-needed national dialogue. In the meantime, the transatlantic partners should team up their efforts and encourage the Libyan government to proceed with the drafting of the constitution and the holding of elections to install a non-transitional, more legitimate government able to exert the necessary authority in the realm of security-related challenges.

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### About GMF

The German Marshall Fund of the United States (GMF) strengthens transatlantic cooperation on regional, national, and global challenges and opportunities in the spirit of the Marshall Plan. GMF does this by supporting individuals and institutions working in the transatlantic sphere, by convening leaders and members of the policy and business communities, by contributing research and analysis on transatlantic topics, and by providing exchange opportunities to foster renewed commitment to the transatlantic relationship. In addition, GMF supports a number of initiatives to strengthen democracies. Founded in 1972 as a non-partisan, non-profit organization through a gift from Germany as a permanent memorial to Marshall Plan assistance, GMF maintains a strong presence on both sides of the Atlantic. In addition to its headquarters in Washington, DC, GMF has offices in Berlin, Paris, Brussels, Belgrade, Ankara, Bucharest, Warsaw, and Tunis. GMF also has smaller representations in Bratislava, Turin, and Stockholm.

### About IAI

The Istituto Affari Internazionali (IAI), founded by Altiero Spinelli in 1965, does research in the fields of foreign policy, political economics, and international security. A non-profit organization, the IAI aims to disseminate knowledge through research studies, conferences, and publications. To that end, it cooperates with other research institutes, universities, and foundations in Italy and abroad and is a member of various international networks. More specifically, the main research sectors are European institutions and policies, Italian foreign policy, trends in the global economy and internationalization processes in Italy, the Mediterranean and the Middle East, defense economy and policy, and transatlantic relations. The IAI puts out an English-language quarterly (*The International Spectator*), an online webzine (*Affari Internazionali*), a series of research papers (*Quaderni IAI*) and an Italian foreign policy yearbook (*La Politica Estera dell'Italia*).