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A EUROPEAN AGENDA TO SUPPORT LIBYA'S TRANSITION

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SUMMARY

Libya has not come far since overthrowing Colonel Muammar Gaddafi. Political institutions lack legitimacy and are riven by factional discord. Tensions between the centre and periphery show no sign of lessening, and a protracted blockade of oil ports spells dire economic consequences. Indeed, three years after the revolution, Libya has reached a critical juncture, with deadlines for key steps, including elections and a new constitution, looming and unlikely to be met.

Though Libya's situation may be direr than its North African neighbours, Europe should not be disheartened. EU policymakers have more leverage and possibilities for influence in Libya than may be immediately apparent – provided Europe makes an honest assessment of their potential. Past focus on the training of the Libyan army and police should be broadened to include areas that profoundly affect the context in which violence and chaos prosper, such as the lack of genuine political dialogue and the weakness of both Libyan institutions and civil society. This broader approach is based on five baskets of policy proposals: sustaining the political process, supporting local authorities, taking a comprehensive approach to security, building a post-oil economy, and strengthening international co-ordination. Ultimately, the efficacy of European support for the transition rests on Libyans' ability to build an effective and inclusive political process.

Libya's post-Gaddafi transition is at a critical juncture, with a number of essential transitional steps needing to take place within the next few months. First, new parliamentary elections are expected at the end of July 2014, just after Ramadan. Though the current parliament has pledged to dissolve itself "as soon as possible", preparations for these elections are proceeding so laggardly that August is the earliest realistic date for a vote.¹ Second, the new constitution is supposed to be produced by August, according to the law that created the Constitution Drafting Assembly (CDA). This should be followed by a constitutional referendum, the laws to govern which will also need to be set. Third, the UN-supported National Dialogue to support reconciliation is expected to begin at the end of May.

Despite the urgency of all these transitional milestones, the likelihood that they could be accomplished within the set transitional time frame is slim. In the three years since an international coalition under NATO launched Operation Unified Protector (OUP), Libya has made little progress on security, democracy, or economic recovery. Likewise, no headway has been made toward reconciliation between those who fought on opposite sides of the civil war or in achieving unity among the different components of the revolutionary front. The deep divisions among Libyans, which have been largely responsible for these setbacks, have only worsened

¹ Author's confidential interviews with international officials working on Libyan elections, 7 May 2014. Where not otherwise specified, all quotes and unreferenced information are from confidential interviews conducted by the author in Tripoli, 5-9 May 2014.

over time and further complicated the chances of Western stakeholders to co-ordinate effective action.

In discussing external support for the transition, one must keep in mind that Libya's lack of decision-making capability has prevented it from moving ahead quickly on any internationally-supported project. If the transition is to carry on, two conditions must be met. First, the Libyan political-military elite must commit to pursuing both inclusiveness and efficacy simultaneously: including all "revolutionary" elements and reconciling with former Gaddafi loyalists is the only way to legitimise and implement the changes necessary to emerge from the current crisis. Second, Europeans, who have the highest stakes in Libya, must deepen their commitments and advance a more ambitious agenda.² Ultimately, while Libya's fate rests in the hands of the Libyans, Europeans have an extensive toolbox that they can, and should, use to protect their interests and pursue their goals.

This brief sets out a new agenda for European support for Libya's transition, starting with the idea that the current focus on the training of the Libyan armed forces should be broadened. European efforts need to target the following areas: the lack of legitimacy for institutions and political actors alike; reconciliation among former combatants and the absence of national dialogue on Libya's future; and the worsening economic conditions, which are linked to the blockade of oil ports.

The static transition

Constitution-making and the crisis of political legitimacy

Western stakeholders welcomed and were encouraged by the elections for the General National Congress (GNC, the Libyan parliament), held on 7 July 2012, which they considered rather successful: polls opened almost everywhere, voter turnout was high, and the resulting legislature was diverse and notably not dominated by Islamists, as in Egypt and to some extent, Tunisia.

But since then, almost everything has gone awry. The executive and the legislative branches have failed to reign in the militias and have, at different times, been held captive by them. Few of the crucial steps needed for the transition to take place have made much progress: constitution-making, national dialogue, parliamentary elections, and transitional justice are all lagging.

The elections for the Constitution Drafting Assembly (CDA) were held on 20 February 2014 amid widespread apathy and disaffection toward democratic institutions and political parties altogether. A key indicator of this was voter turnout: less than 15 percent of eligible voters went to the polls

that day. This was due in part to the boycott from all three minority groups – Tebu, Amazigh, and Tuareg – which were entitled to six of the 60 seats comprising the CDA but felt under-represented and feared that decisions on crucial issues such as Libya's official language could be taken against their will. It was also due to security concerns in many parts of the country causing the closure of a number of polling stations, which discouraged voters from casting their ballots. To date five seats have not yet been assigned, two of which belong to the Amazigh community.

The law – an amendment to Article 30 of the Constitutional Declaration – says that the CDA will have only 120 days to draft and approve a new constitution, which would then need to be submitted to a national referendum, with no extension of this deadline – to expire in mid-August – being theoretically possible. However, the working assumption of most Libyan political actors is that the 120 days timeline can be extended if need be.

Security: militias and "federalists"

Understanding all the elements of the Libyan security puzzle is as crucial as it is difficult. Any armed group can be called a militia, but this term is too general to accurately reflect the varied factors at play among the different actors in Libya today.³ The militias that formed during the revolution against Gaddafi's regime, for example, generally did so according to the town or city that they originated from. In Libya's post-revolutionary, transitional environment, this has exacerbated all kinds of divisions, including political and economic, and increased competition between towns and cities, often defined by the role that each town or city's militia played or was perceived to have played during the revolution. Consequently, some of the armed groups that claim to possess revolutionary legitimacy have gained a national role with strong connections in both the executive and legislative branches. This is especially the case for those from Zintan and Misrata. These armed groups behave (sometimes upon request from the government) as if they were the national army and take on the function of quelling "rebellions" in other parts of the country.

A second component of the security puzzle, not directly linked to the revolution, is the former oil facility guards in Cyrenaica, eastern Libya – known as Barqa in Arabic, under the command of Ibrahim Jathran. These self-styled "federalists" have set up an independent government, the "Barqa Political Office", and halted oil production in the east, creating a major economic crisis. A third component relates to Libya's three ethnic minorities: Amazighs, Tuaregs, and Tebus have both political grievances and armed groups to

³ An excellent mapping of the formal and informal powers in Libya can be found in Wolfram Lacher, "Fault Lines of the Revolution: Political Actors, Camps and Conflicts in the New Libya", German Institute for International and Security Affairs, May 2013, available at http://www.swp-berlin.org/en/publications/swp-research-papers/swp-research-paper-detail/article/libya_fault_lines_of_the_revolution.html (hereafter, Lacher, "Fault Lines of the Revolution").

² This brief adopts a wider conception of Europe than just the European Union and its member states. Both because of national interest and capacities, countries like Norway or Turkey play or could potentially play a relevant role in Libya.

further them. Fourth, Salafi and Jihadi groups are on the rise, both in the east and, more recently, in Tripoli.⁴ The return to Libya of many of the fighters who joined some of the most radical Islamist groups in Syria, for example, is cause for concern. According to journalist and writer Mary Fitzgerald, an expert on Islamism in Libya, they will pose, first of all, a social problem: “These fighters are disconnected from the usual frame of society and proud of it”.⁵ Different estimates put the total number of Libyan fighters in Syria between 4,000 and as much as 15,000.⁶ Tribal leaders and networks of kinship are also part of the puzzle, sometimes as stabilisers and sometimes not, although their role in large cities such as Tripoli and Benghazi is less evident.

Another key factor influencing the security situation in Libya is its black market economy. Illicit gains are made from all types of trafficking, including in weapons, with the Sahel and North African neighbours. Militias play a central role in trafficking and crime.⁷

Ultimately, apart from the Jihadis and Salafis, most of the relevant actors do not want to destroy the system but rather to profit from it.⁸ Moreover, few armed groups are a source of insecurity within the communities that they claim to represent. Rather, insecurity resulting also from the informal economy stems from clashes outside of these communities or in communities where more than one armed group is present.

In many cities, local security and governance compacts, whether formalised or not, guarantee some kind of internal stability, while connections between civilian and traditional authorities on one side and armed groups on the other side still bear some relevance in most of western Libya.⁹ The *hukama*, or local “wise men”, also have a role to play and include businessman, former revolutionaries, and professionals. Yet, while sometimes helpful in striking agreements among different factions, compromises seldom address the root causes of conflicts and usually don’t last long for lack of a third-party guarantee – specifically government authority and law enforcement.¹⁰

Finally, in the eyes of many European decision-makers, Libya’s precarious security situation has a worrying regional dimension, particularly when considering the return of Libyan fighters from Syria. “When we look at the Libyan desert, we see in one place a potential AQIM (Al-Qaeda in the Islamic Maghreb) training camp; in another, a potential suicide bomber training camp; and in a third place, a potential missiles training camp”.

Security in Libya is fragmented, connected to political issues and power, and often destabilised by the illegal economy. It is hard to imagine, therefore, how a conventional army, such as the one currently undergoing international training, would have the capacity and know-how to address unconventional problems. While an army that can protect Libya’s borders would be a significant boon, Libya really needs a depoliticised military police or *gendarmerie* that is capable of securing cities.

Excluding loyalists and growing authoritarianism

Libya’s civil war has left scars that few among the victors care to heal. The cities and towns of Libya that supported Gaddafi have been marginalised legally and politically when not violently. Even more disturbing, this treatment has been applied to any individual or group considered to have been loyal to the old regime, be it because of service in the government or tribal kinship.

Marginalisation of these so-called loyalists has worked in several ways. First, according to some estimates, almost one million Libyans have fled to neighbouring countries, especially Tunisia and Egypt, for fear of retribution.¹¹ Second, individuals who had been sometimes even loosely associated with the Gaddafi regime in the early years have since lost their jobs as government officials or their political positions, previously under the no-longer-functioning Integrity Commission, and now as a result of the commission working under the Political Isolation Law (PIL), which was approved by the GNC under the physical threat of the militias on 5 May 2013. This law alone caused the resignation of the then Speaker of the GNC (and de-facto head of state) Mohammed Magarief and the political marginalisation of Mahmoud Jibril, the head of Libya’s largest political party, the National Forces Alliance.

According to the Human Rights and Democracy report issued by HM Foreign and Commonwealth Office, “The Political Isolation Law, if implemented to its fullest extent, could effectively lead to 10,000 – 20,000 civil servants, former Ambassadors and members of the judiciary connected to the Gaddafi regime, being prevented from participating fully in political life”.¹² A verdict from the Libyan Supreme Court on the PIL is pending, although it is not clear whether it will come. Revoking the PIL (or at least referring its implementation to the courts on a case-by-case basis) is a strictly political matter that may be solved either by the new parliament or by the expected new constitution.¹³

Meanwhile, the GNC approved the law on transitional justice on 8 December 2013, which applies to all victims, both the

⁴ Author interview with Wolfgang Pusztai, security analyst, 3 April 2013.

⁵ Author interview, Tripoli, 7 May 2014.

⁶ Author interview with a senior international agency official, Tripoli, 7 May 2014.

⁷ Author’s interview with Mohammed Benhammou, director of the Moroccan Center for Strategic Studies, 28 February 2014. For more on illegal trafficking and Libya’s insecurity see also Mark Shaw and Fiona Mangan, “Illicit Trafficking and Libya’s Transition: Profits and Losses”, United States Institute of Peace, 24 February 2014, available at <http://www.usip.org/publications/illicit-trafficking-and-libya-s-transition-profits-and-losses> (hereafter Shaw and Mangan, “Illicit Trafficking and Libya’s Transition”).

⁸ Author interview with John Thorne, *Christian Science Monitor*, 4 April 2014.

⁹ Author interview with David Wood, *Peaceful Change*, 11 April 2014.

¹⁰ Author interview with Christopher Thornton, *Humanitarian Dialogue*, Tripoli, 9 May 2014.

¹¹ Author interviews with Libyan and international officials, Tripoli, 5-9 May 2014. See also Lacher, “Fault Lines of the Revolution”, p.24, footnote 78.

¹² Human Rights and Democracy report, Foreign and Commonwealth Office, 30 June 2013, available at <https://www.gov.uk/government/news/human-rights-and-democracy-report-2012-libya--2>.

¹³ Author interview with Anes El-Sharif, director of Naba’ TV, Tripoli, 8 May 2014.

revolutionaries and those who suffered retaliations after the revolution. According to the law, the Truth Finding Commission should ascertain the facts; then the judiciary would proceed with trials; and finally the victims would be compensated. Ultimately, though, the effectiveness of the transitional justice law relies on the functioning of the judiciary, which is severely jeopardised by the threats to judges and lawyers alike. Some courts have been closed for up to a year for this reason.¹⁴ It is in this environment of lawlessness that political assassinations can go unpunished. In eastern Libya alone, the murders of 50 security, military, judicial, and civil society leaders were carried out in February 2014 alone.¹⁵

But violence is not the only component of this rising authoritarianism. Decree 5/2014, issued by the GNC, forbids the activities of any media outlet that is deemed “hostile to the February 17 revolution and whose purpose is the destabilisation of the country or the creation of divisions among Libyans.” Resolution 13/2014, approved on 24 January, discontinued scholarships for students studying abroad and salaries and bonuses for Libyan employees for “taking part in activities inimical to the February 17 revolution”.¹⁶ Both definitions leave wide margins of discretion to decision-makers applying the law.

The unsteady rise of local governments

During the revolution and the civil war, local councils (whether civilian or military) played a crucial role in co-ordinating forces at the local level and defending communities. Many of these councils continue to operate today with a peculiar intertwining of the political and military dimensions.

Only some of the over 100 municipal councils are elected: elections were held in 17 of them during the fall of 2013, and a new wave of elections took place between April and May 2014, including in Benghazi and Tripoli. The remaining councils were either self-appointed by revolutionaries or elected outside of national legislation in 2012. Most of the existing municipalities lack the capacity to handle even basic services, not to mention to carry out urban planning. Their budget should be assigned by the national government, but this is proceeding very slowly.¹⁷

Despite this confusion, many Libyans see local councils as the only credible and legitimate state institution, and therefore some experts advocate a policy of decentralisation of power.¹⁸

While decentralisation is particularly important in restarting public services and increasing popular participation in the transition, the existence of a strong central government is still key to guaranteeing the rule of law and equal rights.

The impending economic disaster

Starting from the summer of 2013, a combination of labour strikes and occupations by militias and other armed groups have stopped production at several oil facilities in all corners of Libya. Production fell from 1.4 million barrels per day (bpd) in early 2013 to 150,000 bpd at the time of publication.¹⁹ The blockade of Libya’s oil fields has had disastrous effects on its economy and public finances. Few other economies in the world are so dependent on oil and gas, which, in Libya, amounts to 65 percent of its GDP, 96 percent of the exports, and 98 percent of government revenues.²⁰

As in other rentier states, Libyan citizens pay little or no taxes and rely on a vast system of government subsidies on essential goods to make ends meet. These amounted to 11 percent of GDP in 2013.²¹ Unsurprisingly, the World Bank estimated a drop in GDP by 9.4 percent in 2013, with a projected drop of 9.7 percent in 2014.²² Economic scenarios vary enormously, based on whether production restarts or not: GDP could grow by 25 percent if energy output goes back to normal or shrink by as much as 15-20 percent if the blockade continues.²³ As a result, public finances are being shored up using the reserves of the Central Bank. While large, these are neither all liquid nor infinite: they were estimated at \$122 billion in 2013, but they are projected to drop to \$100 billion in 2014 and to \$82 billion in 2015 if current levels of high expenditure and low revenue continue.²⁴

Actors on the ground seem to have a different perception. The head of the reserves at Libya’s Central Bank, Musbah Alkari, recently stated that, at current levels, foreign currency reserves could guarantee the functioning of the Libyan state for another three years. If one also adds the roughly \$50 billion of reserves held by the sovereign fund of the Libyan Investment Authority (LIA), it seems that policymakers and militia leaders have no incentive whatsoever to get their house in order – any time soon at least.²⁵ Reliance on reserves rather than on oil and gas fields could even be seen as an asset for the central government in its fight against

¹⁴ Author interview with Stefano Moschini, No Peace Without Justice, 11 February 2014.

¹⁵ “Libya – Country of Concern”, HM Foreign and Commonwealth Office, 10 April 2014, available at <https://www.gov.uk/government/publications/libya-country-of-concern>.

¹⁶ “Libya: Critical TV Bans Setback for Speech”, Human Rights Watch, 26 January 2014, available at <http://www.hrw.org/news/2014/01/26/libya-critical-tv-bans-setback-speech>.

¹⁷ Author interviews with Mohamed Eljarh, *Foreign Policy*, 18 January 2014, and with David M. Denehy, resident country director for Libya, International Republican Institute, 4 April 2013.

¹⁸ See for instance, Jason Pack and Mohamed Eljarh, “Localizing Power in Libya”, 26 November 2013, The Atlantic Council, available at <http://www.atlanticcouncil.org/publications/articles/localizing-power-in-libya>.

¹⁹ “Libya: Western Oil Production Restarting, but Underlying Challenges Remain”, Stratfor, 13 May 2014, available at <http://www.stratfor.com/sample/analysis/libya-western-oil-production-restarting-underlying-challenges-remain>.

²⁰ Mohsin Khan and Svetlana Milbert, “Libya: Facing Economic Collapse in 2014”, The Atlantic Council, 23 January 2014, available at <http://www.atlanticcouncil.org/blogs/mentasource/libya-facing-economic-collapse-in-2014> (hereafter Khan and Milbert, “Libya: Facing Economic Collapse”).

²¹ “Harnessing the Global Recovery. A Tough Road Ahead”, World Bank Middle East And North Africa Region, Regional Economic Update, 1 April 2014, p.18 available at <http://documents.worldbank.org/curated/en/2014/04/19335869/regional-economic-update-harnessing-global-recovery-tough-road-ahead> (hereafter “Harnessing The Global Recovery”).

²² Harnessing The Global Recovery, p11

²³ Khan and Milbert, “Libya: Facing Economic Collapse”.

²⁴ “Harnessing The Global Recovery”, pp.19-20.

²⁵ Michel Cousins, “Central Bank ‘Has Enough Money for Three Years’ without oil”, *Libya Herald*, 6 April 2014, available at <http://www.libyaherald.com/2014/04/06/central-bank-has-enough-money-for-three-years-without-oil/#ixzz2yJMbTRGJ>.

local power centres, if the central government was not the by-product of some of these power centres.

This is of course a very short-term perspective. Nevertheless, it must be kept in mind when trying to understand the calculations of Libya's main actors. In the short term, the economic crisis is both an effect and an accelerator of the security and political crisis: shrinking resources tend to create more demand in which resources are often seized through violent means. The oil blockade has also increased the sense of insecurity among the population: for many months now, rumours of the imminent end of gasoline supplies have proliferated, causing long queues at gas stations with all the destabilising effects that this yields.²⁶ In the long term, therefore, the Libyan economy must diversify to limit the rentier state and put an end to the blackmail of rival groups blocking oil fields.

Can national dialogue be part of the answer?

Over the course of several months, Libya had more than one national dialogue in place at the same time. With Libyan, UN, and international endorsement of an independent National Dialogue Preparatory Commission headed by Fadel Lamem, however, Libyans now have a single body, which is widely recognised, tasked with activating the long-awaited national dialogue process. This is despite the formal existence of a national dialogue within the GNC and several ad-hoc meetings between power brokers that are labelled as "national dialogue" or "reconciliation". Even so, Lamem's commission is struggling to have its budget approved by the GNC. The role of the UN Support Mission in Libya (UNSMIL) in the dialogue could help, both materially and in applying some lessons learned from Yemen's experience, which was also UN-supported.²⁷ In fact, discussion is underway for the creation of an international fund managed by the UN to which donor countries could contribute.

After a slow start in January 2014, the preparatory commission is currently engaged in a listening tour in many cities and villages far from Tripoli. The work of this preparatory commission should lead to the creation by late May 2014 of a 300-member National Dialogue commission, which will be composed of elected individuals, individuals nominated by the organisations they belong to (political parties as well as militias, for instance), and individuals appointed by the preparatory commission itself, particularly with regards to experts and independents. The National Dialogue commission intends to build consensus around a National Charter, which may play the same role as the preamble of a constitution, setting out the main elements

of Libya's new identity.²⁸ After this first phase, the National Dialogue commission will deal with specific issues, such as security, justice, reconciliation, and the distribution of wealth. The process will not entail negotiations or votes but rather approval by consensus.

The requisite for joining the consultation led by the preparatory commission is Libyan citizenship. However, this concept is not as universal as it may seem at first glance. Many members of the Tebu minority had their citizenship withdrawn during the Gaddafi years, and many other Libyans who fled Libya after the revolution and the ensuing civil war, and who cannot return for security reasons, are being disenfranchised.²⁹ Militias will be allowed to participate in the dialogue, provided they leave their weapons at the door. How far outside the door they will be left, however, will be a matter of goodwill, given the absence of a depoliticised security force.

While the initial goal was to agree on the National Charter by April 2014, it is now evident that the process will take longer. To be fair, even more than with the constitution, time is not of the essence here. A speedy but non-consensual process would leave all the major problems of Libya where they stand today.

International commitments and co-ordination

International intervention in Libya, as elsewhere, lacks overall co-ordination and integration among the different programmes. The conclusions of the annual international conference of the Friends of Libya, held in Rome in early March 2014, mentioned the creation of an international partnership for Libya (with no clear specification).³⁰ To date, two main instruments of co-operation are available for this, but they face some fundamental challenges.

UNSMIL is tasked with co-ordinating efforts on constitution-making and national dialogue, but structurally, it can only carry out operative co-ordination, while most problems today in Libya need political decisions by Western and Middle Eastern national governments. In theory, the P3+3, which includes the United States, United Kingdom, and France plus Italy, the UN, and the European Union, would be the body where such decisions are made, but it is an informal gathering that neither includes all donors and stakeholders nor any foreign affairs ministers.

²⁶ Libya's gasoline is purchased mostly from foreign refineries, which do not necessarily rely on Libyan oil production.

²⁷ On Yemen's national dialogue and its lessons for Libya, see Danya Greenfield, "What Libya Can Learn from Yemen", the Atlantic Council, 4 February 2014, available at <http://www.atlanticcouncil.org/blogs/menasource/what-libya-can-learn-from-yemen> and also Sherine El-Taraboulsi, "National Dialogues and Dilemmas: Reflections on Libya and Yemen", *Politics in Spire*, 11 February 2014, available at <http://politicsinspires.org/national-dialogues-dilemmas-reflections-libya-yemen/>.

²⁸ Author conversations with Fadel Lamem, chairman of Libya's National Dialogue Preparatory Commission, London, 9 April 2014 and Tripoli, 9 May 2014.

²⁹ Elham Saudi, Lawyers for Justice in Libya, London, 10 April 2014 (hereafter Saudi, Lawyers for Justice in Libya).

³⁰ The highest form of co-ordination of foreign efforts in Libya, the Friends of Libya conference includes all countries that have projects or policies for Libya and usually sets the tone of foreign policies for the rest of the year. Participants include a broad Libyan delegation, 12 EU Member States plus Norway, non-European countries and representatives from the African Union, the Arab Maghreb Union, the EU, the Gulf Cooperation Council, the League of Arab States, NATO, and the UN. This year's conference approved a final statement along with two annexes that include commitments for both the Libyan government and the donor community.

If the Friends of Libya are serious about forming an international partnership, then there would also need to be a forum for constant dialogue and interaction between those devising external strategy for Libya and a wide array of Libyan actors, first and foremost, its government. In fact, this co-ordination should rely on a broader strategy for Libya rather than just on a set of policies for which international actors provide expertise and technical assistance. While it is fair to say that this could hardly be the product of an annual conference, this nevertheless needs to be kept in mind when Europeans follow up.

Why Libya matters

When looking at the grim picture of the current state of Libya's transition, one is tempted to look next door for more promising scenarios of international support – starting with Tunisia. Yet, many of Libya's problems have direct repercussions for Europeans. For countries like Italy, France, Spain, Ireland, and Austria, Libya is a crucial component of their energy security (see table).³¹

Table 1

From 2010, the last year before the revolution and the ensuing disruption of oil flows

Country	Percent of total crude from Libya
Ireland	23.3
Austria	21.2
Italy	22
France	15.7
Spain	12.1

Restoring Libya's oil and gas production is a shared interest for all Europeans as it would diversify energy supplies and guarantee more freedom of action vis-à-vis both Russia and Iran.³² But also, Libya is a key hub for human trafficking and illegal immigration. According to Italian Minister of Foreign Affairs Federica Mogherini, "In 2013, approximately 70 percent of arrivals by sea in the European Union occurred on the central Mediterranean route, from Libya to Italy".³³

31 Nick Witney and Anthony Dworkin, "A Power Audit of EU-North Africa Relations", European Council on Foreign Relations, September 2012, available at http://ecfr.eu/content/entry/a_power_audit_of_eu_north_africa_relations.

32 See for instance, Mikhail Korchemkin, "EU could survive loss of Russian gas flow through Ukraine", *Financial Times*, 8 April 2014, available at <http://www.ft.com/intl/cms/s/0/84a84210-b68f-11e3-b230-00144feabdc0.html>.

33 "Immigration: Mogherini, 12,000 lives saved but more EU needed", ANSamed, 8 April 2014, available at http://www.ansamed.info/ansamed/en/news/nations/libya/2014/04/08/immigrationmogherini-12000-lives-saved-but-more-eu-needed_63d33cbo-c2e8-4173-8898-fd8cb9b4463.html.

Human trafficking is just one component of the mix between illegality, smuggling, and Jihadism that thrives in what could be defined as the "insecurity belt" stretching from the Sahel to the Sinai, with its central tier in Libya's southern porous borders. This includes the smuggling of weapons and establishment of training camps for Jihadis across the belt but often with an origin or a foothold within Libya's borders. Ultimately, Europeans cannot afford to have a failed state, both crucial to their energy security and to stemming illegal trafficking, 350km south of Malta and the Italian island of Lampedusa.

At the same time, a Libya on the right track could be an asset for Europe and for its efforts in the region. First, because it could take in immigrants from Tunisia, Egypt, and sub-Saharan Africa. Second, for its financial potential as a country with a small population and high oil revenues. Moreover, Europeans who supported Operation Unified Protector in 2011 did so in the name of the Responsibility to Protect (R2P). This includes also a responsibility to rebuild Libya and to make sure its transition gets on track.³⁴ It is not only about moral commitments; it is a crucial component of Europe's credibility when dealing with other scenarios in which R2P is at stake.

What Europe does for Libya³⁵

UNSMIL has a crucial role in supporting Libya's transition externally. Its mandate covers most aspects of the political transition, including constitution-making, elections, national dialogue, transitional justice, and disarmament, demobilisation and reintegration (DDR) programmes for ex-combatants. On 14 March 2014, its mandate was extended by another year by UN Security Council Resolution (UNSCR) 2144. This also includes the "co-ordination and facilitation" of international assistance.³⁶ Many European countries see their support of UNSMIL as indirect support of all of its activities. Some of them, including the UK, Germany, Italy, and the Netherlands, have added their own national programmes in support of both the military and civilian aspects of the transition.

The EU's current programmes in Libya total €130 million, with the EU Border Assistance Mission (EUBAM) accounting for the lion's share. After a very slow start, the mission is now operative, and its goal is to help Libyans develop an Integrated Border Management (IBM) mechanism to protect their land and sea borders, which are respectively 4,383km and 1,770km long. In this respect, Libya presents a conceptual challenge for the EU template of border management: while this focuses on the training of customs officials and border police and providing technical assistance, Libya needs a stronger military presence to defend and control its borders and destroy smuggling routes. Part of the security assistance also includes capacity building and training for the judiciary and the national police.

34 For more on the R2P, see <http://www.responsibilitytoprotect.org/index.php/about-coalition/our-understanding-of-rtop>.

35 Unless stated otherwise, the content of this section, including quotations, are from the author's confidential interviews with both European diplomats and security experts.

36 UNSCR 2144, 14 March 2014, available at <http://unscr.com/en/resolutions/doc/2144>.

A second relevant sector, with €30 million in funding, is migration management, which includes the building of legal frameworks, humanitarian assistance in detention centres, and “voluntary return programmes”.³⁷ A third branch is devoted to supporting civil society (€26 million), which is carried out by the European Endowment for Democracy (EED).³⁸

Several EU member states are deeply involved in supporting Libya’s transition, with a particular focus on security. At the 2013 G8 summit in Northern Ireland, members agreed to train the Libyan national army, (or General Protection Force, GPF). The US, the UK, Italy, and Turkey, meanwhile, offered to train up to 15,000 Libyan soldiers on their soil, but this programme has taken some time to progress: Turkey recently completed training for its first class of Libyan recruits, although between one-third and one-half of them dropped out; Italy’s training programme is underway with the first graduates expected soon; the UK is ready to start; and the US is planning to conduct its training in Bulgaria, starting in the summer of 2014.

Recruits will need an initial training period of at least four to six months in order to generate some cohesion within each unit. However, to produce the first tangible effects on the state control of Libya’s major cities, the GPF will take some two to three years.³⁹ Also, it is still unclear where these graduates will be deployed: the latest idea is that they will constitute a Rapid Deployment Force stationed in Jufra to be used to “pacify” different areas not under the government’s control rather than to keep law and order within the cities.

Meanwhile, France, Italy, and the UK are providing training and support to the Libyan police, with France alone offering to train up to 3,000 policemen and the UK providing containerised, accessible police stations in Tripoli. It remains unclear, however, whether the new army will be the *gendarmierie* capable of securing Libyan cities.

France’s training of the police is divided between “democratic management of crowds”, for which it has dedicated one-third of its resources, and two-thirds for counter-terrorism, reflecting French concerns over the impact of Libya’s chaos on dynamics in the Sahel and the use of its territory as safe havens for Jihadi and Salafi groups.

Germany is heavily involved in DDR programmes and in creating safe arms caches in co-operation with France. The Libyan government recently reactivated its contract with the Italian company Selex, which is responsible for the electronic border management system that has been deployed in the southeast of Libya, a key area of concern, but running it on all the frontiers would be very expensive.

The UK is particularly involved in capacity building for Libya’s public administration, with several of its officials embedded in Libyan ministries, and it is running a large programme for public finance management. A large component of UK aid is also devoted to the political transition, with projects on the inclusion and participation of women and people with disabilities as well as a training programme for journalists.

Smaller European countries are no less engaged in Libya. The Netherlands is supporting a training programme for over 30,000 employees of the new Libyan local administrations while working on the professionalisation of Libyan journalists.⁴⁰ Sweden is offering civil society and electoral assistance, while Denmark is supporting conflict resolution projects and working with asylum seekers and refugees.

Most, if not all, of the current projects carried out either by the EU or its member states have encountered two serious problems. First, the security situation has made working in several parts of Libya (particularly in the east and the south) very complicated for foreign nationals. Second, the overlapping of a post-regime change and post-conflict situation has made it difficult to rely on local interlocutors.

European leverage

Europe’s ability to influence the transition in Libya is stronger than elsewhere and efforts to that end should therefore be more ambitious. The toolbox available to European governments and organisations can be summarised in five areas of leverage that Europe can consider either simultaneously or in different stages.

The Libyans want and need *training for their security forces*, and Europeans are best placed and willing to do that. Consequently, this is a crucial bargaining chip with those groups that aim to control the institutions in Tripoli to which these forces will respond.

Denial of access to Europe is another powerful tool. As part of the pending sanctions system, the EU keeps a list of individuals and companies that cannot travel or do business in its territory. In co-operation with the Libyan government, this tool can be used to discourage illegal behaviour in a way that is similar to UNSCR 2146, which forbids the illegal sale of oil and gas from occupied energy facilities. Obviously, the more multilateral the better: the EU should seek the co-operation of all European Free Trade Association countries, in addition to Turkey.

Frozen assets, some of which are not liquid while others have not been clearly identified. UNSCR 1970 and 1973 in 2011 imposed a freeze on assets from the former regime and from Gaddafi’s inner circle. Libya’s government seems in no hurry to unfreeze them, and, given its decision-making and implementation capacity, this is a wise choice. Nevertheless,

³⁷ Unfortunately, detention conditions for asylum-seekers and migrants in Libya are still well below the basic standards of human rights protection. See “Scapegoats of fear, rights of refugees, asylum-seekers and migrants abused in Libya”, Amnesty International, 20 June 2013, available at <http://www.amnesty.org/en/library/asset/MDE19/007/2013/en/5310f0f7-1ff4-4acd-bfd8-e3e2c082d7d3/mde190072013en.pdf>.

³⁸ For a comprehensive map of EU programmes in Libya, see ENP Package – Libya, European Commission, 27 March 2014, available at http://europa.eu/rapid/press-release_MEMO-14-228_en.htm.

³⁹ Author interview with Wolfgang Puzsai, security analyst, 3 April 2013.

⁴⁰ Ashraf Abul-Wahab, “Local Government Minister Salah Al-Hassi – making a little go a long, long way”, *Libya Herald*, 2 April 2014, available at <http://libyaherald.com/2014/04/03/local-government-minister-salah-al-hassi-making-a-little-go-a-long-long-way/#axzzzxi8TTPH>.

this is a huge pool of money that could be used by the Libyan government for targeted projects in support of the political transition, for education, and for economic diversification. Europeans could help to individuate the frozen assets and also in making them liquid and quickly expendable.

Energy revenues constitute leverage with the Libyan government, once production resumes. True, Europe needs Libyan energy, but historically, the reverse has also been true: Libya needs cash flow from oil to stay afloat. Substituting European customers with customers in Asia can happen only in the medium term, well beyond the chances of survival of the current elite if oil revenues are zero.

Europeans can also offer *investments and know-how*. Traditionally, and even under Gaddafi, Libya has looked to European knowhow for technical expertise and also to diversify its economy and the investments of its sovereign wealth fund.

The way forward for European policy in Libya

In the aftermath of OUP, European governments were careful to uphold Libyan ownership of the transition. This was the right choice: no one knows better than Libyans what is needed for their country. Unfortunately, this has impacted results because international actors seem to lack professional and legitimate interlocutors on the Libyan side. Europeans cannot solve this problem; it is up to the Libyans to choose their leaders and representatives, and even the best-crafted aid programmes are doomed to fail if there is no authority in Libya to implement them. Nevertheless, Europeans can use their leverage to more effectively encourage a broad cohort of Libyan transition actors to pursue that transition constructively.

Crisis management based on the security emergency would hardly solve any problems, as security and militia-rule are a symptom of wider political problems. The slow pace of Libya's transition and the confusion about interlocutors should not lead to an absence of long-term thinking. Many of Libya's problems have been entrenched over years and therefore need strategic patience and long-term planning to address them efficiently and effectively. The EU, its member states, Norway, and Turkey can focus on five baskets of policies, which should be pursued simultaneously:

Build continuous international co-ordination

Co-ordination of international aid programmes is always problematic, and Libya needs more of it. Nevertheless, international intervention in Libya also needs strategic political decisions to be constantly updated based on the rapidly changing events. This is why an annual conference of the Friends of Libya is not enough. The strategic nature of these decisions cannot be left to UNSMIL: Libyans need to know that certain decisions have the full backing of national governments at the highest levels. The proposed

international partnership for Libya, for example, which could be like the Ad Hoc Liaison Committee that works on aid programmes for the Palestinian Authority, would need to include representatives of Libyan institutions and have a strong technical and monitoring support structure.

This International Partnership for Libya could carry out some or all of the following tasks:

- Co-ordinate strategic planning of international support for Libya in between annual conferences of the Friends of Libya.
- Guarantee that international pledges, particularly those taken at annual conferences, do not remain on paper.
- Offer expertise in the management of the sovereign fund of the LIA and help in the recovery of all assets.
- Provide regular updates on the Libyan economy as well as in other sectors that Libyan representatives may wish to add.
- Encourage transparency by publishing, either on its website or on a specific Libyan "open data" government website, all contracts, bids, and budgets.

One potential outcome of the International Partnership, particularly if it is organised around regular meetings, would be to encourage the different Libyan actors to consult one another more and co-ordinate better.

There are ongoing discussions to prepare for a follow-up meeting to the Rome conference to be held in June, with different partners pushing to have it either in Libya or in another Western capital. This meeting could focus on co-ordinating the efforts on security and security sector reform, while involving a variety of concerned Libyan actors and showing European support for (or even pressure on) all armed powerbrokers to stop fighting and enter the political process.⁴¹

In all cases, Libyan ownership of the process should be emphasised, and Libyan representatives should have an important say in the agenda and evaluating outcomes. The composition of this partnership should reflect the UN role (through UNSMIL) and the EU's role in Libya's transition. Ultimately, while the partnership would be key in improving international co-ordination, donors should bear few illusions about the immediate progress that such a body would be able to achieve given the de facto power vacuum in Libya. This is why it is important to simultaneously address the issues of political legitimacy, governance, and the political process, while starting from the bottom up by supporting local authorities.

⁴¹ Author meeting with Nezar A. Kawan, member of the GNC from Justice and Construction Party, Tripoli, 8 May 2014.

Support the political process and national dialogue

The complexity of Libya's transition requires that Europeans reject a "box-ticking" approach, in which there is a checklist of steps (such as parliamentary and presidential elections or approving a constitution) that need to be carried out in a certain time frame, regardless of inclusivity or of the actual implementation of specific reforms. For instance, a hasty approval of a non-consensual constitution may actually worsen security by further alienating specific groups.

The constitution-making process can be split into two components. First would be a "bill of rights" that includes the rights and duties of Libyan citizens along with the main principles of legislation and judicial interpretation. The second component would be an agreement on the ground rules for the functioning of institutions and a clarification of the roles of the legislative and executive branches, including, for example, a decision as to whether the next president will be elected by voters or by parliament.

Ideally, the elaboration of the two components should take place simultaneously, but given the time pressure and the fact that the national dialogue process has only just started, this is fanciful. A more realistic approach would be to complete the second component first and leave the elaboration of the bill of rights for when the plenum is filled and the National Dialogue commission is moving ahead. This would be on the lines of Tunisia's "mini-constitution": a document setting up the ground rules that would give legitimacy to institutions while ensuring that basic rights are discussed in the most inclusive manner.⁴² In the meantime, issues and court cases regarding human rights could be solved according to the International Declaration of Human Rights and all international conventions and agreements to which Libya is signatory.

As in the past, Europeans can provide technical assistance to organise elections for parliament and the constitutional referendum. Several European countries could play an important informal mediating role, particularly those like Ireland or Poland that have either a large Libyan diaspora and/or recent experience in post-regime and/or post-conflict transition. Along with that, Europeans should support two other processes.

Once the National Dialogue commission is formed, it will need assistance and funding to organise inclusive meetings around the country on the lines of what is already happening with the preparatory commission. If the UN establishes an international fund, as is currently being considered, Europeans should be the first to contribute to it. Civil society, both formal and informal, will need to be trained and supported, and current programmes, both by the EU and by single European governments, should be boosted.

The second process that needs European assistance is transitional justice. Libya does not need "special courts" to proceed but rather extra investigative capacities and a judiciary that can try those who are indicted. "The adjective 'transitional' refers to the time in history when it takes place, not to the instruments it uses".⁴³ With this in mind, Europeans can do three things to support transitional justice in Libya:

- 1 Step up the assistance to the Libyan judiciary and also address the security concerns of those who operate within it: judges and lawyers as well as witnesses and victims. To this end, European expertise on witness protection programmes and security details for members of the judiciary should be transferred to Libyans.
- 2 Provide investigative capacity and, where needed, funding for the Truth Finding Commission. Encourage and facilitate outreach initiatives to involve and inform the population about its activities and findings.
- 3 Strengthen watchdogs, intermediate bodies, and mediators alike, particularly if coming from Libyan civil society. This will create better prospects for fewer abuses and violence.

Ultimately, the losers of the revolution and the civil war cannot and should not be excluded from the new Libya through instruments like the PIL or the laws on veterans and wounded that apply only to those who fought on the right side. While these decisions rest mainly with Libyans, Europeans (particularly post-conflict transition member states) should be doing more to make the case that post-conflict transitions must be inclusive if they are to be successful. Likewise, recent laws that go against freedom of speech and freedom of the press should not go unnoticed. In this case, moral suasion should go hand-in-hand with the strengthening and protection of watchdogs and pluralism. In regards to protection, women's organisations need particular help to overcome not just security problems but also stereotypes and lack of expertise. Libyan society has been isolated for four decades and a programme of fellowship for women leaders to spend some time in women's organisations or media outlets in Europe would help it re-join international society.⁴⁴

The media is another crucial element, and Europeans should work not only on news programmes but also on entertainment (television shows, fiction) to foster both the growth of an important economic sector and also to encourage the production of content that promotes tolerance and inclusivity. A TV series, especially like those shown during Ramadan, could do more to shape public opinion than a news programme. Support for independent productions and training or exchange programmes for scriptwriters would

⁴² Author interview with Christopher Thornton, Humanitarian Dialogue, Tripoli, 9 May 2014.

⁴³ Author conversation with Saudi, Lawyers for Justice in Libya.

⁴⁴ Author interview with Farida Ezteni, Libyan Women's Voice of Truth, Tripoli, 9 May 2014.

be crucial in this sense and could build on similar European programmes for the cinema industry in the Mediterranean.⁴⁵ Moreover, Europeans should support the professionalisation of Civil Society Organizations (CSOs), not just through training but also through funding (and to this end, the work of the EED will be crucial) and by creating new public spaces. For example, the idea of civil society “incubators” currently carried out by the EU delegation in Libya should be expanded to include buildings where organisations can have their offices and meeting rooms, create formal and informal networks, access the media, share services, and enjoy security. Given the complex EU funding and reporting system, assistance to civil society groups as they draft projects and implement them should be part of the package.

Support local authorities (with some important precautions)

Foreign support for decentralisation in Libya must be handled with care. Politically, it must not be seen and presented as an alternative to strengthening the central government but rather as a crucial component of institution building, essential for public services and to inject new energy into the nascent Libyan democracy. The Libyan Ministry of Local Government, though admittedly weak and understaffed, must be the focus of this aspect of capacity building.

As a second precautionary measure, Europeans should be careful not to overburden local institutions that still lack capacity and experienced leadership. Nevertheless, there is a realistic set of policies that can be implemented when working with local councils, especially if the approach is one in which European models are offered insofar as they are deemed relevant and helpful by Libyans. Note the following:

- Select a small number of municipalities for which Europeans could provide advanced technical and political support in co-ordination with the national government.
- Initially work on improving basic service delivery and then slowly encourage the central government to devolve to the best-working municipalities the responsibility over urban planning and service provision for some of the more substantial services, such as housing, transportation, education, and healthcare.
- Training in budget drafting and implementation is as important as oversight and accountability. Empowering civil society, for instance by guaranteeing access to information, is crucial.
- In order to encourage dynamism while guaranteeing national unity, European support to municipalities could work along the lines of the European Social

Fund, with projects submitted by municipalities and co-financed by the donor community and the national government through the International Partnership for Libya. This procedure should be first tested in a small number of municipalities in order not to overload the system.

- As part of the effort to encourage accountability, transparency, and democratic oversight, one of the first projects that could be started is the creation of local ombudsmen along the lines of the European experience: either a single one for each municipality or different ones to cover major services.
- Building efficient watchdogs is also key. Specific projects could aim to train local CSOs to monitor embezzlement, abuses, and corruption, along with reporting human rights violations.

Take a comprehensive approach to security

Libya's insecurity is the symptom of its political problems. A clear decision-making process, an inclusive national dialogue, and reconciliation are all essential elements for a stable country. State monopoly of force is also essential, but it cannot substitute politics. Sending armed units (whether militias “integrated” in the current army or a fully-fledged national army) to quell unrest or rebellion in another part of the country has proven ineffective especially in a situation where state authority is perceived as neither representative nor legitimate. Politics in Libya, at least in this initial phase of the transition, should not be a winner takes all sport but a power-sharing exercise.

Two elements of security rest mainly on the shoulders of the Libyan political elite, although Europeans can go some way in building external incentives and disincentives for the parties involved.

The first is a negotiated power-sharing agreement among some of the largest armed and political groups with a national outreach, such as political parties (or their equivalents), militias from Zintan and Misrata, minority groups, and the Saiqa force in Benghazi and other brigades. The objective of the agreement would be how to share power in government, end armed competition, and boost the legitimacy of the central government. While not resulting in the immediate demobilisation of militias, this agreement would aim to lay the ground for that in the medium term.

The second element is to extend the practice of negotiating local security and governance compacts.⁴⁶ This is a more granular form of peace-making, led by the central government that addresses with specific agreements the many localised conflicts that pit one city against another or often even one

⁴⁵ See for instance “Europa Cinemas”, which connects cinemas across the Mediterranean, available at <http://www.europa-cinemas.org/en/Network/About-Europa-Cinemas>.

⁴⁶ An example of these can be found at http://www.peacefulchange.org/uploads/1/2/2/7/12276601/sirte_peace_charter_-_full_text.jpg.

neighbourhood against another. Europeans could support those NGOs that provide assistance to these negotiations and co-operate with the central government in building incentives for these localised agreements – not just economic aid or trade but also the training of security forces to act as peace-keepers.

In both cases, a politically neutral and professional national army is crucial. Two steps need to be taken by European stakeholders in this sense.

As troops for the GPF complete their training, stakeholders must negotiate with the Libyan government for their deployment in focused areas of the country, such as Tripoli and Benghazi. This would at least ensure that decision-making and law-enforcement is free of the threat of militias. Alternatively, the new troops could be deployed to guarantee peace in the areas where localised conflicts have been tamed thanks to negotiations.

In a second step, Europeans should set up, also for the police forces, local and national watchdogs that are integrated with civil society and human rights organisations in order to prevent abuses and human rights violations. Ensure the accountability of security officials through the judiciary.

The strengthening and the protection of the judiciary are essential to ensure both security and the rule of law. Part of this endeavour is the fight against the criminal-Jihadi networks of the “insecurity belt” which also affects human trafficking and illegal immigration, and are two concerns relevant to Europe. The absence of government authority in Libya today has created a breeding ground for all kinds of illicit trafficking, including illegal immigration and weapons. Solving the crisis of legitimacy of political institutions and addressing the wider dimension of security are therefore crucial components in tackling illegal immigration. Three other elements must also be in place.

First, the above-mentioned local compacts on governance and security should especially involve areas in the south (the cities of Kufra and Sebha, for instance), which are the epicentres of this activity. Together, stabilisation and the strengthening of institutions should fundamentally help end this rather informal economy. Second, part of the exchange today is between smuggled goods on one side and subsidised products on the other: Libyans buy subsidised products in great quantities and exchange them for smuggled goods. Reforming the subsidy sector would therefore also affect trafficking.⁴⁷ Third, Europeans should step up their efforts to stop human rights abuses against asylum seekers and migrants and avoid signing immigration management agreements with Libya until a modicum of human rights standards can be ensured.

Support post-oil economic development

The economic crisis in Libya is a result of the combination of the political crisis and of worsening security as its consequence. With the political and technical support of Europeans, Libya’s central authorities need to take several crucial decisions on the country’s oil and non-oil sectors. Oil and gas production can resume once political agreements are struck since no significant damage has been made to the infrastructure. That would also dramatically improve public finances and thus the ability of the central government to rein in local actors.

Simultaneously with the effort to end the blockades, the Libyan government should implement, with the support of its European partners, the following policies: an overhaul of the current management of oil revenues to guarantee transparency; profit-sharing with elected local governments; the use of the LIA sovereign fund to pay for improvements in public services and diversify the Libyan economy.

In fact, Libya needs to develop its economy for the post-oil age. This is in both Libya’s and Europe’s interest. A more diversified economy would likely bring a more diverse business sector that is less dependent on the government: currently, 80 percent of the population is either working directly for the government or for one of the 350 state-owned companies.⁴⁸ Moreover, non-oil sectors would make a greater contribution to the reduction of unemployment, leaving fewer recruits for militias. Foreign direct investment, which requires transparency, a functioning government, and a much improved security situation, could flow to sectors such as heritage and tourism once the government provides the required law enforcement, particularly with regards to urban planning, transparency, and rule of law. To this end, co-operation with European state and non-state actors is crucial; expertise, training, education, and management would be very valuable.

Finally, as with most of its neighbours, Libya should be encouraged to reform its subsidies system, which currently helps to perpetuate a vicious circle between subsidies and criminal activities.

Ultimately, Europe has a bigger toolbox at its disposal in Libya than elsewhere in the region. The Libyan transition is not doomed, but its fate rests heavily in Libyan hands. Libyan decision-makers must find the ability to create an inclusive and effective system and eliminate rewards for spoilers. To do so, though, they will need Europe’s support. The combined EU member states have more leverage, and more at stake, than any other external actor in promoting Libya’s efforts toward political legitimacy, security, and economic reform.

⁴⁷ For a more thorough description of the connection between criminal networks and human trafficking, see Shaw and Mangan, “Illicit Trafficking and Libya’s Transition”.

⁴⁸ Author interview with Abdul Rahman al-Ageli, political consultant and former advisor to the Libyan prime minister’s office, 1 May 2014.

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