Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 14519
29 March 2018

The situation in Libya: prospects and role of the Council of Europe

Report[1]
Committee on Political Affairs and Democracy
Rapporteur: Mr Attila KORODI, Romania, Group of the European People's Party

Summary

The Arab Spring blew across Libya and carried with it not only the dictatorship of Colonel Gaddafi but also the entire State apparatus. In civil war since 2011, this country has not been able to successfully complete its political transition, despite the holding of two national elections, and has been deeply fragmented. This failure of a smooth regime change has had a very high cost. It was first the Libyan people who paid a high price. It was then Libya's neighbours who had to deal with the regional destabilisation that followed. It is also the migrants who, like many Libyans, are victims of inhumane treatment. Finally, it is Europeans who have been confronted with a high security risk and an influx of migrants.

In this context, recent developments on the ground, as well as the actions of the United Nations Support Mission for Libya, point to improvements, in particular through the relaunching of peace negotiations and the construction of an embryonic State. To what extent could the Council of Europe participate in these efforts which concern a neighbouring country? This is the purpose of this report.

1. Reference to committee: Doc. 13812, Reference 4140 of 26 June 2015.

Contents **Page**

A. Draft resolution 3
B. Draft recommendation 6
C. Explanatory memorandum by Mr Attila Korodi, rapporteur 7
1. Introduction 7
2. From the Arab Spring to the failed political transition (2011-2017) 7
2.1. First Libyan civil war and the “humanitarian” intervention of the international community (February-October 2011) 7
2.2. The failed political transition (October 2011-September 2017) 8
3. The cost of this failure 10
3.1. The first victims of the chaos in Libya are the Libyans themselves 10
3.2. Destabilisation of the region: from the Maghreb to the Sahel via the Nile 11
3.3. Wholesale interventionism 11
4. Libya from a European perspective: a security and migration problem 12
4.1. The current “success” of the fight against terrorism and its consequences 12
4.2. Libyan migrants and Europe 13
5. A time for peace? 16
5.1. A good time to relaunch the peace process 16
5.2. The United Nations action plan, initial achievements and three questions 17
6. Rebuilding a State: the possible role of the Council of Europe 18
7. Conclusions 19
Appendix – Map of Libya 20

A. Draft resolution[2]

1. The Parliamentary Assembly regrets that the "Revolution of 17 February" which occurred in Libya in 2011 in the wake of the Arab Spring was not able to result in a successful political transition. It notes that the two elections held in 2012 and 2014 did not make it possible to avoid a serious fragmentation of the country on an institutional, regional and societal level. This fragmentation plunged the country into chaos and, for the European continent, resulted in an increased security risk and migratory flows. The Assembly notes that the collapse of Libyan Arab Jamahiriya led to the complete disappearance of a unified State apparatus and service infrastructure.

2. Bearing in mind that the first victims of the situation in Libya are first and foremost the Libyans themselves, the Assembly calls on all the parties to prevent and to stop committing violations of human rights and humanitarian law and to protect the human rights and fundamental freedoms of persons belonging to vulnerable groups such as displaced persons, women, children, human rights defenders and media professionals.

3. The Assembly also condemns all discrimination against women, whether with regard to their freedom of movement or their right to pass on their nationality to their children.

4. The Assembly notes that the situation in Libya has contributed and still contributes directly to the destabilisation of the region. This was initially of a large-scale economic nature, affecting countries such as Tunisia and Egypt, which lost a major trading partner and were deprived of the funds transferred by nationals employed in Libya. It soon became a security problem owing to the plunder of Libyan arsenals, the spread of terrorist groups in the Sahel-Saharan region and the return to their countries of origin of mercenaries employed by the Gaddafi regime.

5. The Assembly notes and welcomes the successes in the fight against terrorism in Libya, particularly against Daesh, which has not been able to establish itself lastingly, as in Syria and Iraq. In this connection, it points out that this fight must be carried out with due regard for Libya's sovereignty, independence and territorial integrity.

6. The Assembly is perfectly aware that between 2014 and 2016, one of its member States, Italy, had to cope with the arrival of very large numbers of migrants from Libya, some of whom came from countries where respect for human rights is not under threat. It notes that the European Union's response, particularly its Triton and Sophia air and sea operations, resulted in a reduction of nearly 32% of arrivals on the Italian coasts between November 2016 and November 2017, that these operations have saved over 200 000 lives since 2014 and that the European Union provides much of the funding for the activities of the United Nations High Commissioner for Refugees and the International Organisation for Migration in aid of refugees and migrants.

7. Nonetheless, the Assembly calls on the Council of Europe member States to comply with their obligations under Article 3 of the European Convention on Human Rights (ETS No. 5), which requires them to refrain from sending migrants back to countries where they are exposed to the risk of torture and inhuman or degrading treatment or punishment.

8. The Assembly recognises that this is a real risk in Libya, as borne out by the regular reports by the United Nations Secretary-General to the Security Council, the reports and studies of the United Nations High Commissioner for Human Rights, the reports of the United Nations Support Mission in Libya (UNSMIL), the reports of non-governmental organisations and various documentaries providing evidence of slavery.

9. The Assembly urges the member States of the Council of Europe, and in particular those members which are also members of the European Union, to do more than simply managing the migration problem as it currently applies to Libya and to devise a new framework which would make it possible to protect migrants, examine asylum applications in dignified conditions and respect State sovereignty regarding access to territory.

10. In this connection, the Assembly supports recent moves to:

10.1. have the asylum applications of persons considered by the High Commissioner for Refugees to be "extremely vulnerable" investigated in safer, adjoining countries, as the French Office for the Protection of Refugees and Stateless Persons recently did;

10.2. prevent migrants from entering Libya by closing the southern border in Fezzan;

2. Draft resolution adopted unanimously by the committee on 12 March 2018.

10.3. set up a task force involving European and African States to combat human traffickers, as decided at the African Union–European Union Summit in Abidjan on 29 and 30 November 2017.

11. Pending the establishment of this new framework, the Assembly calls on the European Union member States to:

11.1. make any intensification of their co-operation with the Libyan coastguards dependent on the possibility of checking that they make the effort to respect refugees' and migrants' fundamental rights, particularly by refraining from exposing them to situations in which they risk being subject to severe ill-treatment, in accordance with its Resolution 2174 (2017) on human rights implications of the European response to transit migration across the Mediterranean;

11.2. propose an alternative solution to the detention centres officially managed by the Ministry of the Interior, where migrants are cooped up in conditions which UNSMIL describes as inhuman, and which are reported by the High Commissioner for Human Rights to be broken beyond repair.

12. The Assembly unreservedly supports the Action Plan which the Special Representative of the United Nations Secretary-General for Libya presented on 20 September 2017. It considers that the Libyan Political Agreement signed in Skhirat on 17 December 2015 is still the only framework in which an end can be brought to the Libyan crisis, that only the institutions deriving from this, particularly the Government of National Accord, have, quite rightly, obtained international recognition, and that the validity of this agreement extends beyond 17 December 2017.

13. The Assembly welcomes the fact that the Special Representative wishes to make this Agreement more effective by prompting the various parties to amend those provisions which currently impede its full application.

14. The Assembly supports the Special Representative's efforts to promote the most inclusive possible dialogue between Libyans without outside interference. It believes that the national conference provided for by the Action Plan should enable Libyan players who have been ostracised or who have purposely distanced themselves from the Libyan Political Agreement to be involved in the current political negotiations. The Assembly calls on the Special Representative and the Libyan authorities to:

14.1. ensure that this national conference can be attended by representatives not only of the relevant political and military forces but also of social movements, tribes and local stakeholders;

14.2. draw a clear line between the inclusive nature of the national conference, which might enable non-jihadist militias to take part, and accepting some of the practices of these militias, particularly those which claim to be Madkhalists, whose aim is to impose restrictions on public freedoms in the name of a radical view of Islam.

15. The Assembly considers that the adoption of a Libyan constitutional framework is a prerequisite for holding parliamentary and presidential elections. It takes the view that if it is difficult to reach agreement on all the provisions of the draft Constitution, at least those should be adopted which relate to the functioning of the institutional authorities alone, in Chapter 3 of the draft Constitution. This minimum constitutional framework should be adopted before parliamentary and presidential elections are held.

16. The Assembly agrees with the Special Representative that elections should only be held if their results cannot be contested by any of the various Libyan players and that this concern should take precedence over any desire to hold the elections as quickly as possible. If this is so, the Assembly is prepared to provide assistance to the Libyan authorities with election observation when they consider this to be appropriate.

17. The Assembly would point out that, alongside dialogue between Libyans, national reconciliation cannot be brought about unless justice is done, whether this takes the form of transitional courts, international courts for the most serious crimes, or so-called hybrid courts, in other words partly national courts with a considerable international presence.

18. Being aware that only the establishment of unified State structures will help to end widespread and daily violations of human rights and humanitarian law in Libya and will be able to lastingly reduce the terrorist threat and stem migration flows, which are realities affecting the member States directly, the Assembly considers that the Council of Europe should contribute to the efforts of the United Nations Support Mission in

Libya to this end, bearing in mind its expertise in institutional matters and the objectives set by the Special Representative of the United Nations Secretary-General for Libya in his Action Plan of 20 September 2017. Its contribution could, in particular, focus on:

18.1. the drafting of the Libyan Constitution, through the European Commission for Democracy through Law (Venice Commission);

18.2. the establishment of support for electoral procedures in preparation for a constitutional referendum and then for parliamentary and presidential elections, the Assembly being prepared, for its part, to serve as an election observer;

18.3. the creation of a media environment capable of reporting on the above elections, working as much as possible in line with international ethical standards for journalists.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution … (2018) “The situation in Libya – prospects and the role of the Council of Europe”.

2. Being aware that only the establishment of unified state structures will help to end widespread and daily violations of human rights and humanitarian law in Libya and will be able to lastingly reduce the terrorist threat and stem migration flows, which are realities affecting the member States directly, the Assembly considers that the Council of Europe has good reason to contribute to the efforts of the United Nations Support Mission in Libya to this end, bearing in mind its expertise in institutional matters and the objectives set by the Special Representative of the United Nations Secretary-General for Libya in his Action Plan of 20 September 2017.

3. Noting that the establishment of this co-operation organised on an *ad hoc* basis could partly be carried out within a regional framework by favouring the opening of targeted programmes, currently covering countries like Tunisia, to representatives of the administrations of the Libyan Government of National Accord, the Assembly, subject to the Libyan authorities' request, requests the Committee of Ministers to be ready to assist in a timely manner in:

3.1. the establishment of electoral assistance in preparation for a constitutional referendum and then for parliamentary and presidential elections;

3.2. the creation of a media environment capable of reporting on the above elections, working as much as possible in line with international ethical standards for journalists.

3. Draft recommendation adopted unanimously by the committee on 12 March 2018.

C. Explanatory memorandum by Mr Attila Korodi, rapporteur

1. Introduction

1. The Arab Spring blew across Libya[4] and carried away everything in its path: the Gaddafi dictatorship and, with it, the State. In this, Libya is different from the other Arabic nations which felt the same thirst for political change in 2010-2011. Today, it is a failed State where everything – or almost everything – has to be rebuilt, where every day there are immense human rights violations and where instability poses a threat to its neighbours. As a failed State, Libya is not just a "problem" for Europeans, whether in terms of terrorism or migration; it is also a moral dilemma.

2. Firstly, because Europeans are not strangers to the chaos that reigns there. Secondly, because they have to make choices, carefully weighing up ethics and political realism, for example with regard to the treatment of migrants. And lastly, because the reconstruction of a minimum level of state infrastructure means having to accept a series of unpleasant but perhaps essential compromises, such as negotiating with players who have little interest in peace, the establishment of democracy or respect for human rights.

3. If Libya manages to put an end to the current civil war, the country will not emerge as a democratic State cherishing the values of the Council of Europe. Nonetheless, I believe that the Council of Europe can have a role to play there, not immediately but in the medium term: there is at present a chance that a peace agreement will be concluded which, I hope, the various Libyan players will be able to seize. If such is the case, we must be ready to provide this country with our expertise in institutional matters, not to show that Europe has other concerns than securing its maritime border in the Mediterranean, but because by focusing on the construction of State institutions, we will be laying the groundwork for building, subsequently, a State governed by the rule of law. Above and beyond the informative nature of this report, I believe it is important to address the eventual positioning of the Council of Europe vis-à-vis Libya.

4. Both the Committee on Political Affairs and Democracy and the Parliamentary Assembly of the Council of Europe have closely followed the Arab Spring and its developments. For example, the Sub-Committees on External Relations and on the Middle East and the Arab World held a joint meeting in Rome on 5 June 2015[5] on current political challenges and opportunities in the Mediterranean region, where the question of Libya was discussed at some length and to which a former security adviser from the Libyan Prime Minister's Private Office was invited; furthermore, the Committee heard several experts on Libya at its meeting of 24 May 2016, including the Director of Political Affairs at the United Nations Support Mission in Libya (UNSMIL), and a representative of the European External Action Service. In addition, Libya was mentioned on several occasions in Resolution 2174 (2017) on human rights implications of the European response to transit migration across the Mediterranean adopted by our Assembly in June 2017 and there are many references in the report by Mr Duarte Marques of 12 June 2017 on "A comprehensive humanitarian and political response to the migration and refugee crisis in Europe"[6] and in the opinion of our colleague Ms Ioanneta Kavvadia.[7]

5. To prepare my report, I made a visit to Tunis in early November 2017, where I held talks with Tunisian ministers, Libyan politicians, representatives of the United Nations and the European Union, members of civil society, journalists and experts.[8] On 14 December 2017, the committee also heard from the President of the European Commission for Democracy through Law (Venice Commission), representatives of the European Union and UNSMIL, and an expert on Libya.

2. From the Arab Spring to the failed political transition (2011-2017)

2.1. First Libyan civil war and the "humanitarian" intervention of the international community (February-October 2011)

6. Demonstrations began in Libya in January 2011, in the wake of the flight of the Tunisian President Ben Ali (14 January 2011).

4. See Appendix.
5. See AS/Pol/Inf (2015) 15.
6. Doc. 14342.
7. Doc. 14351.
8. AS/Pol/Inf (2017) 19 rev.

7. On 15 February 2011, four days after the fall of President Mubarak in Egypt, a demonstration initiated by the families of detainees in Abu Salim prison[9] was violently put down. Then, from 17 February on, the protest turned into an uprising,[10] first of all in the east of the country, in Cyrenaica, where there were riots in the cities of Benghazi and Al-Bayda, and then in the west, in Tripolitania, in Misrata, the second largest city in the region, in the capital Tripoli itself, where the loyalist air force bombarded the rebel neighbourhoods, in the Nafusa mountains near the Tunisian border, and in the south, in Fezzan, where the Toubou tribesmen joined in the protests.

8. From late February until mid-March 2011, government troops recovered most of the ground lost and were about to enter Benghazi, when on 17 March the United Nations Security Council passed Resolution 1973. Adopted under Chapter VII of the United Nations Charter, it strengthened the embargo on arms destined for Libya and the freezing of assets owned by the Gaddafi family, provided for in Resolution 1970 of 26 February, imposed a no-fly zone and, above all, authorised "member States that have notified the Secretary-General, … to take all the necessary measures … to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory".

9. This intervention was led by an international coalition, with France, the United States and the United Kingdom conducting the bulk of the air and naval operations, together with the participation of several European, Arab, and North American countries. The principle of a no-fly zone had been supported beforehand by the Arab League. On 31 March, the North Atlantic Treaty Organisation (NATO) took command and continued its mission until 31 October 2011.

10. The international coalition, and then NATO, interpreted very broadly the UN mandate which focused on a humanitarian operation. In so doing, they clearly reversed the balance of power on the ground in favour of the insurgents. On 19 March, the coalition intervened to stop the Libyan army's offensive on Benghazi. From then on, thanks to the help of coalition air support, the rebel forces gradually defeated the government troops, culminating in the execution of the deposed dictator, Muammar Gaddafi, on 20 October 2011. Three days later, the representative of the Libyan National Transitional Council (NTC), the organ of the revolutionaries, declared the end of the war in Libya.

2.2. The failed political transition (October 2011-September 2017)

11. The initial aim of the NTC, established on 27 February 2011, presided over by Mustafa Abdul Jalil, Minister of Justice under Muammar Gaddafi who had defected, was to co-ordinate the fight against the government troops. Gradually gaining recognition by the international community, it became an interim government. Originally it comprised 30 or so members of very disparate persuasions, ranging from former Gaddafi officials to those in favour of a return to the Senussi monarchy,[11] and between the two, "liberals" from civil society and jihadists. The bulk of its action was focused on adopting a draft constitutional Charter on 3 August 2011, unblocking part of the funds frozen by the United Nations (September 2011), fighting against the last pockets of pro-Gaddafi resistance and organising the first free elections in Libya in July 2012.

12. However, the NTC proved unable to unite the various factions emerging from the revolution in an integrated military body. The rise in power of the various militias dates from this time. Moreover, it was of concern to a number of European capitals as early as October 2011, when its President, known to have been the appeal judge who had twice confirmed the death sentence passed on the Bulgarian nurses in 2007,[12] spoke out in favour of the introduction of Sharia law and a return to polygamy which had been prohibited under the Gaddafi regime.

13. On 7 July 2012, in an unstable security climate, 60% of Libyan voters elected the General National Congress (GNC),[13] an assembly intended to hold legislative power, but which was not recognised as a constituent power. Furthermore, the electoral law under which it was elected forbade members of the NTC and former members of the Gaddafi regime from standing as candidates.

---

9. Sadly notorious for the massacre there of 1 500 opponents to Colonel Gaddafi in 1996.
10. Hence the expression "Revolution of 17 February".
11. See the May 2011 report entitled "Libya: an uncertain future", p. 23.
12. Having arrived in Libya in 1998, five Bulgarian nurses and a Bulgarian anaesthetist of Palestinian origin were accused of deliberately infecting 400 children with HIV in the paediatric ward of the hospital where they worked. The proceedings lasted from 1999 to 2007.
13. According to The New York Times quoting the results announced by the Libyan Supreme Election Commission.

14. The period between March 2012 and June 2014, during which the GNC sought to assert its authority, signified the failure of the transition and the fragmentation of the country. What should have become a politicisation of the fight for power within a democratically elected assembly having genuine legitimacy turned into a militarisation of politics and the exclusion or liquidation of opponents and those seen as adversaries.[14]

15. The leaders of the various militias refused to relinquish the power they had obtained or recovered during the armed struggle. Some militias, such as those in Misrata, also took exception to the result of the elections which could signify a defeat of their camp: the Muslim Brotherhood, well established in that city, saw their political grouping, the Justice and Construction party, with its 17 seats, come far behind the predominantly "liberal" National Forces Alliance (39 seats). Nonetheless, the influence of the Islamists in the GNC continued to grow until 2014, helped by the support of the "independents" who formed the majority of those elected (120 out of 200).

16. Concerning the exclusion of opponents, under pressure from the militias still active in Tripoli, the GNC passed the law of 6 May 2013. The law provided that all those who had been in positions of responsibility under the former regime of Muammar Gaddafi, in the period between 1 September 1969, the date on which he had come to power, and the collapse of the regime in October 2011 were to be excluded from politics for ten years. This law applied to former ministers, ambassadors, media directors and internal security officers, and even student union leaders and faculty deans.

17. Above and beyond this exclusion, there was ongoing physical liquidation of those regarded as adversaries. An independent expert, Mr Rafaâ Tabib, documented the numerous murders of members of the police, army and the justice system investigating various forms of trafficking (drugs, weapons, etc.) in which certain militias were involved. A number of candidates in the 2012 elections and former supporters of the 2011 rebellion were also murdered.[15]

18. This liquidation also took place at tribal level. One well-known example is that of the expulsion in August 2011 of 45 000 inhabitants, considered as "Blacks" and non-Arabs, from the Tawargha oasis, close to Misrata, by the militias in that city. This was followed by the attack on their refugee camp near Tripoli in October 2012. The Misrata militias claimed that these actions were justified by the pro-Gaddafi stance of the Tawarghi and the disputed historical and legal legitimacy of their presence at the oasis.

19. The weakness of the GNC as a political authority was highlighted dramatically in October 2013 with the kidnapping of Prime Minister Ali Zeidan by Tripoli-based militias.

20. In 2014, the armed struggle was polarised between the forces of General Haftar, which took the name of the Libyan National Army (LNA), engaged in "Operation Dignity" (Al-Karama) against the Islamists, particularly in Benghazi, with effect from May 2014, and the supporters of a political and military Islam, grouped together in the "Libya Dawn" (Fajr Libya) coalition. At the same time, Fezzan became the target of violent clashes between the Toubou tribe and the Arab Awlad Suleiman tribe, shortly followed by fighting between the Toubou and the Tuaregs.

21. It was against this background that the parliamentary elections of 25 June 2014 took place, with a turnout of 18%. The results, once again unfavourable to the Islamists from the Justice and Construction Party (30 seats against 50 for the National Forces Alliance), further fragmented the country and reactivated the opposition between the west of the country, Tripolitania, and the east, Cyrenaica.

22. The elected assembly, the House of Representatives, which gained international recognition, was unable to meet in Tripoli. It was obliged to transfer its headquarters to Tobruk, while the government formed as a result was established in the nearby city of Al-Bayda. It was in competition with a rival assembly, also called the General National Congress, based in Tripoli and supported by the Misrata and Islamist militias. This rival assembly challenged the legitimacy of the House of Representatives and formed a parallel government, termed the "National Salvation Government".

23. Consequently, Libya found itself with two competing assemblies and governments – one in the east, recognised by the international community and the other in the west, signifying what some analysts called the beginning of the second Libyan civil war.

24. Formally, this situation lasted until 2016, when the Libyan Political Agreement (LPA), negotiated by the two rival parliaments under the aegis of the UNSMIL and signed in December 2015 in Skhirat, Morocco, began to be implemented. The LPA created a Government of National Accord, setting up alongside the House

---

14. Information report No. 3259 on Libya by Philippe Baumel and Jean Glavany, National Assembly, 2015.
15. Rafaâ Tabib, La chamelle d'Allah, aux sources du chaos libyen, Le Parchemin bleu, Tunis, 2016.

of Representatives, which remained unchanged, a nine-member Council of the Presidency of the Council of Ministers, headed by Fayez al-Sarraj, and a High Council of State, an advisory body, many of whose members were former members of the GNC.

25. The LPA was a partial success: following some difficulties and armed clashes, the Government of National Accord was able to become established in Tripoli and gain the support of the main militias there. Its leader, Fayez Al-Sarraj, has on several occasions had talks with the strong man of Cyrenaica, General Haftar. However, its territorial authority has remained very limited and the question of the unification of the various armed groups and their command has not been resolved.

3. The cost of this failure

26. "We got a UN mandate, we built a coalition … We averted large-scale civilian casualties; we prevented what almost surely would have been a prolonged and bloody civil conflict. And despite all that, Libya is a mess."

27. This analysis was made by President Barack Obama in April 2016[16] and sums up the situation post-Gaddafi. His death did not lead to a change of regime, but to the total disappearance of any regime whatsoever.

28. I do not wish to consider here the respective responsibilities of the various stakeholders for the chaos that has gripped Libya. MPs in the United Kingdom House of Commons and members of the French National Assembly have addressed this matter.[17] However, the failure of this political transition has had tangible consequences of which I feel it is important to remind ourselves, as Europeans.

3.1. The first victims of the chaos in Libya are the Libyans themselves

29. In 2010, Libya's gross domestic product (GDP) stood at US$80 billion, primarily thanks to oil exploitation. In 2014, the latest year for which statistics are available, it was US$41 billion, i.e. half what it was.[18] While the Human Development Index for Libya has remained relatively satisfactory[19] (0.716 in 2016), putting it in the category of countries with "high human development", it dropped from 53rd to 102nd place in the United Nations Development Programme ranking between 2010 and 2016.

30. Once a wealthy nation, Libya today is a country where the black market exchange rate for its currency is nine times that of the official exchange rate[20] and where citizens have to queue up for hours to withdraw the equivalent of €25 from bank counters.

31. Mr Ghassan Salamé, the Special Representative of the United Nations Secretary-General for Libya, noted in his remarks to the Security Council on 28 August 2017 that "the impression of a now well-rooted political economy of predation is palpable".

32. Over and above the purely economic aspect, all UN players have, year after year, singled out the chaotic state of the country. In his report dated 22 August 2017 on UNSMIL covering the period from April to August 2017, the UN Secretary-General described for the Security Council the day-to-day situation of life in Libya:

> *"… all parties to the conflict committed violations of international human rights and humanitarian law. Victims had little avenue for redress due to a general state of lawlessness and the weakness of judicial institutions. Ongoing violence also continued to cause civilian casualties … Attacks on health-care facilities and medical personnel continued across the country … Armed groups on all sides continued to take hostages, to carry out unlawful killings and to use torture and forced disappearances, including of civilians, in particular women and other persons not involved in the fighting. Individuals were targeted*

16. See The Atlantic, Jeffrey Goldberg, "The Obama Doctrine", April 2016.
17. House of Commons, Foreign Affairs Committee, Libya: Examination of intervention and collapse and the UK's future policy options, HC 119, 6 September 2016 and Information report No. 3259, op. cit.
18. UN data, http://data.un.org/CountryProfile.aspx?crName=libya.
19. This is explained statistically by the fact that starting from a situation of very great wealth before the revolution thanks to the oil revenue, a fall, even strong, did not relegate Libya to the rank of a weakly developed country. In addition, both public structures and Libyan households have been able, thanks to this wealth, to constitute savings on which they have lived since 2011. The latter seems to be running out today.
20. https://www.libyaobserver.ly/exchange-rates.

on the basis of family or tribal identity, affiliations and political opinions, as well as for ransom or prisoner exchange … across the country, arbitrary detention remained widespread in both official prisons and detention facilities controlled by armed groups."[21]

33. The result of this anarchy is also the high, though falling, number of internally displaced persons: 200 000[22] out of an estimated population of 6.3 million.

34. These displaced Libyans, along with women, children, human rights defenders and media professionals form what the United Nations calls "groups in vulnerable situations". Even very recently, "women were arbitrarily deprived of their liberty, often because of family affiliations or for prisoner exchanges, and were held in facilities without female guards, exposing them to the risk of sexual abuse".[23] In his annual report on Libya of 13 January 2017, the United Nations High Commissioner for Human Rights also pointed out that Libyan women are subject to discrimination in fields such as travel restrictions, as certain armed groups require them to travel with a male guardian, and, furthermore, they do not have the right to pass on their nationality to their children or spouse.[24] Added to the violence, these developments are a clear backward step for Libyan women who had seen some improvement to their status under the Gaddafi regime.

3.2. Destabilisation of the region: from the Maghreb to the Sahel via the Nile

35. While the Libyans have been the first to suffer from the failure of the political transition, certain of the country's immediate or further afield neighbours have suffered collateral damage, in economic, migration and security terms.

36. The first is Tunisia, which lost its most important trading partner, saw the disappearance of the 1.8 million Libyan tourists who each year visited their country, had to deal with the fact that 150 000 of its own citizens employed in Libya had lost their jobs, took in between 500 000 and 800 000 Libyans and had to fortify its border after the attack in 2016 on one of its towns, Ben Gardane, by Daesh fighters who had crossed over from Libya. Currently, the Tunisian authorities were expecting fresh attempted infiltrations by jihadists and the possible reactivation of dormant cells in Tunisia.

37. Egypt has had a similar experience, although to a lesser extent. The number of Egyptians working in Libya has apparently halved, falling from 1.5 million in 2010 to 750 000 in 2014 and trade fell from US $2.5 billion to US$900 million over the same period. In addition, the security problems along its 1 000 km of shared borders have prompted it to tighten controls considerably.[25]

38. Lastly, Algeria has had to deal with a huge increase in arms trafficking, a problem that has affected the whole Sahel-Saharan region and which has served the interests of several armed groups. The Gaddafi regime purchased some €34 billion of weapons and ammunition between 1969 and 2010. After the collapse of the regime, some were trafficked across North and West Africa and the Middle East.[26] The United Nations Panel of Experts appointed to examine the impact of Security Council Resolution 1973 identified the presence of ex-Libyan weapons in Algeria, Chad, Egypt, Gaza, Mali, Niger, Tunisia and Syria. The panel concluded that "arms originating from Libya have significantly reinforced the military capacity of terrorist groups operating in Algeria, Egypt, Mali and Tunisia".[27]

39. This influx of weapons, added to the post-defeat withdrawal of mercenaries hired by the Gaddafi regime, facilitated the victory in North Mali in 2012 by a coalition of separatists and jihadists, some of whom were members of Al-Qaeda in the Islamic Maghreb (AQIM).

3.3. Wholesale interventionism

40. The failure of the political transition also prompted several countries to intervene in Libya in line with their own agendas.

41. Western countries, such as France, the United Kingdom and the United States have become involved in the fight against the terrorist groups and some have had no hesitation about sending Special Forces and intelligence operatives, bombarding positions held by these groups or "droning" their leaders.[28]

---

21. UNSC, S/2017/726, paragraphs 24-31.
22. UNHCR Flash Update Libya, 27 October-2 November 2017.
23. UNSC, S/2017/726, paragraphs 37-38.
24. A/HRC/34/42, paragraph 38.
25. See Elissa Miller, Why Libya's stability matters to the region, 25 January 2017, Atlantic Council.
26. House of Commons report, op. cit., paragraphs 84 and 85.
27. See S/2015/128.

42. At the same time, Libya has been the theatre of what certain analysts have called “proxy competition” between, on the one hand, Egypt and the United Arab Emirates, and, on the other, Qatar and Turkey, which had clashed by means of intermediary militias. Initially fairly low-key in 2011, it took a dramatic turn in 2014, when Egypt and the Emirates bombarded certain militias and sent ground forces to Cyrenaica.[29] The fight against the Muslim Brotherhood has been at the heart of this rivalry but, more generally, it has been a response by Egypt to the many attacks and kidnapping of its citizens by Islamist groups and it has taken steps to secure its border. The various people with whom I spoke, whether officials or from civil society confirmed that Egypt’s military support for General Khalifa Haftar, whether air support or the provision of weapons, had been decisive in the successes of his LNA in 2016 and 2017.

43. With regard to this wholesale interventionism, it is important to bear in mind that it is not just the jihadists who condemn any foreign presence in Libya. A not insignificant number within the armed groups, particularly among the Islamists, and radical but influential figures such as the Mufti of Tripoli Al-Ghariani are totally opposed to it.

44. This point was made very strongly to me by the Tunisians, who are very much up-to-speed on what is happening in Libya. Furthermore, it is no coincidence that the Tunisian initiative, launched by President Beji Caid Essebsi, is based not only on a principle of equidistance between the various parties to the conflict, but also on the need for inter-Libyan dialogue without any foreign intervention on the ground[30].

4. Libya from a European perspective: a security and migration problem

45. The security issue is beginning to be resolved, but there are questions for the medium and long term. The migration problem is a real ethical challenge for Europe.

4.1. The current “success” of the fight against terrorism and its consequences

46. Like any revolution, the Libyan revolution was a composite one, with participation by former jihadist fighters, such as members of the Libyan Islamic Fighting Group, which had fought against the Gaddafi regime in the 1990s and is included on the Consolidated United Nations Security Council Sanctions List.[31]

47. From 2012 onwards, the jihadist component has grown in strength, centring around the Ansar Al-Sharia group, affiliated to AQIM. This organisation was involved in the attack on the American diplomatic mission in Benghazi on 11 September 2012, during which the US Ambassador was killed. The jihadist component then increased significantly, in particular in Sirte and Derna. Meanwhile, a group called the “Muhammad Jamal Network”, which had training camps in both Libya and Egypt, and which was close to AQIM and Al Qaeda in the Arabian Peninsula (AQAP), was included on the United Nations List in 2013. In 2015, taking advantage of alliances with members of Ansar Al-Sharia, Daesh seized Sirte and sought to take control of the towns and cities in the oil crescent.

48. The fight against terrorist groups has focused on three fronts. First, General Haftar launched “Operation Dignity” against a coalition of Islamists and jihadists in Benghazi, which he finally succeeded in taking in July 2017. Second, the training camps close to the Tunisian border were neutralised. Third, the Misrata militias, with air support from the United States, defeated Daesh in Sirte. With regard to the Libyan coast, the last city of any importance sheltering terrorist groups is Derna, in Cyrenaica, which has been besieged by the LNA for almost a year.

49. The threat of Libya becoming a terrorist stronghold, as had happened in Iraq and Syria, would therefore appear to have been averted. Nonetheless, two challenges remain. The number of Daesh fighters in Libya had been estimated at between 2 000 and 7 000.[32] According to the United Nations, their defeat has led to a relocation to other countries, but also within Libya itself. The question is therefore what can be done to prevent any resurgence of these fighters and to contain a diffuse threat which could manifest itself in the setting up of dormant cells. The second challenge concerns southern Libya, where other terrorist groups, such as Al-

---

28. https://www.express.co.uk/news/world/837368/Special-forces-britain-islamic-state-libya; www.lemonde.fr/afrique/video/2016/08/02/libye-pourquoi-les-etats-unis-bombardent-syrte_4977621_3212.html; www.lopinion.fr/blog/secret-defense/jean-yves-drian-reconnait-mort-six-agents-renseignement-en-2016-118690; www.opex360.com/2016/05/17/le-pentagone-confirme-la-presence-de-forces-speciales-americaines-en-libye/.
29. *The New York Times*, David K. Kirkpatrick and Eric Schmitt, Arab Nations Strike in Libya, Surprising U.S, 25 August 2014.
30. Algeria and Egypt have joined this Tunisian Initiative, as they both face the same security problems posed by Libya.
31. https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list.
32. Report of the United Nations Secretary-General to the Security Council, 18 July 2016, S/2016/627.

Mourabitoun and Ansar Eddine, have been active for quite some time and have forged links with local armed groups. It is precisely in the south of the country that the defeat of these terrorist groups which are destabilising the whole region will be played out.

50. The countries in the region, and in particular Algeria and Tunisia, will have to deal with the collateral effects of this success against the terrorists in Libya. This will mean preventing them from infiltrating, and taking action vis-à-vis the returning fighters.

51. Another concern is the porosity, in both ideological and military terms, between the Islamist and jihadist groups in Libya. For example, in Benghazi, Islamist and jihadists fought in turn against each other and then joined forces against the LNA. The point is, if we do not negotiate with jihadists, will we negotiate with the Islamists in order to integrate them into the political arena and promote a future national reconciliation in Libya? The example of Abdelhakim Belhaj is quite telling: Mr Belhaj is a former member of the Libyan Islamic Fighting Group who probably had spent time in Iraq and had been close to Al-Qaeda; he took part in the revolution, and then became the military commander in Tripoli, before being democratically elected to the General National Congress in 2012.[33]

52. Lastly, although terrorist groups on the Libyan coast have been defeated or are about to be, there is a new player on the scene focusing the concerns of Europeans: the Madkhalists – a "quietist" Salafist movement taking its name from the doctrine of its Saudi founder Rabi' Al-Madkhali, which promotes an ultra-conservative version of Islam. In Libya, the Madkhalists took military action alongside both General Haftar and the Government of National Accord, and took part in the fight against jihadist and Islamist groups. They appear to have gained sufficient influence to have, for example, persuaded one of the military governors in Cyrenaica to issue a decree in February 2017 forbidding women under 60 years of age from travelling alone without being accompanied by their husband or male guardian.[34] Furthermore, in November 2017, an armed group holding the same religious beliefs and theoretically attached to the Government of National Accord, the RADA Special Deterrence Forces, shut down the Comic-con event in Tripoli and arrested 20 participants, on the ground that they had committed acts of indecency and against public morals.[35]

53. I raised the question of the Madkhalists with several of the people I spoke to and it would appear that some Europeans had expressed their concern to General Haftar. Nonetheless, here again, these Salafists today represent a significant military force, despite the fact that their doctrine is far from one that is shared by the Libyans. We are quite right to wonder to what extent they will be part of the Libya of tomorrow.

4.2. Libyan migrants and Europe

54. At the time of the Jamahiriya, the question of migrants wishing to make their way to Europe was often used by Muammar Gaddafi as a means of pressure on member States of the European Union, particularly Italy. This did not stop him, however, from signing reintroduction agreements. At the same time, by taking in more than two million foreign workers, the vast majority of whom were African, Libya acted not only as Europe's border guard, but also as a point of attachment.

55. The collapse of the regime followed by the civil war deprived Europeans of this two-fold protection. The result has been catastrophic in humanitarian terms and the current situation is extremely complex from an ethical point of view.

56. In 2015, the International Organisation for Migration (IOM) estimated that there were between 700 000 and one million migrants in Libya,[36] and this estimate would appear still to be valid today. In June 2017, it had identified 350 000 of these migrants.[37] Of these, the United Nations High Commissioner for Refugees (UNHCR) recorded 43 000 refugees or asylum seekers in November 2017,[38] half of whom are Syrians.

33. *Libération*, Jean-Pierre Perrin, Abdelhakim Belhaj, le retour d'Al-Qaeda, 26 July 2011. Radio France Internationale, Houda Ibrahim, Le Libyen Abdelhakim Belhaj: jihadiste, "terroriste" et milliardaire, 11 June 2017.
34. Radio France Internationale, 24 February 2017, Libye: les liaisons dangereuses du général Haftar avec les salafistes.
35. Reuters, Libyan Salafist-led force breaks up comic festival for "indecency", 4 November 2017.
36. IOM, Libya in brief, 2015.
37. IOM Libya Monthly Update, June 2017.
38. UNHCR, Flash Update, 27 October-2 November 2017.

57. As a transit country, Libya is, far ahead of Egypt, the main country of departure on the central Mediterranean route through Italy.[39] Between 2014 and 2016, Italy has each year recorded 140 000 to 170 000 arrivals from Libya. In 2016, the main nationalities of origin of those who disembarked there were: Nigerian (21%), Eritrean (11%), Guinean (7%), Ivorian (7%), Gambian (7%), Senegalese (6%), Malian (6%) and Sudanese (5%).[40]

58. As can be seen, this list includes States whose nationals can have legitimate fears as to their safety, but also others where there are functioning democratic institutions.

59. Faced with the scale of the phenomenon, the European Union has responded.

60. Following the Italian operation Mare Nostrum (2013), it launched air and sea operations Triton (2014) and Sophia (2015). The first, led by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), focused on border protection. The second was set up in order to "identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers".[41] Triton and Sophia were also used to carry out sea rescues. At the same time, the European Union increased its support for the Libyan Coast Guard, by providing extra training in partnership with the Spanish *Guardia Civil* and the Italian authorities.[42] Lastly, via its Trust Fund, it has provided significant financial support for the UNHCR and IOM to ensure the protection of migrants and assist with voluntary returns.

61. In so doing, the European Union has applied in advance the principles set out in its "Malta Declaration" adopted by the European Council on 3 February 2017, the aim of which is to provide the European Union with a comprehensive migration policy in order to "ensure effective control of [its] external border and stem illegal flows into the EU".

62. This policy has achieved undeniable results. The number of arrivals in Italy from Libya between 1 January and 1 November fell from 170 000 in 2016 to 115 000 in 2017, a drop of 32%. As was the case with migrants taking the East Mediterranean route, i.e. crossing Turkey, the European Union has succeeded in reducing flows. But at what cost?

63. The positive aspects of EU action are all too often overlooked and I would like to highlight them in a debate which cannot and must not be viewed uniquely in terms of black and white. The Triton and Sophia operations have rescued 200 000 migrants at sea since 2014. This figure should be compared with the – underestimated and already too high – figure of 4 000 deaths that occurred on the central Mediterranean route recorded by the IOM in 2016. Moreover, it is clear that without European funding, there would be much less assistance provided by the IOM and the UNHCR to the migrants in Libya. Without the appropriate facilities, who other than the IOM and the UNHCR would provide the basic assistance to the disembarked migrants, i.e. those brought back to Libya by the Libyan Coast Guard? Who else would carry out the Libyan prison administration's task of providing equipment in the detention centres? Who else would negotiate with the Libyan guards the release of refugees registered by the UNHCR, lawfully resident migrants and those in extremely vulnerable situations? During my visit to the UNHCR team operating in Libya, I was clearly told that in many cases, were it not for the intervention of the UNHCR, people held in the detention camps would die of hunger. Through its substantial funding – the Emergency Trust Fund for Africa has a budget of €200 million – the European Union is making a real contribution to the protection of migrants. This was, moreover, the position defended by the European Union representative, Mr Lorenzo Kluzer,[43] during a hearing by the committee, when he argued that the situation of migrants would certainly not be improving if the European Union were not subsidising the UNHCR or promoting the voluntary return policy. In this way he responded to the documented accusation against the EU member States in a report by Amnesty International published in December 2017, entitled "Libya's Dark Web of Collusion".[44]

64. Nonetheless, the European Union's outsourcing of the management of the flow of migrants and refugees raises a real problem of conscience. A migrant or refugee sent back to Turkey is not by any means faced with the same humanitarian situation as one sent back to Libya.

---

39. European Commission and High Representative of the Union for Foreign Affairs and Security Policy, Joint communication to the European Parliament, the European Council and the Council, 25 January 2017, p. 3.
40. Ibid., p. 4.
41. Ibid., p. 5.
42. *Times of Malta*, 5 December 2017: AFM soldiers train Libyan coast guard officers.
European External Action Service (EEAS), 18 September 2017, Operation Sophia: new training modules for the Libyan Coastguard and Navy arranged in Italy.
43. Senior Policy Advisor for the Middle East and North Africa, EEAS, European Union. Hearing of 14 December 2017.
44. https://reliefweb.int/report/libya/libya-s-dark-web-collusion-abuses-against-europe-bound-refugees-and-migrants.

65. The first scandalous situation is that of the "official" detention centres, of which there are 30, in theory run by the Department for Combating Illegal Migration, subordinate to the Interior Ministry of the Government of National Accord. In December 2016, a report by UNSMIL and the United Nations Commissioner for Human Rights, entitled "Detained and dehumanised" listed the abuses suffered by the migrants in these centres: arbitrary detention, inhuman detention conditions, torture, forced labour, frequent sexual violence committed against women, etc. In late 2016, there were 7 000 people held in these detention centres. The strengthening of "co-operation" with the European Union had led to an increase in the numbers in these centres, reaching almost 20 000 in November 2017. Not only is that just a drop in the ocean compared with the estimated number of migrants, but in addition, as a member of the UNHCR told me very clearly, if the conditions in these detention centres in 2016 with 7 000 detainees were very bad, the situation only worsened with their numbers tripling in just one year. The UN High Commissioner for Human Rights also made this point in his statement of 14 November 2017, entitled "Suffering of migrants in Libya: outrage to conscience of humanity":

> *"The detention system for migrants in Libya is broken beyond repair … The international community cannot continue to turn a blind eye to the unimaginable horrors endured by migrants in Libya, and pretend that the situation can be remedied only by improving conditions in detention."*[45]

66. The second scandalous situation is that of the enslavement of migrants who have fallen into the hands of traffickers. This was widely known but caused an international outcry following the broadcast in November 2017 by CNN of a documentary showing migrants being auctioned as slaves in the outskirts of Tripoli.[46] This documentary showed one of the aspects of the lives of migrants and refugees in Libya. As summed up perfectly by the opinion of the Committee on Legal Affairs and Human Rights on "Human rights implications of the European response to transit migration across the Mediterranean", migrants and refugees suffer "killings, torture and physical and sexual abuse; unlawful detention by smugglers and militias, and indefinite, arbitrary detention by the authorities".[47]

67. I cannot but be concerned about the turn taken by sea rescue operations, whether or not they take place in Libyan territorial waters or international waters: the closure of Libyan territorial waters to non-governmental organisations (NGOs), despite the fact that the Italian navy is allowed to enter, and the tightening up of the code of conduct imposed on NGOs by the latter and which prompted *Médecins sans Frontières*, an NGO hardly likely to be conducting an ideological crusade against States, to refuse to comply, do not, in my view, augur well. The Council of Europe Commissioner for Human Rights questioned the Italian authorities on this issue, to which they replied.[48] Lastly, in its Resolution 2174 (2017) on human rights implications of the European response to transit migration across the Mediterranean, our Assembly, in a particularly judicious way, called on the European Union to make its co-operation with the Libyan Coast Guard conditional on the possibility of verifying that the latter operated "with full respect for the fundamental rights of refugees and migrants, including by not exposing them to situations in which they are at risk of serious ill-treatment".

68. As stated by the Commissioner for Human Rights in his 3rd quarterly activity report 2017: "All Council of Europe member States are under the legal obligation to prevent violations of Article 3 of the European Convention on Human Rights by not returning persons to countries where they risk torture and inhuman or degrading treatment or punishment." This concurs with the position of the UNHCR,[49] the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture from the UN group of experts,[50] namely that Libya is not a place to which migrants should be sent back.

69. Alternative solutions would appear to be taking shape. For example, the French Office for the Protection of Refugees and Stateless Persons has, from Niger, examined 25 applications for asylum from migrants – men, women and children – in extremely vulnerable situations, who had been exfiltrated from Libya by the UNHCR. Could this be the prelude to the creation of hot spots outside the hell of Libya?

70. Furthermore, the broadcasting of CNN's documentary has also given rise to a number of reactions, particularly from African countries. For example, the African Union–European Union Summit held in Abidjan on 29 and 30 November 2017 resulted in three measures to combat slavery in Libya: the establishment of a task force combining police and intelligence services to dismantle the networks and their funding – a force which will not have the right to operate on Libyan territory; "emergency evacuation operations" targeting

45. UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity, 14 November 2017.
46. http://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html.
47. Doc. 14359, paragraph 7.
48. Letter of 28 September 2017 to the Italian Minister of the Interior and reply of 12 October 2017.
49. UNHCR Position on Returns to Libya, Update I, October 2015.
50. OHCHR, EU "trying to move border to Libya" using policy that breaches rights – UN experts, 17 August 2017.

migrants mostly from West Africa held in a camp near Tripoli; and, lastly, the appointment of an African Union committee of enquiry on this matter.[51] In addition, the IOM Director has announced that the Organisation is in a position to evacuate the 30 detention centres of the Government of National Accord. For the time being, how this is going to take place has not been specified, although the IOM did announce on 11 December 2017 that it intended to evacuate 700 to 1 300 "extremely vulnerable" people and send them to Niger by the end of January 2018.

71. Lastly, bearing in mind that most migrants travelling to Libya enter via Niger, the European Union is now focusing its efforts on the Niger-Libya border, requesting that the authorities in Niamey step up their activities to combat smuggling networks and involving tribes in these efforts on the Libyan side. For example, the peace agreement signed in Rome in March 2017 by the Toubou, Tuareg and Awlad Suleiman tribes, which are present in Fezzan, makes provision for the control of 5 000 kilometres of the southern Libyan border. Everything is liable to depend on the benefits that these tribes are supposed to be receiving in exchange, because they currently take part in the various forms of trafficking, including human trafficking.

72. In this way, the southern Libyan border has become a new European border. The question, of course, is how effective a strengthening of the controls will be and if the migratory flows will shift to other routes.

5. A time for peace?

73. All those I spoke to in Tunis and in Paris, whether official representatives, journalists or experts, believe that in the last few months there has been a window of opportunity to relaunch the peace process. This was also the impression gained by the new Special Representative of the United Nations Secretary-General, Mr Ghassan Salamé, appointed in July 2017. He very quickly set to work and is already seeing results.

5.1. A good time to relaunch the peace process

74. Quite apart from the weariness of the vast majority of the population, there are a number of factors today which work in favour of relaunching the peace process.

75. The first is that the majority of players, both national and international, have realised that there could be no military solution in Libya. This realisation is all the more remarkable given that the LNA has considerably strengthened its position over the last two years. It was victorious in Benghazi, took control of the oil crescent, from Sidra as far as Ajdabiya, enabled a coalition led by a Madkhalist militia to take Sabratha, in Tripolitania, and, according to the UN Secretary-General, "significantly expanded its area of control in southern Libya".[52] However, all those with whom I spoke told me that General Haftar had now reached his full military potential, that his position was not the strongest and that he depended to a large extent on the support of Egypt and the United Arab Emirates. It is true that he is finding it difficult to maintain order in Benghazi and that the LNA was easily driven out of the oil crescent last March, before making a strong comeback. One of the people I spoke to claimed that the reason the LNA had first been put to flight in the oil crescent was the loss of support from certain tribes in Cyrenaica.

76. The second favourable factor would appear to be the change that has taken place among the various countries involved in Libya. Until recently each was acting according to its own script. However, since 2017 they would now appear to be able to speak as one and help foster more peaceful relations between the various Libyan groups and authorities. For example, Egypt appears to be organising meetings between the Misrata militias, a significant force in Tripolitania, and General Haftar. Qatar, Turkey and, to a lesser extent, the Emirates have apparently reduced their operations in Libya considerably. Last July, France managed to broker a joint declaration of support for the LPA by the Chair of the Presidential Council, Fayez Al-Sarraj, and General Haftar who met in Paris. Lastly, it is no coincidence that the representatives of the Toubou, Tuareg and Awlad Suleiman tribes who signed a peace agreement in March 2017 which was meant to put an end to the fighting in Fezzan did so in Rome under the auspices of the Italian Government.

77. The third factor is that UNSMIL, the experts I met and the various countries having an interest in solving the crisis in Libya have all come to two closely-related conclusions: any peace agreement must be inclusive, whereas the LPA was not inclusive enough. And secondly, any peace project is realistic only to the extent that the country's abundant resources are fairly shared out and are also of direct benefit to the local players.

51. *Jeune Afrique* with AFP, 1 December 2017, Les trois décisions du sommet UA-UE contre l'esclavage en Libye.
52. S/2017/726, paragraph 14.

78. The time is therefore favourable for robust action by the United Nations, which is what Mr Salamé is in the process of doing.

5.2. The United Nations action plan, initial achievements and three questions

79. Presented on 20 September 2017 by Mr Salamé, this Plan reasserts that the LPA remains the only framework to end the Libyan crisis, but it needs to be amended. The first stage in the process was therefore to find broad agreement on amending the LPA. Once the amendments had been adopted, the second stage would be to organise a national conference, intended to "open the door to those ostracised, those self-marginalised, those players who have been reluctant to join the political process".[53] Taking part would be members of two LPA institutions, the House of Representatives and the High Council of State, and all those insufficiently represented or entirely non-represented in those two bodies. This Conference, which seeks to bring about national reconciliation, should make it possible to select, on a consensual basis, the members of the reconfigured executive. Following this conference, the House of Representatives and the Constitutional Drafting Assembly, which adopted a draft Constitution on 29 July 2017, would work in parallel. The House of Representatives would be expected to prioritise enacting legislation for a referendum on a draft Constitution, and for presidential and parliamentary elections. The Constitutional Drafting Assembly would, for its part, have the opportunity to take into consideration the observations expressed during the National Conference when producing its draft.

80. Following two meetings of the Joint Drafting Committee in Tunis, a consensus would appear to have been reached on some points, such as – according to those with whom I spoke – the size of the Presidential Council (to be reduced from nine to three members), but not on all, for example the authority over the Libyan army. Nonetheless, Mr Salamé[54] felt that these two meetings signalled the recognition of the House of Representatives which emerged from the 2014 election as the single body holding legislative power during the transition period. When addressing the Security Council in November 2017, he also underlined that: the elections would not be held until UNSMIL was certain that they would result in uncontested institutions; in order to implement the Action Plan, no legal vacuum was acceptable and the LPA, amended or not, would remain as the institutional framework until the conclusion of the transition period; and if the Libyans alone were unable to combat impunity for war crimes, it was time for the international community to consider mechanisms that could help them do so, such as so-called "hybrid" tribunals.

81. Three additional questions need to be considered.

82. The first concerns the attitude of General Haftar, who is preparing a political career, which might not go down so well in Tripolitania. And there is still some doubt about his position after 17 December 2017. Up to now, he has taken the view that on that date, the LPA would expire and that he would therefore no longer be bound by it. As stated above, Mr Salamé responded to this in advance on 16 November last when he said that any legal vacuum would be unacceptable during the implementation of the Action Plan and all those with whom I spoke clearly made the point that the countries which had good relations with General Haftar try to make him understand that it is in his interest to support the UNSMIL approach after 17 December 2017. It remains to be seen what he will do.

83. The second concerns the issue of impunity. There will be no reconciliation without forgiveness, but nor will there be reconciliation in impunity, as implied by Mr Salamé on 16 November 2017. While the initiative taken by the Presidential Council to create a national compensation fund for all victims of the conflict is to be welcomed, this is by no means the end of the matter. It is important to note that the International Criminal Court (ICC) has been given a mandate by the Security Council to investigate any crimes punishable under its Statute committed in Libya. The Prosecutor's Office has already issued several arrest warrants, either for acts committed during the first civil war – for example the case of Saif Al-Islam Gaddafi, the son of Muammar Gaddafi – or for acts committed subsequently, for example the case of Mahmoud Mustafa Busayf Al-Werfalli relating to the execution of prisoners by the LNA. In parallel, the French President Emmanuel Macron has called slavery in Libya a crime against humanity, which would justify the ICC taking on the case. Furthermore, in her opinion on the report on "Human rights implications of the European response to transit migration across the Mediterranean", even before anyone was aware of the CNN documentary, our colleague Ms Tineke Strik, indicated that the Prosecutor of the ICC was considering initiating an investigation into the situation.[55] It will be critical therefore to see to what extent international justice can help combat impunity without severely undermining the peace process.

---

53. Remarks of SRSG Salamé at the High-Level Event on Libya, 20 September 2017.
54. Remarks of SRSG Salamé to the United Nations Security Council, 16 November 2017.
55. Doc 14359, paragraph 7.

84. The third relates to the scope of the national conference and the means of selecting the people, tribes, factions and groups that will be invited. Clearly, the analysts are expecting former Gaddafi supporters to be reintegrated into political life, but the question is who else will be involved. It is probable that this will include the country's tribes, which are usually estimated to number some 140, of which only 30 are reported to have any significant influence, in Fezzan, Cyrenaica and some parts of Tripolitania. There is some question though about the Toubou, who are highly present in an area stretching from the Tibesti mountains to Fezzan, but many of whom are not Libyan nationals. Another question is what to do about the non-jihadist radical Muslim groups such as the Muslim Brotherhood, the Madkhalists or the followers of the Mufti of Tripoli. Their interpretation of Islam is far from the majority view in Libya today but they are a considerable force. Lastly, will there be a place for representatives of social movements such as Harak "La Li Tamdid" (the "No to the Extension" Movement), which arose on the occasion of a protest against the presence and exactions of militias in the Ghargour district of Tripoli, leading to their departure in 2013, before its members opposed the extension of the mandate of the General National Congress in 2014 then went underground when the Fajr Libya operation was launched?[56]

6. Rebuilding a State: the possible role of the Council of Europe

85. The experts I met, the representatives of the international organisations and the persons who made statements at the hearing of the committee all agree that the priority is to put in place minimal unified State and administrative structures. Building a State will be all the more difficult given that, although there is clearly a Libyan national feeling, there is no long-standing experience of a modern State in Libya; either because an embryonic State was limited (the Qaramanli Ottoman pashas, 1711-1835), because it was a foreign creation (the periods of direct Ottoman administration, 1835-1911, and Italian colonisation, 1911-1943), because it lasted too short a time (the Tripolitanian Republic, 1918-1922, the Cyrenaica Emirate, 1919-1922, the Kingdom of Libya, 1951-1969), or because the personalisation of power precluded State structures taking root (the Jamahiriya of Colonel Gaddafi, 1969-2011). As summed up by the report of the House of Commons "Libya was a country with no institutions to speak of. When you took Gaddafi away, you took everything away".[57] In practice, the only institutions which currently seem to be functioning properly are the National Oil Corporation and the Central Bank.

86. Building a State in a country with no State tradition and without being able to rely on a multinational armed force, as is generally the case with United Nations State-building missions, is a real challenge. All the more reason for Europe to provide its support in the areas where it has expertise. I believe that the Council of Europe could have a role to play in the institutional field and in those areas directly related to it, in conjunction with the European Union and UNSMIL.

87. Our actions should be guided by two principles: not to hinder the efforts of the United Nations in reviving the peace process; and offering our assistance only if the Libyan authorities explicitly request it, in accordance with the Istanbul principles of 2011, which govern the Council of Europe's policy towards neighbouring regions.

88. If such were to be the case, there are a number of possible fields of action. First of all, the constitutional question with the Venice Commission. It may be a sensitive topic, as any draft will be the result of compromise between former opponents. But the Tunisian example has shown that the drafters of the Constitution were able to choose from among the recommendations made. In this regard, the Libyan Constitutional Drafting Assembly has already made this type of choice, as in 2016 the Government of National Accord received a letter from the United Nations High Commissioner for Human Rights, written in the light of a first draft Constitution, calling for certain fundamental rights to be given greater consideration, and subsequent to this, the assembly adopted a second draft Constitution.

89. At the hearing by the committee, the President of the Venice Commission, Mr Gianni Buquicchio, said that the Venice Commission was at the disposal of the Libyan authorities if they wished to take advantage of its assistance.

90. On the Constitution, I agree with the personalities who spoke at that hearing. If the Constitutional Drafting Assembly finds it difficult to reach a consensus on the amendments to be made to the 197 articles of the draft Constitution which it adopted on 29 July 2017, or if the participants in the national conference fail to reach agreement on all these provisions or those that should be amended, one solution would be to single out

56. In La Chamelle d'Allah, op. cit., Rafaâ Tabib presents a detailed study of this civil movement, which was politically engaged but did not resort to armed combat to defend its positions.
57. House of Commons report, op. cit., paragraph 67.

Chapter 3 of the current draft Constitution on the system of government and put its adoption to a referendum. In this way Libya could equip itself with a minimum constitutional framework, prior to potential parliamentary and presidential elections whose possible political ramifications would thus be clarified.

91. Over and above the purely constitutional aspect, the Council of Europe could provide electoral support, whether with regard to the adoption of a legislative framework, the material and administrative management of the operations prior to the vote or election observation – a process in which the Assembly is well-versed. In this connection, I must say that I believe Mr Salamé has adopted the right position regarding the elections: they should not be held unless they result in uncontested institutions. Several experts are of the opinion that the 2012 and 2014 elections rather than facilitating the political transition actually hindered it, taking place in an environment in which the tradition of political debate and its organisation into parties were very weak and where in several regions the tribal vote had a decisive effect. The hearing by the Committee on Political Affairs and Democracy bore out this assessment: one of the reasons for Libya's failed political transition and its fragmentation was that all the various players felt that they had some legitimacy – the militias because they took part in the Revolution of 17 February, the members of the GNC and then the Chamber of Representatives because they had been elected, and General Haftar because he had led the fight against terrorism.

92. For the forthcoming elections to be uncontested the various parties will have to learn to regard their opponents as legitimate even if they do not win the elections. This is a task which may require a certain amount of time.

93. On a practical level, I believe that the Council of Europe should be ready to assist the Libyan High National Elections Commission, which in May 2017 asked UNSMIL to resume an integrated electoral assistance process, and to consider opening up certain training courses for the Tunisian authorities to Libyans. This could also be of benefit to Libyan journalists, since I find it hard to imagine an electoral process without media pluralism. Promoting a form of South-South co-operation between Tunisia and Libya seems to me to be particularly apt as there are strong links between the two countries, one is in a position to show the other how to bring about a successful transition and the Council of Europe's co-operation with Tunisia is particularly highly developed and productive. In addition to being relevant, this co-operation would save money from the Council of Europe.

7. Conclusions

94. The problems of migration and terrorism which Libya poses to Europe and its neighbours are merely symptoms of a failed and deeply fragmented country without unified functional institutions. The only way to solve them in the long term is to repair the State – or create a new one – with a minimum of control over all its territory. This is a challenge for at least the next ten years to come, which concerns not just Europeans but also Libya's neighbours and the other countries which are involved, such as the United States.

95. The work to meet this challenge can start straightaway. This is precisely what is being done by UNSMIL, whose efforts should be lauded.

96. The European Union member States make a considerable contribution to this on a financial level but they are faced with an ethical dilemma, in which they have come down in favour of protecting their borders. The Libyan question will perhaps enable them to prepare the ground for a new migration policy, which while reiterating their sovereignty, will take account of the most vulnerable people, enable asylum applications to be examined in a safe environment, not in a country where asylum seekers risk their lives, and endeavour not simply to relocate migration routes but to tackle the root causes which set young men, families, children and single women on the path to exile.

Appendix – Map of Libya

