Libya among Negotiations, Escalation and Chaos

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For Libya, 2016 was a year of moderate hope with the formation of the Government of National Accord and defeat of Isis. However, the unaddressed problems seem to have come back to haunt Libya in 2017 leading to fears of military escalation and political deadlock.

From Europe's point of view, the situation could still look better today than in the autumn of 2014 when former Spanish diplomat Bernardino Leon started UN negotiations between the different Libyan factions. These eventually led to the signing of the Libyan Political Agreement (LPA) in Skhirat in December 2015. Today, the international community can deal with a recognized Libyan government, the UN-backed Presidency Council headed by Faiez Serraj, which sits in Tripoli and is trying to take control of government agencies. Europe has ostensibly found a partner in the fight against the Islamic State, which, by the end of 2016 had lost all its territory in Libya. Similarly, the birth of the Presidency Council has given the EU a legitimate counterpart to deal with migration.

But nothing is what it seems, and one only needs to scratch the surface a little to see that things are not headed in the right direction. The coalition that backed the Skhirat agreement subsequently broke up and the Libyan Political Agreement has now lost support from the most significant constituencies in eastern Libya, and its institutions are increasingly weak in the rest of country. The Presidency Council is undermined by boycotts and personal distrust and it would be fair to say that only a handful of its nine original members are still at work in Tripoli. The Government of National Accord (GNA), the new executive branch established by the Skhirat agreement, never received parliamentary approval and its domestic legal legitimacy is continuously questioned in courts.

Even victory against Isis was just tangential to an outcome of the political process and more the result of efforts conducted by the armed groups of the city of Misrata, with help from US airstrikes and support from intelligence and special operation forces from the UK and Italy. While welcome news, the end of Isis' "emirate" in Libya has eliminated a buffer between the two largest armed factions: the Misrata-based militias, which mostly back the PC, and the Libyan National Army (LNA) of the UN-backed government's main rival, Field Marshall Khalifa Haftar. This increases the dangers of escalation in the centre and south of the country with likely repercussions in Tripoli.

Most importantly, the UN-backed government has lost its battle for public opinion. Undermined by the lack of support from the eastern-based House of Representatives, Serraj did not manage to deliver any economic stability and finally broke relations with all relevant economic institutions. Serraj failed to effectively address some key issues which should have been high on his agenda from the beginning, such as the liquidity crisis and the long power cuts, giving the population the sensation that he is not really in charge. This feeling is compounded by his almost complete lack of engagement with the population: Serraj has visited almost every foreign capital with an interest in Libya but has travelled very little domestically.

To understand how we got here and where things may head in the future, we need to look at the roots of the conflict and the situation of Libyan institutions.

How We Got Here

The factions that fought against Gaddafi had already started to divide during the 2011 war. The rift ran

deep between those who were supported by the UAE and advocated some continuity of government with the old regime and those who were supported by Qatar and influenced by Islamist trends, who instead wanted a complete rupture.

A watershed in this sense was the Political Isolation Law approved in May 2013, which banned from public office anyone even loosely connected with the old regime, such as ambassadors who had served in the 1970s. This law was approved by Parliament under heavy pressure from hardline militias and deepened the division that had emerged in 2011. The slippery slope became steeper with the coup in Egypt in the summer of 2013. Libyan Islamists, for fear of ending up like their Egyptian counterparts, retrenched within the ever more delegitimized Parliament, the General National Congress, while anti-Islamists gradually coalesced around general Haftar, whose plan was to eliminate by force anything that smelled of Muslim Brotherhood. Haftar attempted a coup in Tripoli on 14 February 2014 and, after its dismal failure, decided to move east where he found solid tribal support and sympathies from all those who had suffered abuse from post-Gaddafi militias, particularly in Benghazi. From this city, in May 2014 he started Operation Dignity, a military operation that, in response, led to the creation of the Benghazi Shura Council, an alliance between all the Islamist and non-Islamist groups opposed to the general.

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Amid growing tensions, parliamentary elections were held in June for the new House of Representatives. After the failure of an 11th hour UN mediation, the polls became the trigger for the start of Libya Dawn, a military operation that aimed to drive out of Tripoli all the forces loyal to Dignity. This goal was achieved during the summer when both the government of Abdullah al-Thinni and most Western embassies left the capital. Thinni established himself in the eastern city of Bayda while the House of Representative met nearby in Tobruk, albeit with the boycott of several dozen of its members. At the end of the summer, the forces loyal to Libya Dawn formed a National Salvation Government in Tripoli, effectively in opposition to Thinni's internationally recognized government, which by that time sat hundreds of kilometres away from government agencies. Since that summer, Libya has not had a single government in charge, but rather executives with no actual control over the government structure.

In October 2014, the newly appointed UN envoy Bernardino Leon started a mediation first to end the boycott of the House of Representatives and then to achieve a political agreement between the rival governments. Leon's negotiations provoked a split within the Dawn camp, between the moderates from the city of Misrata and the hardliners who controlled part of the resurrected parliament that had been elected in 2012, the General National Congress (GNC). To date, the remnants of the GNC faction are still acting as Libya's third government, alongside the UN-backed government of Abdullah al-Thinni.

Leon's peace process was an ingenious system of parallel tracks: political dialogue between members of the two rival parliaments; a political parties' track managed by Algeria; a tribal track managed by Egypt; a municipal track hosted by the EU; and a security track, which never took shape and which should have involved the leaders of the major armed groups.

In the end, under pressure from major Western and regional capitals to deliver a deal quickly, Leon and the UN prioritized an agreement between members of the two parliaments. The Libyan Political Agreement was signed in Skhirat by individual MPs because the leaders of the two parliaments, Nuri Abusahmain for the GNC and Aguila Saleh for the House of Representatives, would not allow the two assemblies to vote on the agreement. This procedure gave the LPA an extremely fragile base of political legitimacy. The new UN envoy Martin Kobler tried hard to organize a "Libyan Loya Jirga" with major tribal leaders in support of national reconciliation but came up against the doubts of his own UN structure and a lack of enthusiasm from his international partners.

Libya's Current Institutional System

The LPA created a complex structure. At the top stood a collective presidency of nine members, the Presidency Council (PC). The head of the PC is Faiez Serraj, a Tripoli politician who was a member

of the Tobruk Parliament and was picked precisely because of his lack of a clear profile. The PC also included two representatives of Haftar's side who boycotted the meetings almost from the beginning, two members closer to the Islamist and GNC camps, two representatives from southern Libya and two powerful Deputy Prime Ministers who represented the city of Misrata and the oil kingpin Ibrahim Jadhran. It took the PC four months to establish itself in Tripoli, where it could count on a loose coalition of militias negotiated by the UN security assistant, the Italian general Paolo Serra. While Serra has been working since the outset on the formation of a Presidential Guard independent from militias and responding directly to the Prime Minister, this is a process that will take many years to take shape, if indeed it ever does. The PC lost members piece by piece until the spring of 2017 when Serraj ended up working mostly with his Misratan Deputy Ahmed Maiteeq and little else.

Below the PC, there should have been a Government of National Accord (GNA) but the last two letters of the acronym soon lost any meaning. The first list of ministers was rejected by Parliament in January 2016 and the second list was turned down in August of that year. After that, the assumption by the international community was that the government would carry on without parliamentary approval, pending a more inclusive agreement.

The former GNC was integrated into the system as the High Council of State, based in Tripoli, a consultative senate which was supposed to give a green light to major appointments and reforms of the LPA itself. But at the heart of the LPA system is the House of Representatives (HoR) based in Tobruk, which is the only legislature and was supposed to do two important things for the implementation of the agreement: first, approve a constitutional amendment that included the LPA in the domestic system; second, give a vote of confidence to the GNA. It failed to do either, mostly because the "agreement" of many of its members rested on a fundamental ambiguity: many MPs signed with reservations about article 8 of the final regulations of the LPA, which states that the military leadership will be reappointed by the PC, effectively resetting Haftar's leadership of the armed forces as voted by the HoR since the autumn of 2014.

This system essentially gave Haftar veto power as long as he could keep the Speaker of the House of Representatives Aguila Saleh on board, who either refused to put the agreement to a vote or did it only when he knew that MPs opposed to it (about 40% of the legislature's full plenum) were the majority of those attending a specific session.

The "Haftar Issue"

Ultimately, the Skhirat Agreement, because it was based mostly on individual MPs often devoid of any strong link with armed stakeholders, could not effectively address the key issue for most armed factions: the balance of power within the bizarre hybrid security sector created in post-Gaddafi Libya. This hybrid system included the remnants of the official army, which were radically divided between the eastern battalions loyal to Haftar and the mostly inactive but anti-Haftar components in the south and in the west of the country, and an archipelago of militias formally integrated into the government sector. Haftar's plan is to disarm militias mostly by force, striking tribal alliances where possible and using the air force whenever he can. Militias in western Libya have no intention of disarming and falling under Haftar's rule, which they consider a remnant of the old regime because of his role in Gaddafi's war in Chad in the 1980s, despite the fact that he then became an opponent of the dictator. Armed groups have quickly become unpopular in most of Libya because they have been a source of insecurity with their infighting, while receiving generous government salaries and holding elected institutions hostage.

Convinced that he has an historical role in bringing the militia rule to an end, Haftar would like to remain head of the armed forces, under the only oversight of the loyal Speaker of the House of Representatives. He can count on a wide array of international patrons, which includes Egypt and the UAE and, more recently, Russia, though Putin's support for the Libyan "Field Marshall" so far has not been the same as that for Assad. Domestically, Haftar can count on anti-Islamist public opinion and politicians along with some powerful tribal forces in the east of the country. His support base in the west of Libya is slimmer, and, though he enjoys some popular support there, he lacks the military resources to conquer all of Libya by force.

Since Skhirat, US, European and regional diplomacies have tried to come up with creative solutions for

the "Haftar issue": how to include Haftar and his supporters in the agreement while keeping the principle of civilian oversight over the security sector, which is a red line for many radical anti-Gaddafi factions from western Libya. These creative solutions have mostly focused on the combination of two elements: a military council in which Haftar would play a role but where he would not be the only man in charge; and a collective civilian oversight by the heads of different institutions. So far, Haftar's push-back has been that his priority remains fighting "terrorism," his definition of which also includes many of the armed groups that support Serraj, and not striking a power-sharing agreement with those who now control Tripoli. In this sense, he has resisted pressure even from his Egyptian patrons, who would like to portray themselves as the brokers of a new agreement.

An International Solution to the Current Stalemate?

By September 2016, it became clear that the Haftar camp would never play ball with the existing LPA, while Serraj's government was too weak in Tripoli to continue as it was. The UN envoy Martin Kobler agreed to reopen the agreement but to focus on a limited revision.

Ultimately, there is no agreed solution to the Haftar issue and all attempts to come up with creative solutions that the Field Marshall would approve of, have been met with his rejection. It is also true that, should any faction from western Libya accept an agreement giving Haftar a major role in the security sector, it would most likely encounter the armed opposition of the other groups for which the head of the LNA is an existential threat with his plan to uproot anyone he considers too "Islamist."

On the other hand, there is now a kind of shared consensus, particularly among politicians from different sides, on three elements of a potential deal. First, the reduction of the Presidency Council from nine to three members, one for each of the regions of Tripolitania, Cyrenaica and Fezzan; second, the separation between the position of the head of the Presidency Council (i.e. head of state) and that of Prime Minister; and third, the need to have parliamentary elections in 2018, possibly with the approval of the draft constitution agreed by the Constitutional Drafting Assembly, as the necessary political horizon. It is not impossible that Haftar's strategy evolves into supporting a presidential system in which he could run for the highest office just like his model Abdel Fattah el-Sisi. But it is unclear whether the same armed factions in western Libya who oppose his takeover by force would accept him as President should he win presidential elections.

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Ultimately, even though the contours of the solution are known, there is a lack of credible and recognized mediators. The UN mission in Libya (UNSMIL) is extremely weak and its credibility has been eroded by a combination of mistakes made by some of its representatives and a delegitimization campaign by certain Libyan factions, particularly in the east. The new UN Secretary General has been trying right from his first weeks in office to appoint a successor to Martin Kobler but his first choice, former Palestinian Prime Minister Salam Fayyad, was rejected in the 11th hour by the US. Even with a new envoy, it is unclear if Guterres is capable of shifting UNSMIL towards new tasks, more in line with Libya's reality of localized sub-state and non-state actors, where the traditional UN roadmap of negotiating a national ceasefire, then a political agreement and elections to be followed by the management of institution-building and disarmament needs deep changes.

Many regional and world powers have tried to fill the void left by the weakness of the UN. Egypt has masterminded its own roadmap based on an agreement between two delegations from the House of Representatives and the State Council. But Egyptian mediation has its limits not just because of the support that Cairo has given to Haftar's Operation Dignity from the start, but also because it is unlikely that the Egyptian regime, which has crushed Islamists at home, would agree to a political settlement that included them in a neighbouring country. Without

that, the conflict in Libya would be likely to continue even if there was a new political agreement.

Algeria and Tunisia have a different idea based on the inclusion of all factions, including the Islamists, but it is hard to see how the stakeholders in eastern Libya will accept an agreement brokered by them which would undermine Egypt's role.

Nor can Western powers play any significant role in the current situation. The US administration seems to be affected by the President's disinterest for Libya and the slow appointment of those administration officials that would normally manage any serious engagement with a file like Libya. Large European countries like the UK or France are engulfed with important national elections and there is a lack of focus on North Africa in general among other EU Member States. Italy has been the only exception with a strong domestic focus on Libya and the opening of the embassy in Tripoli, but it cannot manage the mediation alone.

The real news since the summer of 2016 has been the steady rise of Russia's involvement. Putin has been playing an ambivalent role. On the one hand, supporting Haftar, while on the other, warning that the conditions are not yet right to lift the arms embargo, Haftar's main request. Russian advisors or special forces have reportedly been supporting the Libyan Field Marshall, though, as of April 2017, there is no major Russian military engagement on his side. On the other hand, Russian diplomats have been constantly engaging with everyone with particular efforts in outreach to Tripoli and Misrata's factions. The official Russian propaganda portrays Russia's role as negotiating an agreement to fix the chaos that the West created in 2011, but it is unclear what the relationship between this diplomatic goal and the military support for Haftar is.

Without Agreement, Escalation or Chaos?

It is hard to see how any of the foreign actors alone can broker a deal in the absence of a strong UN framework and readiness from the Libyan side. On this last point, the only likely coalition in favour of a new settlement is one that relies on the politicians' will not to be sidelined by leaders of armed groups. In this sense, certain actors could play a key role: the Speakers of the two houses of parliament, Aguila Saleh for the House of Representatives and Abdul Rahman Swehli for the High Council of State; Prime Minister Serraj; leaders of both Islamist and anti-Islamist political parties; and local political leaders interested in having a national framework that would prop up local ceasefires. But again, it is hard to see which Libyan or foreign actor could bring them together.

At the UN, distrust between Russia and the three permanent Western members of the Security Council, fuelled by disagreements over Syria or other conflicts, could stop any significant improvement in the role of UNSMIL or any endorsement of partial renegotiations of the political agreement.

However, while the prospects for even a limited deal remain limited, the alternatives are highly unattractive. There is no single armed faction that can win the Libyan low-intensity conflict, but escalation is a danger at present, particularly in southern Libya and Tripoli. Military resources currently available to the different factions do not allow for a full-scale escalation, but any increase in fighting would have political repercussions that would increase the chaos, particularly in Tripoli. Offensives by Haftar's Libyan National Army, while unlikely to bring a military breakthrough, embolden the hardliners in Misrata thus making a political deal even less likely. These hardliners, in turn, support extremist groups both in Benghazi and in Tripoli, and this could lead to further fighting, particularly in the capital, ultimately making the strong presence of both a unified government and of international players increasingly unlikely.

Sadly, Libyans and Libya-watchers could look back at 2015 and 2016 as a missed opportunity to avoid the entrenchment of the de facto partition of the country between east and west and give the country not just peace, but also a government that would look after it. Neither the international context nor the domestic alignments seem set to allow for a similar opportunity any time soon.