

Chapter 8

From Protecting to Rebuilding: The EU's Role in Libya

Patryk Pawlak

Introduction

The democratic uprisings and political transition processes unfolding across the countries of North Africa and the Middle East raise many questions regarding regional peace and conflict. Many hope the recent flux will produce a precious window of opportunity for making the region more democratic and stable. But speculations abound over the trajectories of key actors in the conflict, including Egypt, Syria, Israel and Palestine. At the same time, amidst the financial crisis and a serious resource overstretch due to involvement in Afghanistan and Iraq, the United States and its European allies are much more cautious about their involvement in any potential future crises.

With the revolutions in the Arab world leading to major changes in the regional and domestic architecture, the primary interest of the European Union and United States will remain to ensure the stability of the region and creating a circle of friends. This of course is a very delicate issue, since such approaches led to the current situation and consequently resulted in limited credibility of European and American actors in the region. Consequently, they will be no longer judged on their political declarations but on their concrete actions.

In her speech at the opening of the EU Delegation in Tripoli, High Representative Catherine Ashton was very clear: “This is much more than a building; it is a symbol of our determination to stand with the people of Libya into the future. I say to the people of Libya: This is your country, this is your future but we are here to support and help in any way that we

can.”¹ And even though it was the NATO flag, and not that of the EU, that was waving over the troops supporting the Libyans in their struggle for freedom, many European countries provided support to the operation. Furthermore, now that Operation Unified Protector is over, the difficult job of reconstruction and transformation will need to take place. Libya, therefore, not only provides a good opportunity for the EU to prove its commitment to the region, but also to reinvigorate a dormant European Common Security and Defense policy and prove its own value to its permanently sceptical American ally.

Capitalizing on the EU's Involvement in the Middle East

European involvement in crisis management and transformations in the region has taken several forms. Although various initiatives like the Euro-Mediterranean Partnership and the Union for the Mediterranean have been put in place, their record remains unsatisfactory and in the current context works to the EU's disadvantage rather than providing additional leverage. What might prove to be more important and beneficial, however, is the positive perception of the EU in the region (as opposed to the image of the United States among the Arab countries), fueled by its experience with crisis management and the support with which the EU provided for the Palestinian Authority over the years.

1 Council of the European Union, Remarks by EU High Representative Catherine Ashton at the opening of the new EU Delegation in Tripoli, Brussels, November 12, 2011.

In late 2005 the EU established EUBAM Rafah, a border assistance mission at the Rafah Crossing Point between the Gaza Strip and Egypt. The EU established the European Union Co-ordinating Office for Palestinian Police Support (EUPOL COPPS), the EU Police Mission for the Palestinian Territories, in late 2005, focused on the Palestinian Civil Police and criminal justice. Some EU member states have been active in U.S.-led security sector work. After the Hamas victory in 2006 the Mission's work has been restricted to the West Bank only and focused primarily on training activities and improvement of police and prosecution infrastructure. European member state troop contributions constitute a majority of UNIFIL II contingents since the 2006 Israel-Lebanon War and of the Maritime Task Force securing the Lebanese coastline and preventing arms smuggling.

The EU is also the largest donor to the Palestinians. Since 2008, the EU funds PEGASE, which supports recurrent costs of the Palestinian Authority and development projects in the areas of governance, social development, economic and private sector, public infrastructure. In addition, the Palestinian territory is eligible for funding under a number of thematic programs, including the European Instrument for Democracy and Human Rights, Non-State Actors and Local Authorities in Development, Investing in People, Environment and Migration. According to EU data, so far the European Union has provided about €762 million through PEGASE alone. In 2011, the European Commission approved additional amount of €85 million for the occupied Palestinian territory, in addition to €100 million budgeted under the European Neighborhood and Partnership Instrument. Furthermore, the EU contributes regularly to UNRWA's budget, including to the General Fund, Social Safety Net program and since 2008 has contributed to the Organizational Development Plan. At the same time, the EU supports specific

projects and provides humanitarian and food aid for UNRWA's Emergency Appeals.

The EU's engagement in the Middle East has also provided some valuable lessons that the European External Action Service seems to be taking on board.² First, the U.S.-EU-Israel boycott of Hamas has failed and it is evident that engaging with democratically elected representatives of local populations is necessary. That is particularly evident given the results of elections in Tunisia, where 41% of the votes went to the moderate Islamic party al-Nahda; and in light of forthcoming parliamentary elections in Egypt, where according to the opinion polls conducted in November 2011 another Islamist party -- Freedom and Justice—may count on 35.7%.³ In addition, the presence of the EUPOL COPPS on the ground has reaffirmed once again a clear linkage between policing and justice—the fact reflected in setting up the rule of law section within the mission. The existence of a “distinctive European approach,”⁴ which allowed the European Union to maximize its influence on changes in the Occupied Palestinian Territory, might prove equally valuable in North Africa.

2 For a more extensive discussion see Muriel Asseburg, “EU crisis management in the Arab-Israeli conflict,” in E. Bulut Aymat, *European involvement in the Arab-Israeli conflict*, Chaillot Paper No. 124, December 2010 (Paris: EU Institute for Security Studies).

3 Al-Ahram Centre for Political and Strategic Studies and the Danish-Egyptian Dialogue Institute “Third National Voter Survey in Egypt,” November 3, 2011. Available at: www.dedi.org.eg.

4 E. Bulut Aymat, “The EU Police Mission for the Palestinian Territories,” in G. Grevi, D. Helly and D. Keohane (eds.), *European Security and Defence Policy. The first 10 years (1999-2009)* (Paris: EU Institute for Security Studies, 2009), pp. 287-298.

Challenges for the Security Sector in Libya: What Role for the EU?

NATO's military operation in Libya is over, but the process of transition has only begun, and many challenges still remain. In November 2011 Abdel-Jalil, the Chairman of the Transitional National Council, presented the priorities for the future of Libya: a) building a new democracy through free and fair elections; b) dealing with the issues of security and borders; c) support for the wounded and those left disabled; and d) unfreezing the assets blocked by the international community.⁵ Whereas attainment of these objectives is primarily in hands of the Libyan people, the European Union and its member states can provide valuable support on the way to their attainment.

Unfreezing assets has progressed rather quickly, with the transposition of the UN-SCR 2009 (2011) on the delisting of entities active in the oil and gas sector and on the release of Libyan frozen funds. Furthermore, the European Union has pledged to be "in the forefront of offering new assistance" and "provide the support in achieving these objectives to people who believe in them (...), whoever they are."⁶ In close cooperation with the UN and the World Bank the EU is already

involved in sectoral needs assessments in the fields of border management, civil society, women's rights and media. In addition the EU has expressed its willingness to provide further assistance across many areas, including democratization, rule of law, institution-building, police training or re-launching of the economy.⁷ However, one of the primary challenges in Libya will be building institutions that would allow Libya to benefit from the support that the European Union offers for the implementation of various projects, including on border management. The absence of structures and experience within the country that would be capable of understanding and administering EU financial procedures might create additional difficulties. Consequently, the EU has declared the willingness to establish a list of new priorities together with a new Libyan government but with particular attention to areas such as democratization and civil society, public administration capacity-building and social and economic development.⁸

The following sections focus on three areas where the EU's contribution to stability and security of the country can be of added value: migration control and border management; transitional justice; military and law enforcement.

Migration Control and Border Management

Cooperation on migration control and border management is the area where the EU has probably the greatest experience but which at the same time is most tainted by political

5 This new list represents a clear departure from the priorities of EC cooperation with Libya as established by the Strategy Paper and National Indicative Programme 2011-2013, which took into account preferences of the Libyan government as expressed in the Memorandum of Understanding signed on July 23, 2007. These included: a) increasing the quality of human capital, b) increasing the sustainability of economic and social development, c) addressing jointly the challenge of managing migration.

6 Council of the European Union, Remarks by EU High Representative Catherine Ashton at the opening of the new EU Delegation in Tripoli, Brussels, November 12, 2011.

7 Council of the European Union, Council conclusions on Libya, 3117th Foreign Affairs Council meeting, Luxembourg, October 10, 2011.

8 Council of the European Union, EU support to Libya, Memo/11/722, Brussels, 20 October 2011.

ambivalence and inconsistency. The control of migration has been on the agenda of cooperation between Libya and the European Union since the very beginning. The threat of uncontrolled migration coming from the country resulted in awkward and inconvenient alliances between European leaderships and Colonel Qaddafi. The language of the Strategy Paper and National Indicative Programme 2011-2013 is a very good representation of complexity between European leaderships and Libyan authorities: “Capitalising on past cooperation projects and on the mutual trust [emphasis added] established in dealing with this sensitive and complex issue, EC assistance should aim to support Libyan authorities in establishing an institutional framework for migration, improving border management in Libya (...).”⁹ Given this context, any EU action on migration or border management within the region is destined to be greeted with considerable suspicion. What therefore is needed in the first place is a credible European approach to migration based on partnership, not only with Libyan government as has been the case so far, but also with representatives of the emerging civil society and international non-governmental organizations on the ground. Such a comprehensive approach should incorporate other policy areas as well, including the promotion of freedom of expression or the protection of human rights, which were previously provided for in Democracy and Human Rights Instrument.

9 European Commission, Libya Strategy Paper and National Indicative Programme 2011-2013, European Neighbourhood and Partnership Instrument, 2010.

Transitional Justice and National Reconciliation

The focus on transitional justice¹⁰ and national reconciliation (e.g. truth commissions or national reconciliation committees) constitutes an important element of the holistic approach to crisis management. In the aftermath of Qaddafi’s death, Presidents Van Rompuy and Barroso called on the National Transitional Council to “pursue a broad based reconciliation process which reaches out to all Libyans and enables a democratic, peaceful and transparent transition in the country.”¹¹ High Representative Ashton stressed on the same occasion the important role of the leadership in uniting the country “to build a democratic future for (...) in full respect for human rights.” She added that “while the crimes of the past must be addressed, the leadership must also seek a path of national reconciliation”¹² and offered strong European support to those ideals.

In Libya, where human rights abuses and mass atrocities took place for decades and where historical and ethnic divisions exist but have

10 Broadly speaking, the objective of transitional justice is in general to achieve reconciliation between parties and guaranteeing the development of democratic society and peace in countries where the violations of human rights have occurred. For the UN definition, see: United Nations, Guidance Note of the Secretary General ‘United Nations approach to Transitional Justice’ (2010), p. 2.

11 European Council, Joint statement by President Herman Van Rompuy and President José Manuel Barroso on the death of Muammar Gaddafi, EUCO 104/11, Brussels, October 20, 2011.

12 Council of the European Union, Statement by High Representative Catherine Ashton on the fall of Sirte and reports of the death of Colonel Gaddafi, A 420/11, Brussels, October 20, 2011.

been pressed with force, there is a serious risk for revenge-driven politics. One of the most prominent division lines is probably the one between the ancient regions of Tripolitania in the north-west and Cyrenaica in the east.¹³ In order to anticipate and channel such potential divisions away from conflict, there is a clear need for trust-building measures that would help to rebuild the social fabric of Libyan society. This will imply changes in the National Transitional Council, the leadership of which includes largely representatives from Cyrenaica. Expanding its membership from 33 to 60 members—in particular from newly liberated regions—would help to make the government more representative and accountable. Also in this context, the support offered to local councils, which have superseded tribal ties, to provide for transparent and accountable government will be critical.¹⁴

The previous record of the European Union with transitional justice—including the effort under the UN aegis—may prove particularly useful.¹⁵ The European Union in designing the ESDP operations has conceptualized transitional justice as an element of the ‘exist strategy’¹⁶ incorporating elements like criminal

prosecutions, whether national, international or hybrid, truth commissions, reparations programmes and vetting programmes. For instance, the CSDP mission EUFOR Althea in Bosnia and Herzegovina played a substantial role in implementing the warrants of the International Criminal Court by identifying, disrupting and closing down networks supporting persons indicted for war crimes and bringing criminals to justice.¹⁷ In the case of Libya, complementary measures, such as truth commissions and reparations, will matter even more. The Instrument for Stability and the European Instrument for Human Rights have provided significant assistance for non-judicial measures, including for the establishment of truth and reconciliation commission in the Solomon Islands, Morocco’s Fairness and Reconciliation Commission, or awareness-raising and preparatory campaigns in countries like Zimbabwe, Peru or Haiti.¹⁸

This mission might be even more complicated given that several militias and tribes perceive themselves as ‘the guardians of the revolution’ and refuse to disarm.¹⁹ This implies that trust is low in newly emerging law enforcement bodies, which at the same time increases the risk for unilateral and self-established justice. In that context, any future EU involvement in Libya should take into account the ideas outlined in the EU concept for support to disarmament, demobilization and reintegration (DDR) which stipulates that “human rights of all, both victims and offenders,

13 Tripolitania and Cyrenaica have traditionally remained rival provinces, the fact which had its expression in Libya having de facto two capitals (Tripoli and Benghazi) until the Qaddafi regime used its apparatus to permanently establish Tripoli as the capital. See also S. Stewart, “Libya after Gadhafi: transitioning from rebellion to rule,” *Security Weekly*, Stratfor, 2011.

14 “The challenges of transition to democracy in Libya,” National Endowment for Democracy, 2011.

15 See M. Avello, *Transitional justice: a European perspective*, *Comment*, FRIDE, December 2007; L. Davis, *The European Union and transitional justice*, Initiative for Peace, International Center for Transitional Justice, June 2010.

16 Council of the European Union, *Transitional justice and ESDP*, 10674, Brussels, June 19, 2006.

17 European Union, 2008 Annual Report of the Council to the European Parliament on the main aspects and basic choices of CFSP, Brussels, 2009.

18 L. Davis, *op. cit.*

19 D. Kirkpatrick, “In Libya, fighting may outlast the revolution,” *The New York Times*, November 1, 2011.

should be ensured at all stages of the process at all times.”²⁰ These objectives will not be easy to implement given the popular nature of the Libyan revolution, but will be essential in establishing the EU’s credibility. Therefore, from the very beginning the EU should pay particular attention to the reports about human rights abuses coming from international and non-governmental organizations active on the ground. For instance, the report of the UN Human Rights Council Commission of Inquiry published in June 2011 established with regard to anti-Qaddafi forces that “some acts of torture and cruel treatment and some outrages upon personal dignity in particular humiliating and degrading treatment have been committed (...), in particular against persons in detention, migrant workers and those believed to be mercenaries.”²¹

Military and Law Enforcement

Rebuilding military and law enforcement in Libya will be an important element closely associated with the idea of creating a just and fair society. Contrary to Egypt and Libya, where military and police respectively are quite well developed and played a pivotal role in their respective countries, the Libyan

military and police were mostly built on the basis of tribal allegiances and foreign mercenaries which with very little education and the absence of organisational coherence contribute to its weakness. Addressing this challenge is important not only as a means to stability in the country but also in the context of rebuilding the economy and improving the quality of life.

According to the European Union, security sector reform contributes “to an accountable, effective and efficient security system, operating under civilian control consistent with democratic norms and principles of good governance, transparency and the rule of law, and acting according to international standards and respecting human rights, which can be force for peace and stability, fostering democracy and promoting local and regional stability.”²² A variety of the missions undertaken by the EU in the past and quite a wide range of means at its disposal (i.e. diplomatic, economic, political) make it fairly well placed to assist Libya. The experience accumulated during past and ongoing missions like EUJUST THEMIS in Georgia and EUJUST LEX in Iraq or EUPOL Afghanistan, in addition to missions in the Middle East mentioned earlier, could serve as a valuable catalogue of practices to be considered when designing a potential CSDP mission in Libya. One such lesson, for instance, is the realization that the rule of law and judicial components of transformation should go hand in hand with policing or other security efforts. But a real challenge will come with the need to embed among the security forces the mentality of law enforcement and military as serving the citizens.

20 According to the EU concept, DDR refers to “a set of interventions in a process of demilitarising official and unofficial armed groups by disarming and disbanding non-state groups and, possibly, downsizing armed forces.” See European Commission, The EU concept for support to disarmament, demobilisation and reintegration (DDR), Brussels, December 14, 2006.

21 United Nations, Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, UN Document A/HRC/17/44, June 1, 2011. See also Amnesty International, “The battle for Libya. Killings, disappearances and torture,” May 2011; Human Rights Watch, “Libya: Apparent execution of 53 Gaddafi supporters,” October 24, 2011.

22 Council of the European Union, EU concept for ESDP support to Security Sector Reform (SSR), 12566/4/05 REV4, Brussels, October 13, 2005.

Concluding Remarks

The European Union is well aware that its credibility as a global player ultimately will be judged by how it handles crises in its own neighborhood. The real dilemma facing the EU at the moment is how to consolidate the political capital it gained during the recent uprisings and convert it into concrete solutions for future governance. This does not mean that the EU should prepare a wish list of policies it wants to see adopted; quite the contrary. But while waiting for such a list to be drawn up by the new regimes themselves, the EU should seek to foster an environment that would encourage changes it considers desirable. This chapter has argued that there are many ways in which EU crisis management instruments could be employed in Libya. However, the EU needs to first organize its own backyard to avoid embarrassment similar to EUFOR Libya—the mission that never happened, even though the mandate had been adopted by the Council.²³

Transatlantic Cooperation in Libya: Distant but not Distinct

The transformations taking place in the region of the Middle East and North Africa will require European involvement, and the EU should be ready to provide all sorts of assistance if requested. This chapter has mentioned the case of security sector reform and transitional justice in Libya. But the scope for action is much broader. Given the dynamics of the Arab-Israeli conflict and different

initiatives undertaken by the Palestinian Authority at the UN and its agencies, the EU should be ready to engage in the event of a peace deal between Israelis and Palestinians, including, for instance, border assistance or monitoring or proper security sector reform within the Palestinian state.

While preparing for new missions, the EU cannot be afraid to distance itself from its major ally and strategic partner: the United States. With perceptions of the U.S. in the region becoming increasingly negative, it would be short-sighted of the EU to ignore this fact. In its policy choices, it should not be guided by its connections with the U.S. but rather by its own strategic interests in the region. A stronger Europe in the region should be more desirable to the U.S. than having Europe at its side but with similarly limited credibility and influence.

With numerous challenges on the ground, we will most likely to see further division of labor between the EU, U.S. and NATO. This would include, for instance, help with putting defense and security sector agencies under civilian and democratic control or organizing a modern defense or more general institution-building. At the same time, the EU Council conclusions on Libya, adopted on November 14, 2011, state that “in full respect of the principle of Libyan ownership and in cooperation with the UN, the EU is ready to combine all its instruments, including CSDP if appropriate, in order to provide further assistance to the new Libya across a range of sectors.”²⁴ While a U.S. mission in Libya might be difficult for local actors to accept, the U.S. working under the EU flag, as it is currently taking place in Kosovo might offer the right model

23 Council of the European Union (2011) Council Decision 2011/210/CFSP on a European Union military operation in support of humanitarian assistance operations in response to the crisis situation in Libya (EUFOR Libya), 1 April 2011.

24 Council of the European Union (2011) Council conclusions on Libya, 3124th Foreign Affairs Council meeting, Brussels, 14 November 2011.

for cooperation in light with the EU-U.S. Framework Agreement on U.S. participation in EU crisis management operations, concluded in May 2011.

Choosing the Right Moment

The EU also needs to address the ‘too soon, too late’ dilemma. The EU must be careful not to lend its helping hand too soon, especially directly after the start of a political transition. The EU needs to make sure that the ideals it claims to support (human rights, dignity, justice) and which fuel the Arab revolutions do not become a hostage to politics. Providing financial support and unfreezing assets for humanitarian and civilian needs are steps in the right direction. But the EU and the international community need to make sure that the support they provide is used for the benefit of the whole population, rather than for certain privileged groups. There is, then, a need for a straightforward monitoring mechanism that would strengthen positive dimensions and punish irregularities when supporting the various factions that emerge. The EU should also make clear that sticks, as well as carrots, will be used. It is crucial that the international community makes sure that those wanted by the International Criminal Court (ICC) are brought to justice, at least until the components of the Libyan security and justice sectors are capable of performing their duties. At the same time migrant-related offenses, targeting mostly black Africans, must not be tolerated.

Coalitions of the Willing: A Way Forward

Even though the case of Libya has shown that Europeans are ultimately willing to take care of the crises in their own, certain

shortcomings about their capabilities became evident. Europeans would have been in serious difficulties if the U.S. did not provide certain capabilities. Even though ‘leading from behind’ was the strategy that the U.S. Administration intended to implement, the U.S. played a decisive role in keeping the alliance together by providing political and logistical support. The lack of European unity is another well-worn theme, but Libya is also an indication that Europeans are still capable of acting despite their differences. As has been demonstrated on different occasions in the past—including in Afghanistan—coalitions of the willing should be embraced as one of several future possibilities, rather than as a cause for lamenting. But this also suggests that regional initiatives between European countries are to be expected—either within the permanent structured cooperation introduced in the Treaty of Lisbon; frameworks similar to the Franco-British agreement concluded in 2010; or the extension of Weimar Triangle defense cooperation to Italy and Spain in 2011.

This relates also to the involvement of countries and international actors other than Europeans or Americans. The intervention in Libya was an instructive experience with regard to the future of crisis management and potential role of the European Union. The adoption of UNSCRs 1970 and 1973 (2011), which provided the mandate for the NATO operation in Libya, has proven that multilateral actions with UN support were still possible, although not unconditionally. The involvement of several Arab countries and organizations like the African Union and the Arab League was pivotal to the success of this operation -- not only in terms of capabilities but most importantly in terms of the political capital that their support provided. Therefore, more regional approaches and new partnerships will need to be conceived with countries like Qatar, Saudi Arabia, Turkey, Egypt or organizations like the African Union and the Arab League.

The Libya Contact Group, established at the London Conference in March 2011, is a good example, since it brought together actors like the African Union, Arab League, the Cooperation Council for the Arab Gulf States and the Organization of the Islamic Conference.²⁵

The transformation in Libya is far from over, if it has started at all. And what if things go wrong? Operating under strict deadlines and considerable political pressure, the process of transformation in the coming months will be extremely fragile. While the best case scenario is what we are all hoping for, preparations for worst case scenarios should already be underway.

25 Statement from the conference Chair Foreign Secretary William Hague following the London Conference on Libya, March 29, 2011.