

TWO YEARS ON FROM THE CEASEFIRE AGREEMENT, LIBYA STILL MATTERS

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Executive Summary

Last month's marking of the two-year anniversary of the Libyan ceasefire agreement offers an opportunity to take stock of the North African country's trajectory. Libya's wily and opportunistic post-2011 ruling elite – a network of security, political and economic actors – continues to prioritize patronage and its own transitory deals above the future of the country. While the ceasefire has overall been respected and the country has not witnessed a repeat of the large-scale violence of 2019-2020, Libya has slid backwards into institutional division, misgovernance, limited bouts of violence, and human rights abuses against Libyans and migrants alike. With the international community's attention focused on Russia's invasion of Ukraine, Libya has dropped from the headlines and been deprioritized in many capitals. Despite the somewhat gloomy outlook, there are a number of viable entry points for the international community and U.S. President Joe Biden's administration to mitigate the worst domestic and regional knock-on effects of the Libyan crisis, address some of the conflict's persistent underlying drivers, and meet the aspirations of the Libyan people.

Two years ago, on October 23, 2020 at the United Nations (U.N.) headquarters in Geneva, ten senior Libyan military officers decided to formally bring an end to the country's third civil war (2019-2020) since the uprising against Muammar Qadhafi in 2011. When the Joint Military Commission (JMC), the so-called 5+5, put their signatures on the historic ceasefire agreement¹, which I also signed in my capacity as the United Nations mediator, there was much cause for optimism. After nine years of chaos, violence, unprecedented foreign interference, institutional division, societal atomization and infrastructure collapse, most Libyans looked forward to what could have been a genuine opportunity to turn the page.

At the time, we had hoped that the Libyan parties to the conflict and their associated political and business constituencies would at long last find the necessary common ground to elevate the defense of Libyan sovereignty above their own narrow interests and partisan solicitations of foreign interference. In the U.N., we used the Geneva agreement to pressure the Libyan political class, noting that surely if those who had taken up arms against each other could meet to forge a way forward for their country, so too could the politicians. Our pressure worked for a

while. There was some progress achieved through the agreement on a roadmap to take the country to elections,² and the forming of the first unified government to receive overwhelming parliamentary approval in seven years.³ But this hard-won progress began to stumble as Libya's ruling elite descended once more into bickering over their shallow claims to control the country's post-2011 institutions.

Since the cancellation of the presidential elections in December 2021, Libya has continued to drift back to political division, polarization, eye-watering levels of corruption, and outbreaks of violence. The country's plethora of hybrid armed groups – from east to west – continue to prey upon key national institutions while orchestrating violence without regard for the innocent civilians killed and maimed in the process.⁴

Blatant foreign interference has not abated, with the continued meddling of some of the same cast of foreign actors who have featured prominently in the conflicts of the last decade. Libyan National Army Commander Khalifa Haftar's 2019 attack on Tripoli – backed by a host of countries (Egypt, France, Russia, and the United Arab Emirates) and notably, former U.S. President Donald Trump's White House – brought in the Turks on the side of the then-UN recognized government. Turkish intervention was key to ending that war, but the Turks exacted their price through forcing a series of controversial security and maritime agreements. Recent economic agreements signed in the past few weeks with the current Tripoli government pave the way for Ankara to explore for oil and gas off the Libyan coast, once more escalating tensions in the eastern Mediterranean.⁵ Less is known about the new military agreement, signed just days ago, which has also caused irritation domestically and in international circles.⁶

How to break Libya's dystopic cycle of war followed by fragile peace followed by stalemate and then back to war has been the singular challenge since the first manifestations of serious division emerged in 2014, when Libya's second civil war erupted.

As experience has demonstrated, it will be difficult to count on Libya's post-2011 ruling class to produce a solution. This network of armed groups, business and political actors tend to shoot at each other during the day and collude by night, while continuing to accrue substantial rewards at the expense of their excluded compatriots, particularly in Libya's vast southern hinterland. This transactional ruling class, some of whose network can be traced back to the days of the former regime, uses Libya's state and sovereign institutions as cash cows in what could be described as what former U.N. Special Representative Ghassan Salamé aptly coined as a "redistributive kleptocracy," bringing into their circles on a regular basis just enough of their compatriots to sustain the system. It is a phenomenon that has led to a deepening of the gap between the ruling class and those who are left behind, a substantial portion of the society. Multidimensional poverty and income inequality have been on the rise for the last decade⁷ and the human rights of Libyans and many illegal migrants continue to be abused.⁸

The holding of national elections has rightly been demanded by the Libyan people and most of the international community; the last national elections (parliamentary) were held over eight years ago, in 2014. As I can attest, it is much easier to talk about elections in Libya than to make them a reality. This is in large measure due to the fact that Libya faces a democracy dilemma, a paradox that has impeded progress towards the national polls for which nearly 3 million Libyans (out of a total population of approximately 7 million) have already registered to vote. This enthusiasm is a clear manifestation of the Libyan people's desire to choose their own leadership.

Libya's democracy dilemma first manifests itself through the rational fear that some potential presidential candidates, if elected, will pursue a winner takes all, one-person, one-vote, one-time strategy, resulting in a return to the days of awful dictatorship. Muammar Qadhafi's ghost – past, present, and future – continues to haunt the country he brutally ruled for 42 years, as demonstrated by the surprise entry into last year's presidential race of the longtime ruler's heir apparent and son Saif Al-Islam

Qadhafi, for whom the International Criminal Court (ICC) has issued a warrant for the commission of crimes against humanity. The younger Qadhafi's candidacy, along with those of would-be strongman Haftar and current head of the Tripoli government, Libyan Interim Prime Minister Abdulhamid Dabaiba, stirred deep controversy. Haftar's attempted coup d'état in April 2019 caused considerable death and destruction and alienated a substantial portion of the population in western Libya – where the majority of Libyans reside. Dabaiba acted in bad faith by violating the pledge he took during the February 2021 Libyan Political Dialogue Forum – a pledge made live on-air and in writing – that he would not put himself forward as a candidate for the presidency. Not to be outdone, the eastern-based Libyan Parliament – the House of Representatives (HoR) – in September 2021 produced deeply flawed electoral legislation and refused to abide by the 2015 Libyan Political Agreement's requirement for consultation on such legislation with the Tripoli-based High Council of State (HCS). By the time I returned to Libya as the Special Advisor to the Secretary General in early December of last year, there was widespread consensus that the presidential elections constituted a threat to the country's civil peace.⁹

The second manifestation of Libya's democracy dilemma is the unwillingness of many members of the country's remaining two democratically-elected bodies, the HoR (elected in 2014), and the HCS (a consultative body comprising the remnants of the Parliament elected in 2012), to produce elections which would likely deprive them of their seats and access to lucrative salaries, benefits and the fruits of patronage. When I met with a high-ranking member of the Parliament in December 2021, he complained about my talk of elections, noting – without a hint of irony or shame – that the Lebanese Parliament had remained in place for twenty years without new elections (from 1972-92) throughout that country's long and horrific civil war. My HoR interlocutor saw no reason not to expect Libya's parliament to do the same (in other words, to remain in their seats until 2034!). In fact, the members of Libya's two defunct legislative chambers know full well that, given their deep unpopularity and the low regard in which they are held by most of the population, they are unlikely

to be reelected. I was only half joking in 2020 when I complained about the perfidy of Libya's political dinosaurs, warning that they needed to make themselves relevant.¹⁰

Despite this downbeat prognosis, there are some useful entry points for the U.N. and the international community to consider:

1. The 2020 Ceasefire Agreement must be respected and preserved. Libyans do not want a return to large-scale conflict; the JMC members understand this more than many of their compatriots but need constant encouragement to continue talking. More attention needs to be devoted to pressuring those countries that have dispatched mercenaries and military forces to start respecting Libyan sovereignty and the wish of the Libyan people that these forces depart the country as soon as possible. As discussed in a meeting convened by the Spanish government in May,¹¹ the JMC should continue its work with civilian bodies on the disarmament, demobilization and reintegration (DDR) of armed groups and security sector reform (SSR).
2. While elections are indeed difficult to produce in the Libyan context, the electoral process itself should be sustained and supported as part of a comprehensive peace process that includes DDR and SSR. An electoral roadmap is integral to supporting the Libyan people's legitimate demand for national elections, curbing the ruling elite's insatiable appetite for the interim executive, and deterring a resort to the use of force by those who would like to take matters into their own hands. An interim executive by its very temporary nature and indirect selection inherently lacks the needed legitimacy to win the trust and confidence of the population. Such legitimacy can only be achieved through the ballot box.
3. One key to solving the first element of Libya's democracy dilemma is the production of a constitutional framework to provide the guardrails for the national elections that the majority of Libyans desire. The current draft constitution, produced

in 2017, unusually provides for an extraordinarily strong executive which means that the eligibility requirements for presidential candidates must be carefully negotiated. The production of this vital constitutional basis most lately faltered owing to Haftar's insistence on language that would allow candidates to retain a second nationality (in his case American).¹² However, I believe that with concerted international pressure, the two chambers could be able to finish the work begun in Cairo in March 2022 to amend the disputed articles in the 2017 draft. If the chambers continue to obstruct, an alternative mechanism to produce the constitutional basis should be considered. To address the "winner takes all" dilemma, thought should be given to the election – at least for the first presidential elections cycle – of a three-person presidency council, with each member representing one of Libya's three historical regions.

4. Much progress was achieved in the Cairo constitutional talks around the issue of decentralization. There is no question that the overemphasis on a centralized model has driven conflict in Libya. Power and resource decisions must be devolved downwards from the center to the periphery by transforming the current thirteen electoral districts into provinces managed by elected local authorities, who would be directly accountable to the communities they represent. This is positive power-sharing, as opposed to the negative transitional elite bargains and power-sharing arrangements (which amounted to continual slicing of the executive cake) witnessed in past years. A decentralized model will also reduce the attractiveness of Tripoli – the home of all of Libya's major sovereign and executive institutions – as a target for attack. The original 2017 constitutional draft touched only lightly on decentralization, preferring to leave the matter to a national law which has never been properly implemented as successive executives have sought to consolidate power in the capital. While the constitutional committee that met earlier this year dithered on issues pertaining to the requirements for presidential candidates, its members should be commended for their substantial

additions to the constitutional draft's language on decentralization, including the designation of 13 provinces to be run by directly elected councils, the detailed separation of responsibilities between the center, the provinces, and the elected municipal councils and the establishment of a resource distribution mechanism. Codifying these arrangements in the constitution will go a long way towards addressing the grievances of constituencies who resent the concentration of power and patronage in Tripoli. It will also contain the threat to Libya's unity posed by those in eastern Libya calling for secession.

5. Sanctions, or the threat of sanctions, work in Libya: those Libyans who park their ill-gotten dollars abroad frequently like to visit their money. Countries should use sanctions to target those Libyans who engage in corruption and violate human rights. The Biden administration, the European Union, and a host of countries have a ready tool available in the Magnitsky legislation they have adopted to impose economic sanctions and deny entry to the perpetrators of human rights abuses and corruption. The U.S. used the Magnitsky sanctions in 2020 to blacklist the vicious Kaniyat militia which for years had terrorized the western Libyan town of Tarhouna.¹³
6. The transparent and accountable management of Libya's oil revenues has remained an elusive target given resistance by Libyan and some international actors alike to shed light on money flows. It is noteworthy that the Central Bank of Libya (CBL) has recently begun to publish a monthly revenue and expenditures statement. However, the bank must be pressured to live up to its promises to implement the findings of the UN-facilitated international audit,¹⁴ to do so in an entirely transparent manner, and to abide by Libya's banking law which requires the CBL's Board of Governors to meet on a regular basis.
7. The international Berlin process formally launched in January 2020¹⁵ should be sustained, despite the current divisions in the Security Council produced by the Russian invasion of Ukraine. The Berlin architecture remains a

solid framework for international engagement with Libyans through the four international working groups: military, political, economic, and human rights/international humanitarian law. It is important for Libyans to see that there is a minimum consensus among key regional and global players on the fate of their country. Smaller formats, such as the group of seven countries (Egypt, France, Germany, Italy, Turkey, the U.K., and the U.S.) that has met since the spring of this year should also be sustained and supported, given that these meetings bring together representatives of Cairo and Ankara, the two major regional protagonists who do not see eye-to-eye on the file.

8. While Libya has not witnessed the large popular mobilizations of neighboring Tunisia and Sudan, there have been some promising signs of a nascent national movement for change, despite a dispiriting country-wide clampdown on civil society. Civil society, human rights activists and political parties should be engaged and protected, as should the participation of women in the peace process. Youth engagement is key, given that more than half of the country's population is under the age of 30.¹⁶ Youth mobilization on issues of political and human rights, civil liberties and global warming provide valuable openings for concerned internationals. Libya's climate fragility is exacerbated by rising temperatures in the Mediterranean, the country's sole reliance on fossil fuels, and its damaged electrical and water infrastructure.¹⁷
9. Work on national reconciliation – tasked domestically to the Libyan Presidency Council and internationally to the African Union – should be given more tangible support and victims must be put at the center of the process. The country's Transitional Justice Law is in the process of being amended, while the work of the U.N. Fact-Finding Mission and the International Criminal Court to investigate abuses and potential war crimes continues. Accountability is the ultimate kryptonite for those who commit such offenses.

As for Washington, the Biden administration needs to prioritize the Libya file more fully, despite the terrible legacy of Benghazi and the long-held view that Libya is more of a European problem. In fact, Libya's continued downward spiral poses a direct threat to its immediate neighbors, the wider Sahel and to the security of southern Europe; all of this should be a sufficient wake-up call to policymakers that Libya matters. The file should not be subordinated to other policy priorities and relationships in the region. While it is tempting to tackle Libya primarily through the lens of counterterrorism or other bilateral priorities, that strategy has backfired through the association of the U.S. and European countries with hybrid armed group actors whose goal is the seizure of power for themselves and continued predation on the country's fragile national institutions. These groups certainly are not interested in the kind of state and institution building that Libya so evidently needs to move beyond the difficult decade since Qadhafi's downfall.

On the plus side, Washington has put its weight strongly behind United Nations' mediation efforts, including its warm welcome of new Special Representative Abdoulaye Bathily. Washington has also been a leader in supporting the elections project in Libya, particularly the very capable technocrats at the High National Elections Commission. Libya's inclusion in the Global Fragility Act offers an opportunity for the U.S. to provide support for Libya's municipalities, among other priorities.¹⁸ More broadly, the Biden administration should use its convening power to press for continued international engagement in support of the core principles of democracy, rule of law and civil society, particularly at a time when democratic values are under direct attack by authoritarian regimes in the region and abroad. Washington's leadership role on the economic file should also be sustained, given ongoing threats by various Libyan actors to shut down the country's oil production once more if their demands are not met. Keeping Libyan oil on the market is a strategic necessity, but in exchange, Libya's interim authorities need to be put in a financial chastity belt to ensure budget discipline and maximum transparency and accountability for how the oil proceeds are managed.

None of this is easy. An international strategy should seek to contain the outbreak of violence, while curbing the seemingly endless appetite for the interim executive. The establishment of a firm electoral roadmap, and the pursuit of measures to manage the use of oil revenues, may offer the best way to meet the aspirations of the Libyan people.

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