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Libya: Getting Serious about Negotiations

How a New Political Process Could Help Tackle Security Challenges

Wolfram Lacher

Libya's longstanding political deadlock reached breaking point with the fighting between rival militias in Tripoli in September 2018. Throughout the preceding two years of political stalemate, the UN-led approach to negotiations remained vested in defunct institutions that blocked any progress. As a result, there was no prospect for the formation of regular security forces under government control, let alone the unification of Libya's divided security institutions. Addressing these security challenges requires a new push for a transitional power-sharing agreement with a roadmap towards elections. Negotiations need to involve actors with influence on the ground, including representatives of armed groups. Such a push should also include talks over new security arrangements in Tripoli, as well as efforts at reunifying economic institutions.

Two recent crises have put severe pressure on the political stalemate that has prevailed in Libya since the establishment of the Government of National Accord (GNA) in early 2016.

In June 2018, forces loyal to Khalifa Haftar — the de facto ruler of eastern Libya who does not recognise the GNA — briefly lost control over two major oil export terminals to local opponents. After restoring his authority over the area, Haftar stopped the Tripoli-based National Oil Corporation (NOC) from resuming oil exports, implicitly demanding changes at the NOC and the Central Bank to allow him to access state funds. Haftar eventually caved in to heavy external pressure. The issues at the core of the dispute remain unresolved: who runs the Central Bank, and how it distributes its resources.

In late August, armed groups from Tarhuna, Misrata, and Zintan moved into Tripoli, clashing with the four local militias that had divided up much of the capital among themselves over the previous year. Throughout that time, discontent had built up among a wide range of political and military players over the unbridled pillaging of state resources by these four militias. The attackers mobilised based on such resentment. After a month of intermittent fighting, a counter-offensive by the Tripoli militias forced the attacking groups to withdraw. The GNA's Presidency Council issued a range of decisions to curb the influence of the Tripoli militias, but their successful defence against the attackers places them in a position to resist the implementation of these decisions. This threatens to restore

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the situation that preceded the fighting, in which territorial control in Tripoli corresponded to a highly unequal distribution of spoils — a situation that is wholly unsustainable.

These two crises underlined the limits of the status quo: During the year preceding the fighting in Tripoli, no realistic prospect for peaceful change existed, as the political process remained deadlocked. Both crises also demonstrated the impracticability of rapid elections offering a way out of Libya's crisis — an objective whose most prominent proponent is France's President Emmanuel Macron, but which is controversial both within Libya and internationally. They underlined the urgent need for renegotiating the current dysfunctional power-sharing agreement to enable progress towards elections. Moreover, they revealed that the GNA had made no headway whatsoever towards re-establishing unified, loyal security institutions. Progress in this domain remains dependent on negotiations over the formation of a sufficiently united and legitimate government to which such institutions could be loyal.

However, these crises have also uncovered new opportunities for moving beyond the longstanding political deadlock. Haftar's closure of the oil ports was his first real attempt at bargaining for a stake in central government institutions. This is an important departure from his prior rejectionist stance towards negotiations over power-sharing. The fighting in Tripoli has opened up a chance for negotiating more sustainable security arrangements in the capital — an important prerequisite for the formation of a real unity government. Taken together, the current situation offers an opportunity to shed an institutional framework that has prevented political progress for too long, and to design a new negotiating process that closely links talks over power-sharing with efforts to reunify economic and security institutions.

Towards a New Negotiating Framework

Over the past two years, failed attempts to implement the December 2015 Libyan Political Agreement (LPA) have given way to unsuccessful efforts to amend the agreement and, eventually, an equally frustrated push to prepare the grounds for elections. The obstacles to progress not only resided in persistent political divisions but increasingly also in the unworkable institutional setup the LPA created. This setup lent enormous spoiling powers to those holding formal positions — members of the two legislative bodies, as well as of the GNA's Presidency Council — despite their almost complete lack of a political or military power base.

The LPA divorced formal political authority from actual power relations on the ground in two ways. First, representatives of armed groups as such had not been part of the LPA negotiations, and expectations that political representatives would bring armed groups in their constituencies to support the unity government proved overly optimistic. Second, under the LPA, the government drew its legitimacy exclusively from international recognition. This meant that efforts to seize power in Tripoli by force were futile, thereby keeping the struggles in western Libya in check.

However, in this framework, Libyans outside the LPA's discredited institutions had almost no prospect of recalibrating the dysfunctional power-sharing agreement. Alliance-building between actors with real influence on the ground was of no consequence for formal politics, which played out in the LPA institutions according to their own logic. The crucial role of international recognition, combined with international insistence on the institutional straightjacket of the LPA, also became an insurmountable hurdle to Libyan-led initiatives. Western governments and the UN — fearful that they would lose their official Libyan counterpart should the Presidency Council fall — helped keep the

deadlock in place by sticking to the façade of internationally legitimised institutions.

To seize the current opportunity and break out of the longstanding deadlock, a new negotiating framework is needed. The UN and foreign powers should stop chasing after the mirage of a constitutionally watertight agreement, for which — as was the assumption throughout the past two years — they would need the support of formal Libyan institutions. These institutions have abundantly demonstrated that they will not agree on any solution that would make them redundant. More to the point, these institutions cannot deliver the constitutional legitimacy that external actors are seeking. The two legislative bodies face multiple challenges to their constitutional validity. The Presidency Council, in turn, exists by virtue of international recognition only. One of the two legislative bodies — the Tobruk-based House of Representatives — never ratified the LPA, leaving its institutions in a state of constitutional limbo. Nor does the draft constitution offer a clear path forward: A referendum on the constitution would prove divisive and likely result in the draft's rejection; in addition, the House of Representatives did its best to sow doubts over the validity of the legislation for the referendum. Libya's institutions have irreversibly lost their constitutional basis.

The demise of the very basis for legitimate institutions also underpins the French-led initiative for rapid elections, which intends to re-create an authority that enjoys popular legitimacy. But because of the haste with which the Macron initiative sought to organise elections, it stuck to the existing institutional framework, merely adding Haftar as a negotiating party — the only one among the four Libyan representatives invited to Paris in May 2018 who actually wields influence on the ground. But that framework cannot produce a credible basis for elections. The net effect of the unrealistic deadlines imposed by the French initiative was to divert attention from the need to build a more viable negotiating framework.

A new power-sharing agreement that dispenses with the current institutions would be no less constitutionally valid than the LPA has been. Potentially, however, it would be more functional and associate the actual parties to the conflict, rather than vague proxies for these parties. Negotiations over such an agreement would aim at creating a new executive authority, along with provisions for the reunification of the sovereign economic institutions — most importantly the Central Bank — and detailed security arrangements, including a single military command structure. Such an agreement would also include a clear roadmap towards elections for a new legislature, the preparation of which would be the top priority of the executive. The 2011 Constitutional Declaration — along with its amendments until the mid-2014 split of state institutions — could furnish the constitutional basis for parliamentary elections. Presidential elections would be more problematic, since the Constitutional Declaration does not provide a basis for the post of a president, and a presidential vote would risk provoking a winner-takes-all conflict.

The National Conference — a gathering of political representatives that the UN Support Mission in Libya (UNSMIL) plans to convene in the coming months — could potentially offer local support for sidelining the existing institutions. Even so, there would be no doubt about the fact that an agreement reached within a new framework would receive its force not from its domestic, constitutional legitimacy, but from international backing and the commitment of influential Libyan actors to it.

Armed Actors at the Table

A negotiating framework that centres on representatives of actual political and military forces on the ground — rather than on defunct institutions — has a greater chance of producing an agreement that can actually be implemented, thereby permitting progress towards elections.

Leaders or representatives of armed groups have to be part of the negotiating process for three reasons. First, only if they themselves have a stake in a power-sharing agreement are they likely to even begin considering a gradual takeover of security functions by forces that are loyal to the executive authority as a whole, rather than to representatives of individual factions. Second, any viable agreement will need to include detailed provisions on security arrangements — possibly even several subnational security agreements that are associated with a broader political deal. Only the parties that are directly concerned by such arrangements can negotiate them. This is one lesson from the failures of the LPA, which only included general objectives of security arrangements and did not offer any practical steps for their implementation or gather commitments from those concerned. Third, any negotiations over unifying security institutions — including the military command — will need to involve representatives of the larger armed groups, including Haftar's. No agreement on the reunification of security institutions can succeed without the buy-in from at least some of those who control the bulk of the country's heavy weapons.

The involvement of armed actors in power-sharing talks poses a number of challenges. In the absence of neatly defined conflict parties, the selection of representatives for negotiations would necessarily be somewhat arbitrary. Few actors in Libya's conflicts are coherent political-military forces with clearly identifiable leaderships; Haftar's organisation is the most significant exception to this rule. Some military forces, such as the armed groups of Misrata and Zintan, respond to a diffuse, collective leadership. No single figure can claim to represent such forces, and the ability of representatives to negotiate on behalf of them can vary significantly over the course of a negotiating process. Other forces, such as several of the militias in the capital of Tripoli, have leaders who appear to have no clear political interests, or even political awareness. Not all forces can be equally represented in an adequate manner during political negotiations; others may have to be engaged in detailed talks over security arrangements.

Another danger of inviting representatives of armed groups to the table is bestowing violent actors with legitimacy, thereby sending the message that violence pays. The appearance of controversial militia leaders at UN-led talks could undermine public approval for those talks. However, the example of the most controversial of all the Libyan warlords, Khalifa Haftar, relativises such concerns. Over the past two years, his political adversaries have come to terms with Haftar playing a key role in any negotiations, and several have met with him themselves, at the risk of alienating their constituencies.

This is not to say that the solution lies only in talks between those who wield direct control over the violence — far from it. The designation of negotiating parties could broadly follow considerations of influence and representation. This includes influence over armed groups, just as it includes political influence through media empires, through patronage — in the case of leading businessmen — or through the control of vital economic institutions, such as the Central Bank. It also includes social influence, reflected in the ability to represent majority positions in individual communities. Such a diversity of negotiating parties should also partially assuage concerns about rewarding violent actors by allowing them a seat at the negotiating table.

When designing the negotiating process, an important question will concern the relation between talks over power-sharing — including by reunifying economic institutions — and those specifically over more security-related issues. Each will depend on the other for its own success. Although creating separate forums for detailed deliberations over security arrangements makes sense, such talks would nevertheless have to be explicitly linked to negotiations over a broader political settlement. Moreover, representatives of leading armed groups cannot be relegated to purely security-

related talks, but will also need to be part of negotiations on the composition of executive authority and the command structures in unified security institutions.

A Strategic Approach to Security Challenges

The reunification of security institutions and the dismantling of Libya's innumerable militias are two key interconnected challenges to the success of any agreement. Since the failure of the LPA in this regard has become apparent, two initiatives have sought to address these challenges. First, Egypt has hosted talks between Libyan military officers over command structures in a unified Libyan army. Second, UNSMIL has begun work on a strategy for engagement with armed groups whose ultimate objective is the demobilisation of these groups in the medium term. This strategy is one pillar of a nascent approach within UNSMIL on security-related challenges; the other two pillars are efforts to support the reunification of security institutions and capacity-building for regular security forces.

However, in their current form, these initiatives are not (and cannot be) part of a coherent political framework that would tackle Libya's security challenges strategically. A fundamental problem of both initiatives is their assumption that regular security forces exist in Libya, separately from the armed groups. This assumption is not informed by realities on the ground: The entirety of Libya's security sector is beset by factionalism. Units that are loyal to particular individuals — rather than to the non-existent state — or associated with particular localities cannot be regular forces, regardless of whether the officers of Qadhafi's army play a dominant role in them. Regular, loyal forces can only be formed if there is a unified executive authority that they can be loyal to.

Instead, political considerations are behind the distinction between regular forces and armed groups. The Egyptian initiative confers official status upon Haftar's organisation, whose self-description alternates between "Libyan Arab Armed Forces" and "Libyan National Army", neither of which is the official name of Libya's military. Egypt thereby distinguishes Haftar's forces from other armed groups, according a critical advantage to its ally. UNSMIL also distinguishes between regular forces and armed groups, and conceives of its approach to each as separate pillars of its nascent security strategy. This offers the political advantage of facilitating engagement with Haftar's and the GNA's military commands, both of which claim to represent regular forces.

However, separating talks between supposed representatives of regular forces over reunifying security-sector institutions from those with armed groups over their dismantlement makes progress impossible on both fronts. Even leaving aside the obvious obstacle of Egypt's bias in favour of Haftar for a successful Egyptian mediating role, the Cairo talks cannot deliver an implementable agreement. Whereas Haftar's officers in the talks represent a force that controls the east of the country, most of the western and southern Libyan officers who act as their counterparts do not control sizeable forces, and they often do not enjoy the support of the armed groups in their communities. Any agreement in this framework would therefore mean that Haftar exerts overwhelming influence in a unified army, which most armed groups in areas outside Haftar's control would reject. For Europeans, the question now is how they can ensure Egyptian support for a more functional framework — one preferably led by UNSMIL, possibly in coordination with Egypt and a less biased third state.

Only negotiations that include representatives of major armed groups across the country — including Haftar's — could potentially produce progress on the twin challenges of reunification and militia dismantlement. The integration of members of the armed groups into regular forces will be an important aspect of any effort to dismantle the militias. There are different options for structuring and sequencing

such negotiations: Political negotiations could come first, with the aim of forming an executive authority and army command that would then define the parameters of how leaders and members of armed groups are integrated into unified security institutions. Or bottom-up negotiations over local security arrangements and the formation of joint, integrated units at the local level could run parallel to high-level political negotiations. This would provide the new executive authority with security structures it can link up to and work with, as well as create broader support for a political deal at the central government level.

Whichever way these challenges are approached, the immediate aim should be realistic, intermediary steps towards the ultimate goal of rebuilding regular forces. Given the absence of regular security forces and pervasive distrust between the conflicting parties, it is unrealistic to expect armed groups to surrender their weapons immediately after a political deal. The parties to a deal would initially retain at least part of their coercive force to insure against the possibility of their adversaries reneging on the agreement.

For such an agreement to enable progress towards the formation of regular forces, it is critical that the deal not allow the parties to use their access to state resources to expand their coercive capacities. This is a key lesson from Libya's failed political transition between 2011 and 2014, when rival political-military interest groups competed over resource allocation in the security sector, leading to the emergence of powerful militia conglomerates that ended up fighting each other. This concern is all the more relevant today, as an important driver behind Haftar's growing interest in a political deal appears to be his decreasing ability to mobilise funds from his external backers or the eastern Central Bank. Third-party monitoring of state expenditures could play an important role in preventing the misuse of state funds for belligerent purposes and building trust between the parties. UNSMIL could usefully expand its push for the unification of economic institutions and improving their transparency to underpin a prospective deal on security-sector institutions.

The Crucial Role of Tripoli Security Arrangements

Negotiating new security arrangements for the capital is of enormous importance for the viability of a new political deal, as well as for the ultimate handover to an elected government. Prior to the recent fighting, four large militias from Tripoli had acquired a stranglehold on state institutions in the capital. They misappropriated resources and placed their allies throughout the administration. This state of affairs precluded any political progress: Neither the unification of the economic institutions nor the establishment of a meaningful unity government — let alone a handover to an elected government — was a realistic option while a handful of militias were calling the shots in the administration. The withdrawal of the attacking forces following a month of fighting, in September 2018, returned the capital to this unsustainable situation. Negotiating new security arrangements that would limit militia influence over state institutions is essential to prevent a repeat of the recent conflict. Devising a successful approach to Tripoli's security conundrum could also point the way for similar local-level agreements in flashpoints elsewhere in the country.

The absence of regular forces to secure state institutions is a key challenge for UNSMIL's efforts to negotiate new security arrangements. During the fighting, UNSMIL called on forces under the nominal command of the Western and Central Military Regions to intervene and separate the belligerents, in accordance with a decree issued by Prime Minister Faiez al-Serraj. In reality, however, these forces are local militias from the cities of Misrata and Zintan. Having successfully defended their control over central Tripoli, the Tripoli militias will resist the deployment of these forces in the capital. And even if they did

deploy, this would not, as such, solve the fundamental problem: The logic whereby each armed group extorts what it can from state institutions located in the territory it controls would continue to define the workings of the administration. Changing this logic to a situation in which armed groups limit their influence on the administration as long as their adversaries do the same is a difficult endeavour without regular forces.

To make progress towards security arrangements that would offer greater assurances to the administration, it is necessary to depart from the current institutional framework. In trying to negotiate new security arrangements, UNSMIL has sought to rely on the Presidency Council and its security officials — inevitably so, since supporting the GNA remains part of UNSMIL's official mandate. However, the Presidency Council — or, more precisely, Serraj, since the Presidency Council has long ceased to act as a collective body — has adopted a highly partisan stance to the current crisis in Tripoli, associating itself closely with the four largest Tripoli militias. Moreover, the Presidency Council is politically weaker now than ever before. It survives only because international actors do not see an alternative to it, and it has long lost credibility among local actors that it can produce solutions to security problems. The Presidency Council and its security officials therefore cannot oversee security arrangements that seek to limit the influence of the same militias on which it has depended to date.

A new negotiating framework that makes it clear that the Presidency Council's days are numbered would allow for more creative approaches to Tripoli's security challenges. It would place the big Tripoli militias under greater pressure to make concessions. Rather than relying on the Presidency Council and its discredited security officials, UNSMIL could take the lead in negotiating and overseeing security arrangements, negotiating directly with the actual parties to the conflict. Moreover, to incentivise the forces that see themselves as stakeholders in Tripoli to protect state institutions — rather than to exploit these institutions — they need to be confident that credible efforts are being made to alter the composition of executive authority. The leadership now in place in Tripoli has become closely identified with the excesses of corruption that have marked the situation in the capital over the past two years. Leading forces in Tripoli have to be part of political negotiations over executive authority, though they cannot be allowed to dominate such negotiations, lest this produce a situation as unsustainable as the one that prevailed during the preceding year.

New security arrangements for Tripoli should take the form of a roadmap, starting with immediately feasible steps and moving towards the gradual integration of rival local forces into common command structures and units. For the implementation of such a roadmap to succeed, it will be critical that Western and regional governments strongly support UNSMIL by exerting pressure on violators. Because UNSMIL would need to focus on mediating between the parties in political and security negotiations, it may be more appropriate for representatives of individual states to help monitor the implementation of security arrangements — along with Libyan representatives — and call out contraventions. This requires a departure from the approach that prevailed over the past two years, during which wary Western governments and the UN avoided challenging the status quo so that they could operate in Tripoli and have an official interlocutor in the GNA. The events over the past months have shown that this approach has now reached its limits.

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