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On Friday 11th an extraordinary meeting of the European Council, called to discuss the crisis in Libya, issued a declaration demanding that Colonel Gaddafi step down from power. This came after nearly three weeks of struggle and fighting in Libya, brought about by the emergence of a popular uprising, whose ultimate objective seems to be the removal of Colonel Gaddafi’s regime and the installation of a new and more accountable government. However, unlike the revolutions in Tunisia and Egypt, which led to relatively peaceful (although still uncertain) transitions, the revolt in Libya has reached a violent stalemate: the Gaddafi regime is now using armed force – backed up with airstrikes and helicopter gunships – to push back and retake towns and cities held by the rebel forces. As Tripoli’s aerial attacks have intensified, the international community has grown increasingly alarmed. The United Kingdom, France and the United States have all repositioned military units off the Libyan coast, having spearheaded an extensive effort to extract European and American citizens from the country. London and Paris are pressing for direct military intervention, in the form of a no-fly-zone. This would effectively paralyse the Gaddafi regime, reducing the killing of civilians now, preventing the massacre of civilians in future; and providing the rebels with an aerial safety umbrella to give them time to regroup.

The European Union and Atlantic Alliance are both divided, with some countries being reluctant to intervene without explicit sanctioning from the United Nations Security Council. Indeed, Russian and Chinese opposition to a no-fly-zone means that a Security Council resolution authorising the use of military force by any European or American power is highly unlikely. However, an impending humanitarian crisis may provide Europeans with the legal right (in case of approval by the UN Security Council) and certainly a moral one, to intervene militarily in Libya, under the protection of the principle of the ‘Responsibility to Protect’. What is more, widespread international condemnation – not least from the United Nations, the European Union and the Atlantic Alliance – of the Gaddafi regime; explicit support for a no-fly-zone by the Arab League; and the spectrum of instability in the southern Mediterranean; provides further justification for the implementation of an exclusion zone. This paper examines the legal, moral, political and strategic aspects of a Libyan no-fly-zone and recommends that Spain and the European Union support the undertaking of defensive military action in Libya by the international community, above all for humanitarian purposes.

Are there legal grounds for a no-fly-zone?

At first hand, it would appear to many that intervening in Libya without an explicit mandate from the United Nations Security Council would be ‘illegal’. However, since the end of the Cold War, a growing consensus has emerged that – in certain circumstances – foreign military intervention can be justified, especially to prevent the mass-killing of civilians. The reprisals met out by Saddam Hussein against the Iraqi Kurds and Marsh Arabs led Britain, France and the United States to impose a no-fly-zone after the Gulf War in 1991 that would last for twelve years, without an explicit mandate from the Security Council. Slobodan Milosevic’s repression and killing of the Bosnian Muslims after the collapse of Yugoslavia eventually led – after notorious hesitation and inaction on the part of Europeans – to Allied air-strikes in 1995, again with no explicit resolution from the Security Council. Perhaps most emblematically for Europeans, the near-genocidal activities of the Serbian army and paramilitary forces in Kosovo in 1999 resulted in extensive precision airstrikes (although not free of collateral damage) on Belgrade by the Atlantic Alliance, which eventually brought Milosevic’s downfall, again with no Security Council backing.

These and other interventions – such as those in Sierra Leone in 2000 – have shaped the emergence of a new international legal norm: a requirement to prevent mass killings. In particular, the horrors of the Wars of the Yugoslav Succession and the Rwanda Genocide of 1994 (when nobody intervened) led many to believe that state sovereignty could be temporarily suspended when massive abuses were being enacted by an authoritarian regime against its own people. This perspective has evolved and consolidated into the so-called ‘Responsibility to Protect’ agenda, which has increasingly become part of United Nations’

discipline. Nevertheless, in many cases, conflicting interests in the Security Council – particularly obstruction from Russia and China – has meant that the necessary resolutions have not been forthcoming to support the ‘responsibility to protect’ in concrete cases. The situation in Kosovo was one example (albeit a precursor), as was the ethnic cleanings in Darfur; the current crisis in Libya might be another. In those circumstances, it is possible – as it has been previously – to look for other means of justification: in 1999, Europeans and Americans justified their actions through the proximity of Kosovo to the European Union and Atlantic Alliance, along with the view that Russia was being deliberately obstructionist in the Security Council.

Today, in the case of Libya, intervention could be legally justified by the sheer scale of the humanitarian crisis, along with wide and growing international support, particularly from local international organisations. Clearly, the situation on the ground in Libya is approaching a humanitarian crisis: tens of thousands of foreign workers have already fled back to their own countries; tens of thousands of Libyan citizens have been displaced by the fighting or are unable to access basic provisions or to move around safely; and groups of foreign mercenaries are reported to have begun shooting civilians indiscriminately in the streets. At least 1000 people are already suspected as having been killed. This situation will only deteriorate as Colonel Gaddafi’s forces close in on the rebel strongholds, while exacting revenge on areas already conquered. Further, the Libyan rebels have themselves already called for European and American military support, in the form of a no-fly-zone. Finally, and crucially, the League of Arab States has explicitly backed a European- and American-led no-fly-zone – although under a UN Security Council Resolution – after meeting last Saturday to discuss the crisis in Libya.

Therefore, even if a no-fly-zone in the absence of a Security Council resolution would be of dubious legality in a traditional sense, the ‘Responsibility to Protect’ principle would provide a legal ground to justify an intervention as a last resort to prevent the further killing of civilians.

The political and strategic dimension: why Colonel Gaddafi cannot be left to run amok in Libya

Aside from potential legal-norm justifications, there are three further and intertwined reasons – humanitarian, political and material – for why Europeans must prevent the Gaddafi regime from re-establishing its control over rebel-held areas.

Firstly, as Gaddafi’s paramilitary forces get closer to the heart of the rebel base of power – primarily the city of Benghazi and the eastern sector of the country – it is almost certain that the killing will intensify. The regime will have to use progressively rougher and more brutal methods to crack the rebels’ morale and re-establish control. An extensive humanitarian crisis is almost certain. Should Gaddafi prevail, it would be very unlikely that he would be willing to show mercy to his former opponents. Libya would be ruthlessly brutalised: former supporters of the rebel cause will face massive retribution, including beatings, shootings and hangings. This means that Europeans might be forced to intervene more comprehensively in the future, especially if the Tripoli regime decides to massacre whole towns and villages for supporting the rebel cause. In such a scenario, the rebels might be so beaten down that there would be few allies left for Europeans and Americans to work with on the ground, necessitating the eventual use of their own ground troops, leading, in turn, to another costly and protracted war.

Secondly, European leaders have, over the past three weeks, declared that Colonel Gaddafi must step down from power, both on an individual basis, and through a plethora of multilateral forums (including the European Union and Atlantic Alliance). The statement issued by the European Council on Friday is significant in this regard: it represents an unambiguous declaration of political intent. A subsequent failure to engineer Gaddafi’s downfall will lead to an important loss of credibility for Europeans, as it will show their inability to steer events in their own backyard. Libya is a country in the European Union’s southern neighbourhood, where the European Union has stated it has special security interests, as well as duties to uphold and
obligations to discharge as the pre-eminent regional power. Europeans’ failure to follow through their words with actions would be particularly embarrassing at a time when the entry into force of the Treaty of Lisbon and the setting up of the European External Action Service, which are supposed to give Europeans the mechanisms to deal effectively with such challenges. Gaddafi already seems to have been emboldened by the lack of cohesion among European states. Without explicit intervention – either via a British- and French-led European coalition of the willing, or preferably through the Atlantic Alliance – the European Union’s ability to manage its own neighbourhood would be called into question, sending a powerful signal of European weakness across the entire Mediterranean region. This could set a negative precedent whose consequences could be detrimental to the security and prosperity of both Europeans and their neighbours. And if young Arabs look on as their northern neighbours allow a popular uprising be ruthlessly smashed, they could become increasingly alienated and indifferent to democratic ideals, and thus more open to Islamist influences.

Thirdly, events in the last few weeks have demonstrated that the Gaddafi regime is not in a position to maintain legitimacy or stability in Libya. Humanitarian reasons aside, given geographical proximity, a high exposure to migration flows and heavy energy dependency on particular countries, it is crucial for Europeans that governments in the southern neighbourhood are sufficiently competent to administer their countries effectively. Colonel Gaddafi is no longer able to meet this objective: regardless of whether Tripoli succeeds in crushing the rebellion, there is now a powerful indigenous movement against his regime (both within Libya itself and from across the broader Arab world). This means that, unless Colonel Gaddafi goes out of his way to literally liquidate the rebellion – a move that Europeans would be unable to tolerate – a shadow of uncertainty will remain over Libya’s future in the short and medium term. Indeed, should Gaddafi succeed, Libya would once again become a pariah state: it could become a haven for terrorism and its oil and gas exports would be closed off, with damaging consequences for Europe.

**Operationalising a no-fly-zone**

Some have argued that little is known about Libyan air-defences, making the implementation of a no-fly-zone particularly dangerous. Furthermore, it is claimed that such an exclusion zone would almost certainly lead to an escalation, eventually requiring a ground intervention. There is, surely, a degree of uncertainty about Colonel Gaddafi’s military capability and any aerial action involves risk. However, most of Gaddafi’s military capabilities are antiquated by modern standards and poorly serviced; the army is also fragmented and inexperienced. Libya is very different to most of the countries Europeans have intervened in over the past two decades, particularly Iraq and Afghanistan. It is flat, open and the majority of Libyan cities, including Tripoli, are located on the coast – and it is on the coast where most of the conflict is located. Thus, with a robust set of rules of engagement, it would be fairly easy for European airpower to take control of Libya’s air space and paralyse Tripoli’s air force. European warplanes could easily project airpower from aerodromes in Italy, Malta and Akritori in Cyprus, using some of the most advanced and lethal weaponry in the world. What is more, further protective depth could be provided by European naval power, especially with warships equipped with modern air defence systems whose missiles have a range comfortably exceeding 100 kilometres. Most British and French air defence destroyers and frigates have such a capability, as so do Spain’s Alvaro de Bazán class frigates. In any case, it is highly unlikely that Colonel Gaddafi has the necessary capability to knock down British and Spanish Eurofighters, French Rafales or almost any other European interceptor, particularly should they be integrated into a wider aerial and maritime expeditionary force located off the Libyan coast.

It remains true that air cover will not end the conflict, and will possibly even lead to a short term escalation of battle on the ground as the rebels take advantage of the protection the aerial blister would provide. In this sense, Europeans must make it clear that they will not countenance anything that smacks of a ground intervention: explicit European intervention would be financially and militarily costly, but it would also be politically so. Arab countries, the Libyan rebels and international public opinion are good as far as a no-fly-zone is concerned,
but going beyond it would be highly problematic. The fighting is for the rebels to undertake, and them alone. They must seize their liberty from the Tripoli regime, for only that will give them a feeling of ownership over their own destiny and that of their own country. However, Europeans could, if the situation so requires, offer weapons and logistical assistance to the rebels, including targeted and precision air-strikes, particularly to neutralise any resistance to the no-fly-zone from the Gaddafi regime. From a military viewpoint, European action to enforce a no-fly-zone must be taken before Tripoli further degrades the rebels’ edge and morale, denying a significant tactical advantage. In short, it is time for Europeans to seize the opportunity to implement their legal, moral and strategic interests in Libya: the time has come to enforce a no-fly-zone, and that time is now.

Recommendations

1. Spain should deploy all its diplomatic means – working together with Britain and France to garner greater European, American and Arab support – in order to speed up a United Nations Security Council Resolution authorising a no-fly-zone over Libya. This would provide the clearest legal backing for any European- and/or American-led coalition. But in the eventuality of a humanitarian crisis, such a resolution cannot stand in the way of a no-fly-zone, particularly given the existence of other legal arguments in support of action – moral, political and strategic. In this case, Spain must work fast to assemble the broadest international support possible to intervene in time. This should include political backing by the European Union, the Atlantic Alliance (and eventually the African Union as well) – alongside the Arab League, which has already offered its support. Operationally, it would ideally entail a European coalition of the willing working through the Atlantic Alliance, as well as some Arab states and other concerned countries.

2. Should a broad international coalition including European, American and Arab partners decide to follow through with a no-fly-zone over Libya, Spain should offer military assistance. This could be done semi-directly, through military assistance, perhaps making available aerial reconnaissance capabilities or deploying air defence warships off the Libyan coast to provide another layer of protection to European jets patrolling the exclusion zone and to increase the pressure on Tripoli; or directly, by joining the British and French by providing Spanish warplanes to help fetter and paralyse Colonel Gaddafi’s use of armed force against the rebels and innocent civilians.

3. The consequences of a non intervention in Libya are clear. Firstly, the massacre of civilians and the defeated rebellious army would be followed by a regime of terror. Secondly, it would be major setback if Libya became a pariah state again - a haven for illegal immigration or terrorist movements. Thirdly, the prestige of the European Union as a reliable, regional and global actor would be seriously damaged. Finally, the defeat of the democratic movement in Libya would open the way to radical Islamism as the only alternative to state violence.

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1 The British, French and Americans cited Resolution 688 as having provided the necessary mandate for their military operation to enforce the no-fly-zones over the north and south of Iraq. However, nothing is explicitly mentioned of such a zone in the resolution’s text.


3 These objectives – to foster a ‘ring of well governed states’ – are explicitly stated in the European Security Strategy and the European Neighbourhood Policy.


5 For example, the United States Secretary of Defence, Robert Gates, has argued that all Libyan air defences would have to be destroyed before the implementation of a no-fly-zone.
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