

Celebratory atmosphere pervades Msallata, Libya, on 93^d anniversary of the Republic of Tripolitania

UN (Jason Founten)



Libya

The Transition Clock

BY JULIAN LINDLEY-FRENCH

I am proud to stand here on the soil of a free Tripoli and on behalf of the American people I congratulate Libya. This is Libya's moment, this is Libya's victory; the future belongs to you.

—Secretary of State Hillary Clinton, October 2011¹

These are heady days in Libya. In the wake of the slaying of former dictator Muammar Qadhafi on October 21, the National Transitional Council (NTC) moved quickly to issue a “declaration of liberation.” The October 22 announcement establishes a timetable for the abolishment of the NTC and lays out a road map to political transition. Elections for a public

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national conference are to be held within 8 months, which will in turn appoint a new prime minister, an interim government, and a constituent authority charged with drafting the new constitution that will then be put to a referendum. If the constitution is approved, general elections will take place within 6 months.

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Libya's political transition toward democracy is already being painted by many in the West as the first real success of the so-called (and poorly named) Arab Spring, with the now almost forgotten struggle in Tunisia a close second.² However, the political dust has yet to settle on the 2011 War of Libyan Succession. This article considers the state of the Libyan transition by applying the five endstates of transition, established in 2009 by the U.S. Institute of Peace (USIP) and U.S. Army Peacekeeping and Stability Operations Institute (PKSOI), and then places the process of political transition on a 12-hour transition clock.³ Much has been made of transition in light of efforts in Afghanistan to draw down major combat forces therein by 2014. However, transition by nature is entirely context dependent. In Libya, it is almost completely driven from within itself, with some marginal external support and influence. Transition in Libya is thus necessarily ambitious, moving from an illegitimate regime to a legitimate self-sustaining regime that is neither a threat to its own people or others. The NTC/interim government has only just embarked on the road to

the critical endstate of political stability. On the 12-hour transition clock, Libya is at best at 3 o'clock. In order for it to keep moving forward, much more needs to be done and greater support must be made available.

This article is thus a snapshot of Libya's transition in November 2011. It considers the achievements thus far and the challenges ahead, and where Libya is now compared to where it needs to be. Now that Qadhafi is dead, a peaceful future for Libya looks more assured. Too often in the past, however, the West has declared the final whistle blown when in fact it is only halftime. Given the complex tribal loyalties that make up Libya, a hastily formed new government could all too easily be tempted to swap one form of oppression for another unless a truly representative form of government can be established.

A Long Road Traveled

That said, there is much to be positive about in Libya today. What started with the arrest of a human rights activist in Benghazi on February 19, 2011, led—some 9 months later—to the fall of one of the Arab world's most oppressive regimes headed by a dangerously and increasingly deranged leader. The fact that the liberation of Tripoli on August 21, 2011, was driven essentially from the west rather than the east eased fears of an all-out civil war driven by visions of a Benghazi-led supremacy. The liberation of Tripoli took place with the city left relatively unscarred. However, the interim government is a loose confederation of anti-Qadhafi forces ranging from putative democrats to hard-line Islamists. The country is awash with weapons and, in spite of pleas by the new government, some old scores are being settled violently even though Human Rights Watch suggests the violence is far less than that exercised on a daily basis by the old regime. However, the arbitrary arrests of thousands by the militia, beyond

the control of the new government, point to a very difficult postconflict period in which the ability of the interim government to exert real control will prove the decisive factor in transition.

The interim government itself grew rapidly out of a group of Benghazi-based human rights lawyers and admits that its legitimacy in the country is tenuous at best, despite having declared itself Libya's sole legitimate representative on March 5, 2011. The international legitimacy afforded first by Arab states and then the West, most notably Great Britain, France, and the United States, was critical. Moreover, the military support of these three countries proved crucial when Benghazi seemed about to fall to Colonel Qadhafi's military that same month.

Now the interim government has to find a way to bring the many regional and clan interests together under what will necessarily be a broad political roof. Paradoxically, the very military strategy adopted by the interim government might make that goal more complicated to achieve as the council promoted a decentralized approach to give the impression that Libya was liberated by a simultaneous uprising of all Libyan society. Certainly, given the divide and rule strategy employed by the old regime, it will take a long time before some semblance of national unity and purpose can be fashioned, and yet such unity is the all-important commodity upon which successful transition is founded.

To its credit, the NTC leadership under former Justice Minister Mustafa Abdul Jalil has tried to consciously avoid the mistakes made in Iraq and elsewhere. In some ways, the interim government's approach is reminiscent of the British in their sector in postwar Germany when some former Nazi Party members were retained in post to keep essential systems working. Where possible, the interim government has permitted some members of the so-called Revolutionary

Committees to continue their work to ensure a semblance of stability in the transition.

The support of the international community was essential and, for once, impressively fast. Following the seizure of Misrata on February 24, 2011, the United Nations (UN) Security Council imposed sanctions on the regime. As Qadhafi's forces approached Benghazi on March 17, the UN Security Council authorized "all necessary means" under UN Security Council Resolution 1973 to be used to protect civilians. Critically, Qadhafi had little support within the Arab world, and the Arab League was swift to give its backing to Western-led efforts to prevent a massacre in Benghazi. Western intervention proved critical because it tipped the balance of forces in favor of the interim government. Although the effect was not rapid, the air and sea embargo essentially starved Qadhafi's forces of resupply, and British, French, and U.S. special forces played a crucial role as trainers for the ragtag group of militias that made up the NTC forces. This was reinforced by the vital role played by the special forces as forward air observers directing air strikes.

Equally important was the political solidarity of the international community. The Chinese and Russians grumbled about the North Atlantic Treaty Organization (NATO)-led operation overstepping the limits of the UN Security Council Resolution. Also, South Africa objected to the release of funds to the NTC, which it did not regard as the legitimate government of Libya. Little effort, however, was made to impede the operations in support of the NTC—for what they were rapidly became clear. Furthermore, with Tripoli only 182 miles from NATO's southernmost tip, the conditions for a successful air policing war were uniquely in favor of the Alliance. Air operations began on March 19 with first British, French, and U.S. aircraft and then units from other coalition members halting the

armored column that was approaching Benghazi. Thereafter, several thousand sorties were flown with surprisingly few leading to the infamous collateral damage of old. There were tragedies of course. One among many took place on April 30, when a NATO air strike killed Qadhafi's three grandchildren. Some estimates have the death toll in the war as high as 8,000.

Furthermore, there was concern that the issuing of an arrest warrant by the International Criminal Court on June 27 would make it more difficult to end the conflict. In fact, it seems to have further delegitimized Qadhafi and the regime.

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The key test for the interim government will be the willingness of the 40 or so armed *katibas* (brigades) to either stand down once the fighting is over and/or join the new Libyan army. Privately financed, many of these *katibas* are closely linked to regions and towns and thus are intensely factional. It is alleged that one of them, the Abu Ubeidah Ibn al-Jarrah *katiba*, was responsible for the July 28 murder of General Abdul Fatah Younis, the NTC's top military commander, who was trying to unite the various factions under a unified command.

A Safe and Secure Environment (3 O'Clock)

The first transitional endstate is a *safe and secure environment*. This is defined as the "ability of the people to conduct their daily lives without fear of systematic or large-scale violence."⁴ With combat operations still ongoing and much of the country effectively lawless, the key components of such an

endstate are far from being realized. Public order is virtually nonexistent.

The next year or so will thus act as the pivot for the transition process. The announcement by the NTC on October 22 demonstrates the importance of political legitimacy via national elections. However, before that can happen, the rules of the game will need to be established with the key power brokers. The interim government is certainly ambitious having established elections for the Public National Conference by mid-2012. The need to move quickly is understandable as there are already rumors that the NTC was making deals to sustain its political base with a few special interest groups such as the Muslim Brothers and the hitherto-exiled National Front for the Salvation of Libya. These needed to be quashed; hence the October 22 road map to transition. Whatever happens, these are well-organized groups and thus they are likely to do fine in the elections. Once the fighting—the kinetic phase of transition—is over, much greater emphasis will need to be placed on political transition, especially because that will be the focus of the Libyans and their foreign backers. It is far too early to tell if Libya can survive the transition politically intact. A particularly important aspect will be the treatment of minorities such as the Berbers, who played an important role in the fighting apparently supported by British special forces.

The physical challenge alone is daunting. Even though 90 percent of Libya's 6.5 million people live on the coastal strip, the country is roughly the size of Alaska with 679,358 square miles of territory. The coast alone is 1,099 miles long with land borders totaling 2,723 miles. Furthermore, with so many militias operating in this space, it is going to be some time before legitimate state monopoly over the means of violence is reasserted or control over the borders is reestablished along with physical and territorial

security. Here, parallels with Afghanistan and Iraq are appropriate. Critical to the entire transition process and, indeed, one of the key indicators will be to what extent, and at what pace, the interim government can weld all the militias into a single national army. That will in itself require the new government to consider the level of sanction it imposes on the officer corps of Colonel Qadhafi's army. This question exerts a pivotal paradox on the interim government. Does it disband the army and start again à la Iraq? Or, does it keep some of the senior officers in place and risk offending both the militias and those former officers of the army who did defect? In Afghanistan, it was the reappearance of hated figures after the fall of the Taliban in November 2001 that did much to discredit Hamid Karzai's Kabul government and by extension the broader coalition effort.

Libya is far from becoming a safe and secure environment, and the claim of the interim government to represent all Libyans will by and large stand or fall on its ability to create such an environment. Failure there will mean that all other aspects of the transition will also likely fail. Libya is thus at 3 o'clock on the transition clock as it seeks to reestablish a secure environment.

Rule of Law (3 O'Clock)

Rule of law is defined as the "ability of the people to have equal access to just laws and a trusted system of justice that holds all persons accountable, protects their human rights and ensures their safety and security."⁵

A just legal framework for the whole of Libya will not only take time, but it is likely to prove an intensely political process. Some of the Islamist groups will insist on the adoption of a strict interpretation of Shariah law, a position that led to Berber representatives walking out of at least one meeting held to discuss transitional arrangements.

Public order, another key facet of rule of law, is fragmented and uncertain. This will also take some time to restore because Libya's new democratic institutions will require meaningful oversight of a form of public order administration very different from that of the Qadhafi regime. Logically, the first order principle for the interim government will be to establish the equitable rule of national law in Libya's two major population centers—Tripoli and Benghazi—and then expand its writ once the seat of said government has been firmly established and protected.

Furthermore, accountability under the law, access to justice, and eventually a culture of lawfulness—all of which are vital—will likely require the establishment of an entirely new system for the administration of justice. Judges and administrators will need to be trained and a police force created that acts with the consent of the people and not against them. Libya is therefore only at 3 o'clock on the transition clock in its search to create legitimate rule of national law across the entire country.

Stable Governance (4 O'Clock)

Stable governance is defined as the "ability of the people to share access or compete for power through non-violent political processes and to enjoy the collective benefits and services of the state."⁶

Libya is in early postconflict transition, which must not be confused with political transition. *Conflict transition* is defined as "the point where the host nation is on a sustainable positive trajectory, where it can independently manage the dynamics causing violent conflict. Conflict transformation requires reducing the drivers of conflict while supporting those that mitigate conflict across security, economic, and political spheres."⁷ Political transition embraces conflict transition but in effect takes a

helicopter view of stability with a specific focus on the rebuilding of sustainable and legitimate political institutions. Thus, the interim government is only engaged in the first and most tentative steps toward representative government. It is trying hard to provide basic and essential services and, thankfully, has access to a relatively large and skilled workforce that in time should be able to get food and energy supplies moving.

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Libya's natural resources will be at the center of the entire process of transition. Indeed, effective stewardship of state resources is a critical aspect of stable governance and here there are grounds for cautious optimism. *Cautious* is the key word because, as the *Economist* recently stated, "Guns, not civilian politicians, are currently determining Libya's future, and could yet precipitate a squabble for the country's tantalizingly rich resources."⁸ Libya's greatest assets (apart from its people) are its high-grade hydrocarbon and gas reserves, which Qadhafi did much to squander on military expenditures and foreign adventures. Encouragingly, the NTC has already moved to establish new contracts with potential partners, and there is every reason to believe that Libya will in time pay for its own reconstruction. At an estimated 41.5 billion barrels, Libya has the largest proven oil reserves in Africa—about 3 percent of the global total—with much of the country unexplored due to past sanctions. The geology, however, looks very promising. Even without further discoveries, Libya has some 20 years of reserves at 2009 production rates. Libyan oil is also easy to recover. In addition, the country

has proven gas reserves of 52 trillion cubic feet, making it the world's 14th largest producer.⁹

Other aspects of stable governance are less promising, at least for the moment. Political moderation and accountability will depend largely on the nature of governance. If there are genuine elections in which power is vested in a representative parliament, then there are hopes that political control will in time be passed to relatively moderate, accountable, and above all replaceable regimes. However, a mistake the West has repeatedly made is to believe that places and spaces with no tradition of such structures can magically reproduce them. What is more likely is some form of hybrid structure among secular, tribal, and Islamist elements with all three vying for supreme state authority. How this equilibrium is institutionalized with the checks and balances in place to ensure that no single group dominates will be a critical test of transition. While Libya is by no means as politically fragmented as, say, Lebanon, there are sufficient divisions within the society to lead to squabbling and infighting, thus creating the conditions for the return of a Qadhafi-like figure. The early establishment of a structure robust enough to ensure civic participation in the political process and the empowerment of all with a stake in legitimate government will be just one of many challenges faced by the new regime.

Certainly this is one area where the European Union (EU) could play a very important role, the efforts to support the Libyan people having been thus far lamentable. In August 2011, the EU appointed a special representative for the Southern Mediterranean with a remit to assist in the promotion of good governance. Subject to the request of the new Libyan government, the EU could play as important a role in supporting stable governance as NATO could in disarmament, demobilization, and reintegration; security sector reform; and democratic control over armed forces.



U.S. Army (Brendan Stephens)

Taken in the round, there are reasonable grounds for optimism that Libya will enjoy some degree of stable governance, but much needs to be done. Libya thus stands at 4 o'clock on the transition clock with regard to stable governance.

Sustainable Economy (2 O'Clock)

A *sustainable economy* is defined as the “ability of the people to pursue opportunities for livelihoods within a system of economic governance bound by law.”¹⁰ According to the UN Development Programme Human Development Index, Libya ranked 53^d out of 169 states prior to the civil war.¹¹ This suggests a relatively educated population with enough of a middle class to provide an entrepreneurial impetus to the economy. Indeed, one of the telling images of the war has been the prominent role that class played in ousting the old regime.

One of the first order requirements for the new government will thus be to reestablish macroeconomic stability as measured by key indicators such as consumer price inflation, real growth in gross domestic product over one or more business cycles, changes in measured unemployment and employment, the effective management of fluctuations in government finances, and stability of the currency. This in turn will only come once sound economic and financial regulatory frameworks have been established. There is little evidence that the Qadhafi regime ever established such sound economic governance and best practice. State wealth was seen as the personal fiefdom of the colonel to use for personal aggrandizement and to fund the massive system of patronage through which the regime wielded power. At the very least, there is likely to be a significant rebalancing of

wealth between the west of the country, which was favored under the Qadhafi regime, and the east, which was starved of resources.

Perhaps the greatest challenge in establishing a sustainable economy, however, will come when the regime tries to exert control over the illicit economy that has long been established. The various rent seekers on both sides of the divide have or are accumulating huge reserves of financial muscle that will represent an economic threat to Libya's peace and will need to be tackled.

Given the lack of any real instruments over Libya's conflict-torn economy and the need to create the functioning structures critical for effective economic governance, Libya is at best at 2 o'clock on the transition clock in the construction of a sustainable, functioning economy open to and supportive of all its people.

Libya is a society at war with itself as those who hitherto have benefited from Qadhafi's patronage are dispossessed by those who suffered from the regime's oppression

Social Well-Being (2 O'Clock)

Social well-being is defined as the "ability of the people to be free from want of basic needs and to coexist peacefully in communities with opportunities for advancement."¹² Libya is a society at war with itself as those who hitherto have benefited from Qadhafi's patronage are dispossessed by those who suffered from the regime's oppression. The rebalancing of political and economic power will inevitably be a difficult and bumpy process but it must be managed. If not, the almost certain insurgency could well gain rapid support.

Furthermore, in these early days of the postconflict period, whatever efforts the interim

government is making to prevent the settling of scores, a rudimentary form of "restorative justice," will be unavoidable. There are already signs of tensions between the rural-based militias that did much of the fighting and the city dwellers who sat on the fence for much of the conflict, particularly in Tripoli.

That is one of many paradoxes faced by the interim government because Tripoli is in many ways the key to national stability. If the interim government spends too much time trying to "buy" Tripoli, however, the sense of social injustice that has pervaded Libya's regions for decades could be reignited as hope is expunged. Further fighting thereafter would be almost inevitable. Yet, much of the country's intellectual capital is in Tripoli, and only if the city is safe and secure with essential supplies restored will expatriate Libyans begin to return and the international community will have a sense that progress is being made. In that regard, Tripoli is the transition litmus test for the international community; thus the early reestablishment of a functioning seat of government in a functioning capital is hugely important.

Equally, there are other indicators that the interim government should establish early for the whole of the country to ensure there is a sense of balance for all. One of these key indicators will be the early reestablishment and development of education across Libya. Paradoxically, Qadhafi's *Jamahiriyah* (state of the masses) claimed to promote political decentralization and a form of direct democracy. The structure was created right down to municipal level but was politically hollowed out. Ironically, education was meant to be the showcase for this system. Following Qadhafi's September 1969 seizure of power, education was given a high priority. However, a shortage of teachers, interference in the curriculum, and lack of effective technical training

undermined the utility of the many tertiary education institutions that developed after 1975. This led to an overreliance on foreign labor. On the positive side, an impressive educational infrastructure is in place that could be developed rapidly as soon as a functioning education policy is established.

These indicators will also affect one of the other key indicators that transition is working: the return of refugees from abroad and of internally displaced persons. Only then can social reconstruction, which is perhaps the most important driver and indicator of transition, really get under way.

Libya is still a state at war with itself. Before real social well-being can be said to be reestablished, much will need to happen. Libya can only be said to be at 2 o'clock on the social well-being transition clock.

Libya: The Transition Clock Is Ticking

Political transition is a difficult and dangerous process that must be established through the application of consistent principles if the essential endstates are to be reached. These principles are: a safe and secure environment, a just rule of law, stable governance, a sustainable economy, and social well-being. The USIP and U.S. Army PKSOI call such ideas the crosscutting principles of stability and reconstruction. The political objectives of transition are host-nation ownership and capacity, and Libya is well-placed for both compared with Afghanistan and Iraq. Political primacy, an early political settlement as the cornerstone of a sustainable peace, is probably still some way off, but the decision to draft an inclusive constitution gives some grounds for hope. Political legitimacy is the oil in the machine of transition based on three elements, all of which are achievable but problematic:

the degree to which the Libyan nation as a whole accepts the mission and the mandate of the new government, the extent to which the new government is accountable to the people and is seen to be so, and the degree to which the Arab world and the wider international community accept the legitimacy of the government that eventually emerges.

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Now that the first phase of the Libyan succession war has been won by the NTC and Qadhafi has been removed from power, a further critical indicator of transition will be to what extent unity of effort can be maintained and fostered. This will require all postconflict parties to share a continued understanding of the environment and to maintain cooperation across a broad coalition toward agreed short-, medium-, and long-term objectives. That unity of effort will need to take place in parallel with conflict transformation in which the drivers of conflict—political, security, rule of law, economic, and social—are removed even as capacity for effective governance is constructed. Hope and trust are the stuff of transition. However, transition also inevitably leads to friction with powerful actors who could delay elections until all-important rules of the political game can be established. Getting the balance right between power and legitimacy will be tricky.

Libya is thus at a very sensitive moment and is at best at 3 o'clock on the transition clock. If the remaining 9 hours are to be successfully negotiated, Libya will need much support from the international community. In this

regard, the signs are less hopeful. Much of the Arab world is locked into its own political tumult, particularly close neighbors to Libya such as Tunisia and Egypt. Already the Western press is turning away, implying the job is done and citing Libya as the victor of the Arab Spring. Critically, if for once the EU could move beyond theory and start properly practicing what it preaches, then support for the Libyan people could act as an indicator for much of the region, which, after all, is in Europe's backyard. Recently appointed EU Special Representative for the Southern Mediterranean Bernardino León stated:

*Europe has to take the lead in Libya and Europe is aware that the international community is expecting this. The first step is providing basic services like water, electricity, fuel, medicine. Providing security and economic reconstruction will also be very important, as will the recovering of assets from abroad, which seem to be in many different places because of the actions of the former regime and particularly Qadhafi. We will also have to contribute to building a government in a post-conflict Libya.*¹³

However, Europe is at the very nadir of the Eurozone crisis, and the appetite for supporting neighbors to the south will likely be lost in the pressures to support EU members to the south. Moreover, EU offers of early humanitarian assistance have remained precisely that—offers.

It looks like you again, America. Sorry. **PRISM**

Notes

¹ "Clinton Hails 'Libya's Victory' on Tripoli Visit," *The Daily Herald*, October 19, 2011, available at <www.thedailyherald.com/us/3-news/21709-clinton-hails-qlibyas-victoryq-on-tripoli-visit-.html>.

² In fact Tunisia is perhaps in the lead. On October 23, 2011, Tunisian voters went to the polls to elect a 217-seat assembly that will draft a new constitution and appoint an interim government.

³ "Guiding Principles for Stabilization and Reconstruction" (Washington, DC: U.S. Institute of Peace/U.S. Army Peacekeeping and Stability Operations Institute, 2009).

⁴ *Ibid.*, 19.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*, 29.

⁸ "The Birth of Free Libya," *The Economist*, August 27, 2011, 18.

⁹ "FACTBOX-key facts about Libya's gas sector," Reuters, available at <<http://uk.reuters.com/article/2007/05/29/uk-libya-gas-factbox-idUKL297607920070529>>.

¹⁰ "Guiding Principles for Stabilization and Reconstruction," 19.

¹¹ "International Human Development Indicators: Libya—Country Profile of Human Development Indicators," available at <<http://hdrstats.undp.org/en/countries/profiles/LBY.html>>.

¹² "Guiding Principles for Stabilization and Reconstruction," 19.

¹³ "Europe needs to take the lead in Libya—EU Special Representative," September 2, 2011, available at <www.europarl.europa.eu/news/en/headlines/content/20110826STO25372/html/Europe-needs-to-take-the-lead-in-Libya-EU-Special-Representative>.