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**ABOUT PILPG**

The Public International Law & Policy Group is a non-profit organization, which operates as a global *pro bono* law firm providing free legal assistance to states, governments, and groups involved in negotiating peace agreements, drafting post-conflict constitutions, and prosecuting war criminals. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. To date, PILPG has advised over two dozen countries on the legal aspects of peace negotiations and constitution drafting, and over thirty countries in Europe, Asia, and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes.

# LIBYA: NEGOTIATING A CEASEFIRE

## Lessons Learned from a Negotiation Simulation Addressing a Ceasefire in Libya



**BACKGROUND**

Nearly six months into the conflict between the Qadhafi regime and opposition forces, led in part by the Transitional National Council (TNC), attempts to broker a ceasefire agreement have been unsuccessful. On July 15, the Libya Contact Group, with representatives from 32 countries and seven international organizations, announced certain conditions required for the successful implementation of a

ceasefire. Shortly after the simulation was held, information was leaked that ceasefire talks brokered by the United Nations were being held in Tunisia.

To prepare for potential ceasefire negotiations between the TNC and Qadhafi regime, the Public International Law & Policy Group (PILPG) and the American-Libyan Council on August 12 organized a ceasefire negotiation simulation at the offices of Orrick, Herrington, and Sutcliffe in Washington D.C., with the support of the United States Institute of Peace. The participants included members of the Libyan Diaspora, individuals with regional expertise in Libya and North Africa, and ceasefire experts. The objective of the negotiation simulation was to stimulate debate, surface key issues, and identify potential points of impasse likely to arise during potential ceasefire negotiations between the Qadhafi Government, the TNC, and NATO. The participants found this to be a useful vehicle for exploring the range of issues that ceasefire negotiations would address.

The materials for the negotiation simulation were prepared by PILPG using the methodology employed by the United States Department of State's National Foreign Affairs Training Center, which runs similar

simulations to train U.S. diplomats prior to negotiations. Each participant received a briefing packet that contained an overview of the principal interests of the parties to the conflict, the relevant issues to be negotiated, and instructions for the delegations. The negotiation agenda included discussion regarding the cessation of hostilities, the separation of forces, the disarmament of forces, and monitoring commissions.

PILPG has prepared and conducted a number of other negotiation simulations for key conflict areas around the globe to train parties in negotiation techniques and to assist in the development of innovative diplomatic solutions to armed conflicts. PILPG's prior negotiation simulations have addressed a range of issues in Darfur, Aceh, the Democratic Republic of Congo, Iraq, Kashmir, Kosovo, Nepal, Sri Lanka, and Sudan.

The views cited in this report reflect comments made by individual participants and do not necessarily reflect the consensus views of all participants in the simulation, the TNC, or PILPG.



#### **DELEGATION NEGOTIATING POSITIONS**

While the negotiation simulation was intended to reflect the current state of affairs in Libya, certain assumptions were made to simplify the negotiations. Negotiations were conducted trilaterally between participants representing the Qadhafi regime, TNC and NATO, without an official mediator. Neither Colonel Qadhafi nor his son, Saif al-Islam Qadhafi, were present at the negotiations, yet officials loyal to the regime, and selected by Qadhafi, represented the Qadhafi government in the talks. The simulation assumed that Colonel Qadhafi had formally agreed to relinquish power but remained in Libya. It further assumed that the TNC controlled approximately the territory that it controlled on the date of the

simulation. The principal interests and primary objectives of the delegations were described in the materials for the negotiation simulation as follows.

#### **Qadhafi Government Objectives**

Qadhafi's main objective is to maintain the regime's continuation in power by ending the NATO military intervention and consolidating its political control over as many Libyan towns as possible.

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*“Once we get NATO planes grounded, waning political support within NATO member states will make it nearly impossible for them to get the planes off the ground again.”*

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The regime asserts that the conflict in Libya is a civil war between rebel forces and the legitimate government. Since the beginning of the conflict, the regime has argued that NATO is exceeding its mandate under United Nations Security Council resolution 1973 (2011) to use force for the protection of civilians. However, the Qadhafi government recognizes that NATO operations will not end until a ceasefire agreement has been reached with the TNC.

#### **Transitional National Council Objectives**

The main objectives of the Transitional National Council are to oust the Qadhafi regime, establish democracy, preserve the country's unity, and ensure the security of the Libyan people. The TNC views the violence in Libya as an armed conflict between its own democratic forces and the regime. However, the TNC is adamant that the armed conflict is not a civil war; it is the legitimate response of Libyan democratic opposition forces to protect Libyans from attacks by the regime. The TNC views NATO as essential to the protection of civilians in towns it controls from attacks by regime forces, TNC military offensives against regime forces, and the ultimate survival of the TNC. Further, the TNC is skeptical of any commitments made by the Qadhafi government. Thus, the TNC would oppose any ceasefire agreement that further constrained NATO's authority to use force to protect civilians under Security Council resolution 1973.

## NATO Objectives

NATO's main stated objective is to protect civilian-populated areas under threat of attack by regime forces, as authorized by Security Council resolution 1973. However, as a number of governments participating in the NATO-led operation have reiterated publicly, a primary goal of NATO's intervention is the removal of Qadhafi and his key lieutenants from power. NATO would prefer a quick end to the conflict, but will continue to implement Operation Unified Protector until a ceasefire is achieved. Having invested significant resources since March 27 in air operations in Libya, NATO would like to ensure that an end to the fighting is durable. As a result, NATO may want to maintain a military watch over any ceasefire agreement that is reached to ensure that the Qadhafi Government does not resume its attacks. NATO will argue that a ceasefire agreement between the regime and TNC does not affect its authority under Security Council resolution 1973 to use force to protect civilians.

## TEN LESSONS LEARNED

The simulation identified major issues that will likely dominate ceasefire negotiations between the TNC and Qadhafi regime. As a result of grappling with these issues, ten important lessons emerged that could inform future negotiations.

### (1) Qadhafi's Role in Negotiations

Participants in the simulation noted that even if Qadhafi is not present at the negotiation table, his delegation will be under his control and seek to protect his interests. The Qadhafi government delegation made little effort to hide its responsiveness to his direction during the negotiations, including receiving a phone call from him and dissuading a member of the delegation from defecting. The latter incident was a reminder that Qadhafi's leverage over his followers derives in part from fear of retribution.

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*"We will not accept any final agreement without Qadhafi's leadership stepping down."*

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Participants noted the primary importance of the matter of Qadhafi's fate to any negotiations. The

issue of Qadhafi's fate dominated much of the discussion, as the participants from all three delegations considered that the substantive issues of a ceasefire could not be addressed without agreement on this issue. Participants in the simulation realized that Qadhafi's ability to maintain power – even if he were to formally “step down” as he did in the scenario – had more impact on the durability of a potential ceasefire than the actual terms of the ceasefire agreement.



### (2) Effect of the ICC Arrest Warrants on Negotiations

Participants further noted the effect that the International Criminal Court (ICC) arrest warrants for Qadhafi and his son, Saif al-Islam, have on the options for their departure from power. Importantly, the arrest warrants prevent all state signatories to the Rome Statute creating the ICC from allowing Qadhafi and his son to reside on their territory. However, the African Union has called on its member states to disregard the arrest warrant for Qadhafi. Were Qadhafi to remain in Libya, this would prevent his successors from becoming a signatory to the Rome Statute. Qadhafi will be less likely to accept an agreement that requires him to relinquish power and depart Libya if he believes that it will lead to his arrest and trial before the ICC. Thus, the effect of the ICC arrest warrants is an important consideration in dealing with Qadhafi's future.

### (3) Disadvantages of Entering into Negotiations

Many participants on the TNC delegation entered negotiations with the intent of negotiating the best possible ceasefire agreement with the regime. However, by the end of the simulation, there was an apparent consensus among participants in all delegations that engaging in ceasefire negotiations may be counter to the TNC's interests.

The TNC's forces have a military advantage

over the regime and benefit from military support from NATO. The regime is increasingly confined to Tripoli and has much less to lose by ceasefire negotiations with the TNC, particularly if this brings relief from NATO airstrikes and the possibility of maintaining – even temporarily – control over Tripoli.

In the simulation, the Qadhafi government delegation operated under the assumption that it would be difficult – logistically but especially politically – for NATO air operations to resume once they had stopped. Thus, the regime delegation was prepared to agree to seemingly problematic terms if they helped end NATO’s air operations, confident that regime forces would have considerable room to maneuver in the interpretation of these terms once NATO aircraft were grounded and NATO governments constrained by their constituents from resumption of the airstrikes. In this context, the regime delegation assumed that Qadhafi would have few qualms in violating the ceasefire agreement and resuming attacks against the Libyan people, knowing that NATO could no longer protect them.



Due to TNC reliance on NATO military support, the TNC delegation negotiated as if it had little leverage in negotiating the specific terms of a ceasefire agreement. The TNC’s primary leverage was simply to indicate that it would not accept a ceasefire that did not benefit its interests. Several members of the TNC delegation considered that the terms of the agreement were dictated by NATO and that they had relatively little power to change them.

#### **(4) NATO Interests**

NATO’s preferred outcome – to resolve the conflict in a way that allows for an end to NATO military operations while guaranteeing the protection of civilians and keeping open the possibility of removing Qadhafi – may actually be closer to the Qadhafi government’s preferred outcome than to that of the TNC. Under Security Council resolution 1973,

NATO’s mandate is to protect civilian-populated areas under threat of attack. NATO may view a ceasefire agreement as a first step in a peace process that could end the conflict in Libya and avoid further civilian casualties. However, NATO is also concerned by the toll that the conflict in Libya has taken on the organization, both politically and financially. NATO could perceive a ceasefire agreement – even one containing terms not completely favorable to the TNC – as tolerable. In the simulation, this was reflected by NATO’s focus on a symmetrical ceasefire agreement, particularly the requirement that opposition troops disengage and disarm to the same degree as regime troops. This was also reflected in the lack of attention given by the NATO delegation to the potential impact that a ceasefire agreement at that time could have on the future of Libya, particularly with regard to the separation of forces.

#### **(5) Benefit of Talks between NATO and the TNC**

The simulation underscored that the TNC would be well-advised to initiate talks with NATO prior to entering into ceasefire negotiations with the regime in order to ensure that the TNC’s interests are protected. Although the TNC and NATO engaged occasionally in shuttle diplomacy during the simulation, it was evident that the two delegations had not fully communicated their positions with one another. As a result, the NATO delegation occasionally used guesswork to advocate presumed TNC interests. Though the TNC and NATO may have different priorities, both share an interest in Qadhafi’s removal from power and an end to violence in Libya. In addition to highlighting the advantages of working together militarily to reach this goal, the simulation demonstrated that the TNC and NATO would benefit from coordinating strategies on the diplomatic front that would also deflect efforts by the regime to divide the allies.

#### **(6) Importance of Cohesiveness**

The participants noted that the relative and perceived cohesiveness of each side influenced the negotiations. When the simulation took place, General Abdel Fattah Younis had recently been murdered, allegedly by TNC supporters. Further, there had been increasing accounts in the press about rising dissatisfaction with the TNC within the opposition’s ranks. On the other hand, at the time of

the simulation, there had not been a major defection within the Qadhafi regime in months, the Qadhafi government appeared to present a united front, and regime forces continued to operate under Qadhafi's unified command and control.

During the simulation, the Qadhafi government argued that the TNC would have difficulty exercising full tactical control over its military forces to maintain a ceasefire. This had an impact on the way in which NATO perceived the TNC and, as a result, on certain terms of the ceasefire agreement, such as the requirement that both sides cease all military activities and that all forces be separated and disarmed to the same degree. Further, because any potential violation of a ceasefire agreement would draw international condemnation, the regime delegation planned to utilize any violation by opposition forces to demand that NATO compel the TNC to abide by the agreement, thereby creating tension between NATO and the TNC. Thus, in crafting its own negotiation strategies, the Qadhafi government delegation relied on the assumption that it would be more capable than the TNC of abiding by the terms of a ceasefire agreement so long as it suited the regime's interests.

#### **(7) Need for a Strong Monitoring Mechanism**

The participants noted that if the parties did agree on the terms of a ceasefire agreement, the TNC and NATO should insist on a strong multinational monitoring mechanism. During the simulation, both NATO and TNC delegations operated under the conviction that even if the regime agreed to the terms of a ceasefire, Qadhafi could not be trusted to abide by them. The NATO and TNC delegations insisted

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*“We would be happy to establish neutral monitoring. We don't insist on the African Union, but it could be an ad-hoc, multinational group.”*

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upon a monitoring mechanism that included armed peacekeeping troops with the ability to enforce the terms of the agreement. They proposed a monitoring commission comprised of United Nations peacekeepers, certain NATO states, and certain Islamic or Arab states that have recognized the TNC.

The participants noted that the TNC should begin to think now about which states it wishes to monitor any ceasefire that might be agreed.

#### **(8) NATO's Role during a Ceasefire**

Even after a ceasefire agreement is reached, many participants noted that NATO should continue to fulfill its mandate under Security Council resolution 1973 to take all necessary measures to protect civilian-populated areas under threat of attack. They interpreted this to include playing an oversight role in the transition to cessation of hostilities, thus minimizing the likelihood that the regime could use the ceasefire to gain military advantage over the TNC.



Further, NATO should continue to implement the no-fly zone and the arms embargo until the Security Council passes a resolution dictating otherwise. In the simulation, the NATO delegation stressed that it would take time for a multinational monitoring commission to be deployed and offered to oversee the transition to a ceasefire and monitor the ceasefire in the interim. The NATO delegation also offered to continue its air surveillance, at least during the initial stages of the ceasefire, to ensure that the terms of the ceasefire agreement were implemented.

#### **(9) Potential to Use Negotiations to Divide Libya**

The participants noted that the Qadhafi regime could use ceasefire negotiations to perpetuate its control over Tripoli and other strongholds indefinitely. The Qadhafi government wants to

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*“We will not agree to a territorial division line.”*

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maintain maximum territorial control over Libyan towns and minimize the amount of territory controlled by the TNC, and may use the separation of forces in a

ceasefire agreement as an opportunity to do so. During ceasefires, the parties are usually allowed to maintain their current positions. Rarely do ceasefire agreements allow for the exchange of controlled territory between the parties. Thus, it is likely that the territory controlled by the parties during negotiations will reflect the location of assembly points and separation zones after a ceasefire agreement is reached. This, in turn, may lead to an indefinite – or at least long-term – division of Libya along these ceasefire lines.

#### **(10) Need to Think Big Picture**

If the TNC does enter into ceasefire negotiations with the Qadhafi regime, the participants highlighted the need to seriously consider the effect that any agreement may have on the long-term future and stability of Libya. Any ceasefire agreement that does not provide the TNC with a pathway to future political and territorial control of Libya will risk reinforcing the *status quo*, making major reform difficult. Thus, the participants noted that the TNC should avoid a ceasefire agreement that could preserve Libya's political and territorial *status quo*. One way to do so would be to use ceasefire negotiations to establish a framework and timeframe for negotiations on a broader peace agreement between the TNC and the Qadhafi regime.