

REVISED ARTICLE BY THE RT HON LORD OWEN FOR THE
INDEPENDENT ON SUNDAY – AUGUST 2011

When the Arab Spring started in Tunisia last December and quickly spread to Egypt, it was predictable that for Europe the greatest political and military challenge would come from Libya. Gaddafi's long record of support for terrorism and brutality against his own people had for six years been masked by an apparent readiness to abandon both terrorism and a nuclear weapons programme. But by March 2011, the grotesque language of Gaddafi's son threatening to destroy Benghazi, Libya's second largest city, confirmed the regime had no intention of changing.

Following a specific Arab League request, and French and British resolve, a no-fly zone was authorised by the Security Council over Libya "to take all necessary measures ... to protect civilians and civilian-populated areas". It has long term importance that China and Russia did not block the resolution and that the US wanted to be supportive but not to take a lead role.

To the German government and other EU dissenters from taking military action over Libya, one simple question needs to be posed. If we had let Gaddafi and his sons take Benghazi, what would have happened in Syria? Would President Bashar Assad and his brother still be being fought by the Syrian people? Would Turkey be contemplating taking action against Assad? Realpolitik always dictated there could be no UN-authorized no-fly zone in Syria. By a cruel coincidence of timing just when the patience of the Turkish government was running out with the Assads, the upheaval in the Turkish military has been a huge distraction. Yet Turkey is the one country in the region capable of acting to stop the present Syrian slaughter. Israel wisely stays out of the conflict. The US rightly fears being blamed for exacerbating present tensions in Lebanon and provoking Hezbollah. Nevertheless President Obama's decision this week to freeze Syrian assets and ban petroleum products is an important new pressure on Assad. Russia has a strategically important port in Syria and they are now slowly allowing the Security Council to use more condemnatory language and tougher sanctions against Syria.

Overall, the implementation by NATO of the Libya no-fly zone has been a success helping the liberation forces in the last few days to virtually control Zawiya close to Tripoli. But the price of UN-authorized intervention has been a strictly controlled limited military operation and political intervention designed to necessitate negotiations between the Libyans.

This new form of constrained interventionism has been the inevitable consequence of US and UK failure in Iraq. It is something that China and Russia is likely in future to insist on to guide the "responsibility to protect" interpretation of the UN Charter agreed in the heads of government summit of 2005. Experience has also taught the world that forcefully removing despotic leaders is fraught with difficulty, particularly if accompanied by foreign military occupation.

The world has, however, also designed a new legal mechanism for intervention. During the war in Bosnia, Cyrus Vance and I recommended the Security Council should establish the International Criminal Tribunal for the former Yugoslavia (ICTY). President Milosevic was tried by the Tribunal but died or committed suicide just before he was about to be sentenced. Tragically, the ICTY established in 1993 did not prevent the genocide in Srebrenica in 1995. In Rwanda, a tribunal came after its genocide. In Cambodia, the Extraordinary Chambers in the Courts of Cambodia has only just started to try a former head of state, Khieu Samphan, for his role in the Khmer Rouge genocide starting in 1975.

The big legal breakthrough came with the decision to bypass Security Council vetoes with a multinational treaty to establish a new International Criminal Court (ICC). This Rome Statute came into force on 1 July 2002, and 116 states are ICC members. A further 34 countries, including Russia, have signed but not ratified. Israel and Sudan have unsigned as did the US under George W Bush though the Obama administration is working with the Court. China and India have neither signed nor ratified.

The ICC remains very controversial. President al-Bashir of Sudan has already been indicted by the ICC but the African Union (AU) does not believe he should be sent to trial for crimes committed in Darfur and instead should be allowed to get on with the difficult task of dividing

Sudan as agreed in the recent referendum. There is also criticism within the AU of the referral by the Security Council of the Libyan situation to the ICC at the end of February and the following indictment of Gaddafi, in that it is argued harder to persuade him to leave the country.

There are deep issues involved in both the case of al-Bashir and Gaddafi. They go to the basis of the priority to be given to absolute justice and reconciliation. In Africa, it is widely believed that the readiness of Saudi Arabia to take President Idi Amin of Uganda in 1979 helped greatly to ease the transition in that country. I was closely involved as Foreign Secretary in aiding Tanzania to intervene militarily to oust Amin and have no doubt that Amin would have fought harder had he not been given sanctuary. I acknowledge, too, those in Africa who believe that Robert Mugabe's refusal to leave Zimbabwe is partly related to the prosecution of a former president of Zambia in that country. Also to the pressure the US put on Nigeria, who had given refuge to President Charles Taylor of Liberia, as part of bringing peace between that country and Sierra Leone, to resile and send him to the ICC.

In Libya, I do not, however, believe that Gaddafi has stayed just because of the ICC. This is a man of abnormal personality, whose conduct is totally unpredictable. If the Libyan negotiators representing all sections currently meeting in Tunisia decide to defy the ICC ruling and allow him to remain within their country and avoid trial – Libya is not a signatory to the statute creating the ICC – they can do so. That reality, already recognized by France, the UK and the US, is not an ignominious defeat as some claim.

Until a successful negotiation is achieved amongst all Libyans, Nato must persist in helping the liberation forces fight Gaddafi forces and the mercenaries he has brought in.

Lurking in the background to decision-making in Damascus has always been the question of what is happening in Tripoli. Is Gaddafi going to get away with it? There is a case for the Security Council referring to the ICC the situation in Syria. But against this is the fact that, as in Libya, the endgame will likely be negotiations of enemies having to be reconciled. Negotiations are thankfully playing a role in Bahrain. All the time in Iran, the only country likely to harbour the Assads, the

unreconcilable amongst its leadership look for opportunities to exploit situations which will make the Arab Spring peter out. Iran has no interest in demonstrations for greater human rights succeeding – let alone bringing about fresh elections and a change of government in any Arab country which its leaders have grown used to working with, particularly Syria.

This all combines to making it fundamental that Gaddafi loses power soon in Libya. The Bush-Blair days of unbridled and largely internationally unauthorized intervention are over. It is not just states but the people who demand respect for international law and proportionate use of military power.

As Libya has shown such constrained intervention takes patience and necessitates new mechanisms. First and foremost, we need to see the establishment of an effective UN Rapid Reaction Force. It should be made up predominantly of members of the Security Council, be well equipped and train regularly together. Britain and France should give the lead and commit jointly to providing from one or other's navy an aircraft carrier, if appropriate, to support the Rapid Reaction Force. The UK senior military got Libya wrong, as they did Helmand in Afghanistan, too cautious about military action in Libya and too gung-ho about defeating the Taliban. They must now realize that constrained intervention is the future global role for Britain's armed services.

Eventually the ICC statutes should be renegotiated to win the full hearted support of the US, Russia, China and India and maybe even come within the auspices of the UN with some special arrangement to overcome the initial and justified fear of the veto power in the Security Council but also give some of the flexibility required to judge between the sometimes conflicting priority of reconciliation or absolute justice.