

# The last stretch: ICC's arrest warrants on Libyan top leaders

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Luís Moreno-Ocampo, chief prosecutor at the International Criminal Court (ICC), said on May 13<sup>th</sup> that the international legal body would seek arrest warrants for three top Libyan leaders on charges of murder and persecution, crimes committed since February 15<sup>th</sup> during the regime's clampdown on Libyan rebels aiming to oust Muammar Gaddafi. The names on those warrants are those of Muammar Gaddafi, of his son Saif al-Islam, and of Libyan intelligence chief Abdullah al-Sanoussi. This statement follows a formal investigation initiated by Moreno-Ocampo after the United Nations Security Council (UNSC) unanimously referred the Libyan crisis to the ICC last February through Resolution 1970. Besides giving political clout to the investigation and its subsequent decisions, this was also a way to bypass the fact that Libya is not a party to the Rome Statute, and hence does not recognize the jurisdiction of The Hague. Understandably, it was not difficult to gather evidence of the brutality performed by Gaddafi's regime. Several witnesses were interviewed, videos and pictures were made and gathered, and after close to 30 missions the ICC now claims to be in possession of a wide array of solid evidence.

Although the arrest warrants will be a legal step with solid foundations, the ICC's decision has an inherent

political dimension that goes far beyond the jurisdictional scope. When the UNSC referred the Libyan Crisis to the ICC, it simultaneously approved a series of other measures including imposing an arms embargo on the country, banning travel rights for 16 Libyan leaders and freezing the assets of Colonel Muammar Gaddafi and his family. In other words, it was a decision clearly intended to increase pressure over the Libyan regime, more than punish human rights violations. This distinctive political dimension becomes even more obvious if one bears in mind the evolution of the Libyan crisis, particularly with regard to the stance taken by the international community.

These arrest warrants are, perhaps, an attempt by the international community to end a marathon whose finish line, despite the distance already traveled, has been difficult to see.

France, the United Kingdom, and the United States (US), among others, were quick to demand Muammar Gaddafi step down from power. Yet, despite resolute public statements, their willingness to take action was frail and uneven. The US soon demonstrated strong reluctance to either lead a military operation or to put boots on the ground, regardless of what shape or mandate a future mission could take. On the other side of the Atlantic,



Europe displayed its usual inability to speak with one voice in a situation where the endgame is clearly of more importance to it than it is to Washington.

Soon after the first political statements were made by the main Western capitals, it became increasingly obvious that these countries had two objectives in mind: (i) the hope that the rebels would be able to debunk the regime by themselves and create a new political landscape without requiring great foreign involvement; (ii) and, consequently, ousting Gaddafi from power as the ultimate goal. However, despite good initial prospects for such a scenario to unfold, the rebel forces soon began to show difficulties in progressing on the ground. Therefore, after the imposition of sanctions, the international community began advocating the imposition of a no-fly zone, which fell within the reach of UNSC Resolution 1973. A coalition of countries was formed and, with support from international organizations such as the Arab League and the African Union, decided to push for the imposition of the no-fly zone. The airborne campaign was initially limited to bombing Libyan artillery and Air Force since the destruction of this type of military equipment is a pre-condition for closing a country's airspace. The coalition hoped that this support would provide the rebels with the momentum necessary to regain ground from Gaddafi loyalists. In fact, all the premises behind the coalition's actions were based on the assumption – and desire – that the Libyans would be able to oust Gaddafi by themselves. Yet, it did not work.

Therefore, after enforcing a no-fly zone over Libyan territory, the coalition took the conflict up a notch and began bombing Libyan cities held by Gaddafi, aiming to establish a set of preparatory strikes that would facilitate a subsequent rebel incursion. After initial positive results, intensifying the bombings as well as diversifying the targets did not produce the desired effect either. Moreover, it exposed new fractures within the already uneven international coalition since Amr Moussa, the Arab League's Secretary-General who had originally backed the no-fly zone, distanced himself from the military incursion adding that what was happening in Libya at that time differed from the aim of imposing a no-fly zone. Such statements, which by themselves represent a fissure, deepened the concealed divisions even more as they puzzled and irritated other members of the coalition who had just met in Paris in order to reach common ground on what to do about Libya as well as to counter a growing image of inner disagreement.

Then, countries such as the United Kingdom offered non-combat equipment to the rebels such as communication equipment, and nations such as Italy officially recognized the Transitional National Council (TNC) – a rebel body established in the city of Benghazi – as the legitimate interlocutor of the Libyan people. As in previous steps, the idea was to provide additional support on the ground to the rebels, and increase the political pressure over Gaddafi's regime. This did not work either.

The negotiation path was also tacitly taken, but due to Muammar Gaddafi's irreducibility in accepting any solution that encompassed his departure, that door was closed. The next step took place at the beginning of March, with military advisors being sent to assist the rebels with their technical expertise.

Despite initial resistance to greater involvement, the assistance provided by the international community to the rebel forces has been increasing over time. By setting the bar high from the onset, the international community was forced to step up its involvement in Libya in order not to be seen as capitulating before Gaddafi. A strategy is chosen and, when it fails to produce the expected results, the assistance is taken one step further. And despite the commitment and risks taken – both military and political – by the international community, the rebels continue to display a slim capacity to act with the slightest degree of independence. The constant rebel calls for more NATO support seem to reflect their complete external-aid dependence – not to mention constant reports of disarray within the rebel militias and a certain ambiguity in their political views – hence creating the conditions for a never-ending marathon. Moreno-Ocampo's indication that arrest warrants will probably be issued may constitute an attempt by the international community to go the last stretch.

Issuing an arrest warrant does not mean the end of Gaddafi's rule. Enforcing the ICC's mandates in all cases is a responsibility that remains with states. And judging by the case of Sudan – also not a party to the Rome Statute, and a case which also implicated a sitting head of state – these arrest warrants have a questionable effectiveness: President Omar al-Bashir, who had two arrest warrants issued in 2009 and 2010, was able to travel through several Arab and African countries without being detained. Of course al-Bashir has allies that Gaddafi lacks, and part of the reason why Sudan's President was able to avoid arrest has also to do with the fact that UNSC failed to offer strong backing to the ICC by not approving additional sanctions that would raise the cost of doing business with al-Bashir. Yet, despite each case's specificities, it is clear that the ICC lacks the ability to have its decisions properly enforced.

The ICC's warrant is meaningful because, on one hand, it represents additional pressure on the Libyan regime, and on the other, it can give NATO wider latitude to act. While current attacks are constrained by the need to abide to UNSC Resolution 1973 terms, and thus, are only justifiable if civilians are under threat – although it is highly questionable that what is currently happening in Libya has any legal ground – , the arrest warrants may provide some political maneuver and facilitate a direct targeting of Gaddafi. Still, such action would most likely embody a violation of international law and consequently open a problematic precedent and generate interstate tension as well as political controversy.



These warrants are not only another step further towards the latent intention of deposing Gaddafi, but also a recognition that diplomatic solutions are likely to be off the table: although some countries do not recognize The Hague's legitimacy, it clearly becomes more difficult to exile Muammar Gaddafi and his entourage in a foreign country when pending arrest warrants, issued by a legal body created under the auspices of the UN, are upon them. In other words, it would constitute a blow to

international law as well as to the United Nations as a political entity.

If this fails to offer a significant improvement with regard to weakening the regime and ousting Gaddafi, the international community appears to have cornered itself in a place surrounded by inconvenient scenarios: either it acknowledges a defeat since Gaddafi remains in power; or it takes on all the innate risks and costs of putting troops on the ground.

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