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# Teaching Notes for CHAPTER 17: Military Intervention and Diplomatic Engagement in Libya: A Collage of Policy, Force And Law

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## TEACHING NOTES

### **MILITARY INTERVENTION AND DIPLOMATIC ENGAGEMENT IN LIBYA: A COLLAGE OF POLICY, FORCE AND LAW**

By Anna F. Triponel and Paul R. Williams\*

This case study provides an opportunity for students to examine the role that law plays in decisions relating to highly complex operations—how it enables, shapes and constrains political-military options and policy approaches.<sup>1</sup> Five key political-military decision points will be examined relating to the case of Libya. First, should the United States join France and Great Britain in using force to protect the people of Libya? Second, what is the extent of military force that could be used to accomplish this objective? Third, to what extent should Congress be involved in the decision to use force? Fourth, should the United States recognize the National Transitional Council as the legitimate government of Libya? Finally, should the United States and its allies seek a negotiated settlement if the military campaign failed to adequately protect civilians or to prompt a regime change?

Each section addresses one of these decision points. The applicable legal questions will be considered in the context of underpinning policy-making by key civilian and military decision makers. The case study will provide a brief review of the applicable international law and norms, as well as prior United Nation (UN) practice. Each section of the case study will describe how the international and domestic law enabled, shaped or constrained the political and military decision making process in the case of Libya.

#### **Objectives**

- To recognize that the law can enable, shape and constrain complex operations
- To realize that the law underpins a number of decisions made at the policy level regarding military and diplomatic engagement
- To appreciate the need in complex operations to assess how the law and politics intertwine to achieve the U.S. government's objectives

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- To understand that the various branches of U.S. government can have competing views on the law and different interpretations of the proper distribution of power.
- To assess how prior military operations can set precedents for civilian decision-making in future operations.
- To distinguish between the law and policy relating to humanitarian operations and purely military operations.

### **Target Audience**

- Graduate and post-graduate students in national security affairs, international affairs, international law, and international development
- U.S. government agency officials with national security responsibilities:
- U.S. Department of State
- U.S. Agency for International Development
- U.S. Department of Defense, Office of the Secretary of Defense
- High-level U.S. military staffs (Joint Staff, regional commands)
- Civil Affairs Military Officers
- Civilian-Military Planners
- Army Reserves planning and employment in support of operations

### **Suggested Process for Delivering Case Study**

1. Assign the case study to be read before the class
2. Break the class into small groups of 4-6 students each

The students will discuss amongst themselves specific themes for 20 minutes before reverting to plenary discussion to discuss the same themes guided by the professor.

The suggested themes are as follows:

#### ***The Law and Policy in Libya***

- To what extent do you think the law enabled the military and diplomatic operations in Libya? (*e.g.*: the immediate authorization of the use of force)

- To what extent do you think the law constrained the military and diplomatic operations in Libya? (*e.g.*: the delayed recognition of the NTC due to legal complexities)

### ***Lessons Learned for Future Military Interventions***

- What are the set of questions that this Libyan case study triggers for you for future military interventions? For instance:
- What basis is the U.S. President relying upon to justify the use of force?
  - What is the international basis for the use of force? (*e.g.*: self-defense, UN Security Council authorization, humanitarian intervention)
  - What is the domestic basis for the use of force? (*e.g.*: Congressional authorization, President's authority as commander-in-chief, etc.)
- What is the legal authority for undertaking the specific military activities?
  - To which document can I refer in order to assess the type of military force that can be used?
  - What do the rules of engagement provide for?
  - Might there be terminology that has a different meaning for lawyers than for laymen (*e.g.*, foreign occupation).
- To what extent is there buy-in from the different branches of government for this military intervention?
  - Is Congress seeking to approve or limit this intervention and what is the impact of the Congressional position on the U.S. President?
  - Is the Executive branch intervening unilaterally?
- What type of diplomatic actions can the U.S. be taking to strengthen its military support?
  - Can recognition of an opposition group help further the military cause?
  - Are there any unintended consequences of recognizing an opposition group?
- Are there any restrictions to what the U.S. government can offer politically in negotiations?
  - Has an offer of amnesty or an offer of exile been discussed?
  - Can an international criminal tribunal be involved to help build the case for military intervention?

### ***International Authorization of the Use of Force***

The UN Security Council in paragraph 4 of Security Council Resolution 1973  
 “[a]uthorizes Member States . . . to take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya,

including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory.”

- How would you have interpreted this language? What type of force do you think this language allows?
- How broad would you interpret “under threat of attack”? What are your views on NATO’s five categories of “threat of attack”: (1) imminent threat of attack; (2) capacity to attack; (3) command and control; (4) incitement to attack; and (5) combat support role?
- What type of ground occupation does “foreign occupation force” mean for you? Is this different than its legal meaning as set forth in this case study?

### ***Government Recognition***

- In this case study, what were the specific legal challenges to the recognition of a new group as a government?
- How important were these challenges to the U.S. government?
- How do you view the change in wording employed by the U.S. government to refer to the NTC: from “*a legitimate and credible interlocutor for the Libyan people*” to “*the legitimate interlocutor for the Libyan people*” to “*the legitimate governing authority for Libya.*”

### **Related Homework Assignment**

1. Ask students to find a legal issue in the press that was present in a prior U.S.-led military intervention; and
2. Ask students to write a 5 page paper that includes the following:
  - a) a summary of the legal issue; and
  - b) a description of how the legal issue enabled, shaped or constrained the military operation.

### **For Further Reading**

Williams, Paul and Michael P. Scharf, *Shaping Foreign Policy in Times of Crisis: the Role of International Law and the State Department Legal Adviser*, (Cambridge University Press, 2010).

Gill, Terry and Fleck, Dieter, *Handbook of the International Law of Military Operations*, (Oxford University Press, 2010).

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<sup>1</sup>For further discussion on how the law shapes foreign policy, see Williams, Paul and Michael P. Scharf, *Shaping Foreign Policy in Times of Crisis: the Role of International Law and the State Department Legal Adviser*, (Cambridge University Press, 2010).