

Legality versus Pragmatism: Or Pandora's Box of Turkish Parliament

A Comment by Femi Mimiko

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Wisuschil - Media & Law - The bill approved by Turkish parliament which allows for deployment of its troops to Libya to support the Government of National Accord (GNA) headed by Fayez al-Serraj will hardly become a comprehensive solution that can bring a dramatical change to the current alignment of forces in the Libyan civil conflict. The main political opponent of Serraj, the head of the Libyan National Army (LNA) Field Marshal Khalifa Haftar, controls about 80% of the territory of Libya, and this situation is unlikely to change in the foreseeable future. Naturally a possible deployment of Turkish troops, if it occurs, would be aimed at protecting Tripoli from a possible fall under the onset of the Haftar's forces that conducts anti-terrorist operation "" development that was still not very likely even without it. LNA began the offensive on Tripoli on April last year, but so far managed to achieve limited progress. The obvious reason for this is the lack of human resources, experienced by the LNA. That means that there it has enough manpower to maintain the status quo, but clearly not enough to finally solve the situation in its favor.

Thus, the decision of the Turkish parliament will have little military effect "" what couldn't be said about the legal dimension of the Libyan situation. And this is not only about the international law aspects, which Egypt immediately stressed, qualifying the Turkish decision as a violation of UN Security Council resolution No. 1970 of 2011, which imposes an embargo on military cooperation with Libya. The result of Turkish bill can be a switch of focus of public attention to a more significant aspect "" such as the very right of the Serraj's GNA to be a legitimate representative of Libya and, accordingly, invite foreign troops to the country.

The matter is that the legitimacy of the GNA was constituted in December 2015 when the representatives of the main Libyan factions signed the Skhirat Agreement. This document provides the existence of only two legitimate authorities: the House of Representatives, formed by means of the general election, which took place in June, 2014 in accordance with the Libyan Interim Constitutional Declaration and Electoral Law, and the Government of National Accord (GNA).

Due to the Skhirat Agreement, the House of Representatives has been given the full powers: without its approval the GNA does not have the right to conclude any international treaties. At the same time the mandate of GNA was limited with clear functional: the adoption of the new constitution of Libya and holding new general elections. What is even more important, GNA's powers were initially limited in time: the term was limited with 1 year, and could be extended for a maximum of one year more if the constitution was not adopted in the first year.

Thus, according to the Skhirat Agreement, the Serraj Government of National Accord lost its legitimacy at the beginning of 2018, after it didn't use the legitimate ways of extending its powers provided by the agreement: it could be either general elections on the basis of a new constitution, or a new pan-Libyan conference. What is significant, the House of Representatives, headed by Agila Saleh, fully retains its legitimacy in this situation: in accordance with the same agreement its powers expire at the time of the opening of the first session of the new parliament.

As long as the conflict remained internal, where external forces participated indirectly, this legal logic remained in the shadow of political pragmatism: for all external players the situation of government with limited legitimacy was preferable to its complete absence. However even the very fact of invitation of foreign troops by Serraj's GNA, which got so quick approval of Turkish parliament, immediately moves all these arguments to the forestage: it is hard to imagine that both external and internal players with their interests and stakes in Libya will be able to ignore them. This means that the decision of GNA may turn out into opening the Pandora's box that irrevocably change the situation in Libya: the rest of the GNA legitimacy can be completely destroyed.

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