

THE LIBYAN AFFAIR: AFTERTHOUGHTS ON SWISS CRISIS MANAGEMENT

Switzerland's management of the recent hostage crisis with Libya was successful as far as its outcome is concerned. However, there have also been some serious shortcomings. The deficiencies of coordination within the government are essentially systemic. The numerous indiscretions and the tendency to exploit the crisis for party purposes have aggravated the challenges for Swiss diplomacy. The media and the Canton of Geneva have also contributed to the complexity of the Libyan affair. There are lessons to be learnt too, especially as far as Switzerland's foreign-policy positioning is concerned.



Press conference of Foreign Minister Micheline Calmy-Rey after the return of the second Swiss hostage, 14 June 2010.

The Libyan crisis has been an unusual and very complex challenge for Switzerland. Unlike most other hostage crises, this was not a case of Swiss citizens being kidnapped by rebel groups. Instead, the two Swiss were seized as hostages by a regime that regarded them as pawns to be used for enforcing its interests and winning compensation from Switzerland in the dispute over the arrest of Hannibal Ghaddafi and his wife in Geneva in the summer of 2008.

The Libyan regime proved to be an extremely difficult and unpredictable negotiating partner that operated outside the rule of law while engaging in pseudo-legal measures. Equally challenging for Swiss diplomacy was the domestic front, with both the political leadership and public opinion according high priority to the release of the hostages.

As understandable as it may be, this position, and the attendant high level of mediatisation of this crisis, increased the value of the hostages from a Libyan perspective.

Against this background, the return of both hostages within less than two years can certainly be regarded as a success for Switzerland. However, in retrospect, some serious flaws in the handling of the crisis can be identified that are reflected in the ongoing domestic arguments over the "Libyan affair". In conjunction with the crises over banking secrecy and UBS, the Libyan issue has raised fundamental questions over the Federal Council's ability to exercise political leadership. Yet, the roles of the parliament, the media, and the Canton of Geneva should be taken into account too when assessing how the Swiss managed the Libyan crisis.

Limits of diplomacy

Crisis management in the Libyan affair can be subdivided into three phases. The first phase, up to the summer of 2009, was marked by the unsuccessful efforts of the foreign ministry (FDFA) to resolve the crisis by diplomatic means. Among the central developments in this phase were the arrest of Hannibal Ghaddafi by Geneva police on 15 July 2008, various countermeasures against Switzerland by Libya, including the arrests of Swiss citizens, and Ghaddafi's civil lawsuit against the Canton of Geneva in April 2009.

The FDFA responded swiftly and comprehensively after the outbreak of the crisis. Foreign Minister Calmy-Rey interrupted her vacation, established a task force, called the Libyan foreign minister, dispatched a diplomatic delegation to Tripoli, and reinforced the Swiss embassy there. Berne probably also helped to bring about the retraction of the lawsuit by Ghaddafi's employees that had precipitated the crisis. However, this failed to persuade Libya to release the hostages. In autumn 2008, the parties to the conflict concentrated on an investigation of the events in Geneva by a bilateral ad-hoc commission with one representative each. Yet, no agreed final report emerged from this. A Swiss proposal presented to a brother of Ghaddafi at the World Economic Forum in January 2009 failed to make an impact too.

The lack of success in the diplomatic efforts became apparent when Calmy-Rey returned empty-handed from Tripoli after talks with the prime minister and the foreign minis-

ter at the end of May 2009, with her return delayed by what were alleged to be “technical problems”. It is unknown at this point whether Libya was aware of secret Swiss plans for an operation to liberate the hostages. The fact is, however, that it was precisely around this time that Swiss security experts in parliament began to state publicly that the armed forces had the capability to carry out such a mission in Libya.

But talk of an alternative military-intelligence strategy is unlikely to have been decisive in bringing about the failure of the negotiations. Rather, the FDFA may have failed during this phase to recognise the extent to which the injured family honour of the Ghaddafis was at the core of the conflict. In retrospect, it seems clear that the refusal to apologise was an obstacle to resolving the conflict. Also, the FDFA may have relied on diplomatic channels for too long, instead of introducing direct contact between the Swiss Federal President and Muammar Ghaddafi as the head of family and state. The respective differences in strategy between the FDFA and the Swiss ambassador in Tripoli, which led to the latter being recalled, would prove to be a handicap for Swiss diplomacy, as Libya refused for months to allow the new Swiss envoy to enter the country.

Lack of coordination

The second phase of crisis management lasted from June to November 2009. It was marked by Federal President Merz taking over the Libya dossier, his surprise visit to Tripoli on 20 August 2009, the subsequent domestic controversies over the agreement concluded with the Libyan prime minister, the escalation of the crisis due to the publication of Hannibal Ghaddafi's police booking photographs in a Geneva newspaper on 4 September 2009, and the Swiss suspension of the agreement on 2 November 2009 after Libya failed to return the hostages.

In terms of crisis management, this phase was characterised by lack of coordination and cooperation at the politico-strategic level of the Federal Council, i.e., the Swiss government. It will be the task of a parliamentary Control Committee to assess to what extent this was already true for the preparations of the President's trip to Libya by the FDFA and Merz's finance department in summer 2009. The fact is that these preparations proved difficult because the Libyan side constantly increased its demands. It is also true, however, that

after Merz's trip to Libya, severe disagreements arose in the Federal Council that have significantly handicapped Switzerland's crisis management thereafter.

It is clear that the substance of agreement signed by Merz in Tripoli was a significant departure from the FDFA's position. The “apology” for the “unjustified” police action was certainly indispensable to eventually bring the crisis to a solution. What is more, the treaty was altered to the Swiss advantage by Merz in that previous Libyan demands such as an acknowledgment that the police operation was “illegal”, the dismissal of the police officers involved, and payment of €20 million in compensation, no longer figured in it.

However, Merz did commit Switzerland to a court case against the police officers and payment of compensation, if an agreed arbitration court should determine any civil or criminal liability. Also, Federal President Merz accepted that bilateral relations were to be normalised not immediately, but within 60 days. His greatest concession consisted in accepting the fact that the treaty did not explicitly deal with the release of the hostages. By trusting in a vague pledge given by the Libyan prime minister, without being able to discuss the matter directly with Muammar Ghaddafi, as the Libyan side had promised, he manoeuvred himself into the same impasse that the FDFA had reached earlier.

Crucial from the perspective of Swiss crisis management, Merz signed the agreement without a clear mandate by the Federal Council. He made his decisions in Tripoli in the style of a powerful government leader rather than that of a Swiss federal president, who is just the first among equals in the seven-headed Federal Council that takes decisions collectively. Equally remarkable, there was much public disagreement and dissociation among the seven heads of departments after Merz's return from Tripoli. The impression of ministers and departments working against each other was nourished by the numerous indiscretions that became a real hallmark of the Libyan affair – and which were far too seldom investigated. Further evidence that coordination and information at the strategic level were deficient not only in this phase could be found in the revelations about the above-mentioned plans for a hostage rescue mission in Tripoli.

Although the deficits in Switzerland's management of the Libyan crisis can to some extent be attributed to individual persons, they are essentially systemic in nature. While Switzerland's traditional political institutions are characterised by a high degree of legitimacy, the system of collegial government with strong departmentalism and no single leader authorised to issue directives has always been badly suited for effective crisis management. The challenges in this respect have become even more apparent recently in the context of domestic polarisation and diminishing concordance, increased partisanship within the Federal Council, and an increasing personalisation of politics. The growing complexity of foreign relations in a globalised world and the international trend towards conflict resolution and strategy formulation by way of bargaining at the highest political level are increasingly threatening to overtax the Swiss system.

The core dilemma with regard to a governmental reform, which has been discussed for years, is that adaptations within the system such as extending the federal president's term in office from one to two years or increasing the number of secretaries of state are only of limited use in resolving problems of coherence and political leadership in a multi-party government. On the other hand, further-reaching systemic changes such as enhancing the authority of the federal presidency and discarding the concordance-based model of democracy are hardly feasible, since such a move would cause the instruments of direct democracy to be overused by opposition parties, which could paralyse the political system even more. Accordingly, Switzerland with its idiosyncratic institutional structures is likely to remain weak as far as its strategic capability to manage crises is concerned.

Successful Europeanisation

The third phase was marked by the Europeanisation of crisis management, which began in November 2009 and continues today. The crisis itself was shaped during this period by the Libyan court proceedings against the two hostages, the release of one hostage in February 2010, the four-month prison sentence against the other hostage, and the return of the latter to Switzerland in June 2010. At the level of crisis management, the key events were the Swiss restrictions against issuing Schengen visa to selected Libyan citizens,

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the subsequent visa ban by Libya against Schengen states, and the mediation efforts of the EU that followed.

The implementation of the Swiss-Libyan Action Plan, which took effect with a statement co-signed by Calmy-Rey in Tripoli on 13 June 2010, is likely to take several more months. For the Swiss side, the release of the second hostage ahead of the convention of the arbitration court was a major success. One indispensable prerequisite was the apology for the publication of the police booking photographs of Ghaddafi and the payment of compensation into a German blocked account. Switzerland may have to provide further compensation depending on the arbitrators' assessment of Hannibal Ghaddafi's arrest.

Important documents

- ▮ Agreement between Switzerland and Libya, 20 August 2009 [↗](#)
- ▮ Action plan, 14 May 2010 [↗](#)
- ▮ Statement, 13 June 2010 [↗](#)
- ▮ Statement by Conference of the Cantonal Governments (CCG), 25 June 2010 [↗](#)
- ▮ CCG-initiated legal assessment of the Agreement by the Institute of Federalism (summary) [↗](#)

One decisive step towards resolution of the crisis that can be readily identified was the change in strategy at the beginning of this phase, when Switzerland took recourse to the Schengen framework as a means of applying pressure against Libya. The countermeasures by Tripoli forced the EU to intervene as a mediator, as Brussels has an interest in deepening relations with Libya due to economic, migration, and security policy interests. The efforts of Spain, as the acting president of the EU Council, to engage as mediator were not strictly in line with the new stipulations of the Lisbon Treaty. But they proved a boon for Switzerland due to Madrid's good contacts with Tripoli and because of the close relations between Calmy-Rey and the Spanish Foreign Minister Miguel Moratinos. Both Spain and Germany deserve credit for their continued efforts to resolve the crisis even after the mutual visa restrictions had ended.

It should be noted, however, that the Europeans during the crisis treated Switzerland as a third party rather than as part of their network of solidarity. If the Libyan regime had indiscriminately detained EU citizens, it would likely have faced collective counter-

measures. In the case of Switzerland, that was unlikely. The EU's actual manifestations of solidarity with Switzerland were largely restricted to the level of ambassadors in Tripoli. In Brussels, by contrast, there has been a good deal of criticism over the way the Schengen Agreement was instrumentalised by the Swiss in this conflict.

The fact that Switzerland could hardly have resolved the Libya crisis without the help of the EU allows some conclusions to be drawn concerning Switzerland's foreign-policy positioning. Since it is safe to assume that Switzerland will hardly be able to leverage Schengen a second time to pressure Brussels into engaging on behalf of its interests, an ever closer rapprochement with the EU network of states seems advisable for the future. The Libyan affair will certainly not serve to trigger a new debate on EU accession. Still, in a world that is getting less Western and more multipolar, Switzerland is bound to increasingly depend on foreign and security policy cooperation with the EU.

Parliament, media, Geneva

In addition to the Federal Council and the federal administration, other actors also impacted on Switzerland's crisis management. Various members of parliament and political parties instrumentalised the crisis for domestic purposes. Calls for resignations and intense public criticism of Federal Councilors in the midst of the crisis reinforced the notion that Switzerland was riven by domestic self-recriminations. Neither was the parliament immune to indiscretions. For instance, minutes of meetings of the Foreign Affairs Committee (FAC) as well as a Federal Council document were leaked to the media. On the positive side, it should be noted that the presidents of the FAC have made serious efforts in the past two years to ensure coherent crisis communication.

The media played an important role too. The crisis was the subject of intense media scrutiny, as one would expect in a matter of such great public interest. However, the quasi-permanent, often highly emotional coverage may have inadvertently served the interests of the Ghaddafi family. Much as in the case of terrorist attacks, effective use of hostages depends to some extent on the mediatisation factor. The media became mouthpieces for Libya especially in those cases where they devoted great attention to Ghaddafi's bizarre calls to break up the Swiss state or to launch a holy war, or when they dedicated a great deal of

coverage to Hannibal Ghaddafi's humiliating visit to the imprisoned hostage.

The tension between headline-seeking news coverage and responsible media reporting became manifest during the crisis in the strong media focus on personal disputes within the Federal Council and the publication of leaked information. True, the publication of the police photographs, which considerably complicated the crisis, was declared to be a violation of personal rights and thus unlawful by a court of first instance. However, when it comes to leaked confidential information, the boundaries between freedom of publication and unlawful use remain vaguely defined and in practice often ignored.

Finally, as far as the Canton of Geneva's role is concerned, the federalist (i.e., cantonal) dimension of Swiss foreign policy is likely to be subject to further discussion. There is a certain logic to the criticism voiced by Geneva and the Conference of the Cantonal Governments, who argued that the agreement with Libya to have the circumstances of the arrest investigated by an international court of arbitration constituted a violation of cantonal jurisdiction and of the constitutional consultation rights of the Canton of Geneva. To this extent, a more profound clarification of the relationship between the federal administration's foreign-policy competence and the cantonal allocation of responsibilities may be required.

At the same time, it should be noted that Geneva's legalistic stance concerning the controversial arrest of Hannibal Ghaddafi contributed little to the resolution of the crisis, particularly since Berne had asked for a careful approach before the police operation. Even the Swiss representative in the ad-hoc commission admitted that the actions of the Geneva police, while legal, might have been disproportional. Against this background, Geneva might be able even now to escape the unwelcome arbitration body if it were more amenable to a political compromise.

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