

Date with history as UN acts over Libya

By Harvey Morris , 27 February 2011

Muammar Gaddafi, at his only appearance before the UN, ripped pages out of its founding Charter and branded its Security Council the Terror Council.

Less than 18 months on, that same council has now acted with unprecedented speed and unanimity to try and hasten his downfall.

There was a forgivable atmosphere of self-congratulation among diplomats of the 15 council members on Saturday night after a grinding day of bargaining that led to the adoption of sanctions against the rapidly shrinking Libyan regime. The question, as always: will they work?

The intention, summed up by Susan Rice, US envoy to the UN, was “stopping the violence against innocent civilians”. But are an asset freeze, a travel ban, an arms embargo – even the threat of future prosecution for war crimes – enough to deter a regime fighting for its survival?

Diplomats acknowledge that the measures might not divert Colonel Gaddafi from his murderous intention to crush the Libyan uprising. However, they could persuade his cohorts of military and security henchman that there is still time to bail out before the inevitable end. Why fight on in a lost cause, only to end up penniless in an international court, facing life imprisonment for war crimes?

For the first time, the Security Council unanimously referred a case of state violence to the International Criminal Court. That alone was a big victory for the resolution’s British and French drafters and could set an important longer-term precedent. The UK and France are the only permanent members of the council even to have ratified the Rome Treaty that established the court.

Many senior regime officials have already headed for the exit. Ibrahim Dabbashi, the deputy envoy who led the defection of the Libyan delegation at the UN, urged remaining Gaddafi loyalists to abandon ship. Addressing the security council, he urged “brother” officers to renounce their support for “this criminal leader”. Outside his circle, Col Gaddafi now has no friends: not the Arab League, not the Islamic Conference Organisation, not even China or Russia – usually so resistant to interference in the internal affairs of UN member states.

With such unified sense of purpose, could the Security Council not have gone further by imposing a no-fly zone or even authorising force to protect the Libyan people? The pragmatic British, who drafted Resolution 1970 with the support of the French, decided to stay within the limits of the possible.

“We want something adopted quickly that will include the means as well as the ends,” said a European diplomat.

The assumption that the council would not endorse a military response, even if it were feasible, was well-founded. In the hours of negotiations on Saturday, member states balked at authorising “all possible means” to ensure humanitarian supplies to the Libyan people for fear it could provide cover for military action.

Q&A

International Criminal Court

Why is the United Nations Security Council referral of the Libyan conflict to the International Criminal Court important?

It puts Colonel Muammer Gaddafi, Libya's leader, and his close associates on notice that any violence they order against the country's people to shore up the regime could leave them open to possible prosecution for war crimes or crimes against humanity.

But isn't the ICC a mess, with difficulties in bringing suspects to court and delays in the trial process?

Both of these have been significant problems, and even the court's strongest supporters wouldn't argue that its first eight and half years have been a triumph. But its backers would say that these are still early days in the complex business of trying to enforce international justice – and that a case like Libya, which has grabbed the world's attention, could be just what the court needs to prove its worth.

But does the ICC have serious political backing to pursue people linked to the Gaddafi regime? Aren't a lot of powerful countries hostile towards it as an institution?

First, the court would say that its investigations are operationally independent and go where the evidence takes them, rather than in the direction politicians might want. Second, the international appetite for pursuing the Libyan case appears to be there in any event. The referral was approved unanimously by a Security Council that includes China, the US, Russia and India – even though all of them have either not signed or not ratified the treaty creating the ICC.

Col Gaddafi may have struck a chord when he told the UN general assembly during a 100-minute diatribe in 2009: "Superpowers have interests and they use the power of the United Nations to protect their interests."

It is a perception that even some permanent members of the council were prepared to acknowledge. "Very often we are told that it is the west which is pressing for human rights, that the west is pressing for interference in internal affairs and that Libya is an internal affair," said Gérard Araud, French envoy to the UN.

"No. What we have seen here is that there is an international community. The world is changing and I think it is changing for the better. And I guess the Security Council has to be at this rendezvous with history."

In the longer run, however, will it be there as a bystander or as a participant? Will the speed and unanimity of the Security Council response to the Libyan crisis extend to other theatres where the interests of one or other veto-wielding power are more intimately involved?

In recent years, the UN has developed the doctrine of a responsibility to protect. It implies a global responsibility to intervene to ensure the safety of populations whose leaders have abandoned them. It demands a common will and the means to implement it. The Libyan resolution reflected a growing acceptance of the concept and the continuing constraints on its implementation.