



27 March 2011

Dear Colleague,

Since I wrote to you on 14 March, the UN Security Council has adopted Security Council Resolution (SCR) 1973 authorising the imposition of a No Fly Zone (NFZ) on Libya and the NFZ has been enforced by coalition aircraft. That is another story which has been well-covered by all the broadcast, internet and print media (you can also read an account of the story up to 25 March at <http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snia-05909.pdf>). But SCR 1973 (http://www.hm-treasury.gov.uk/d/unscr_1973_170311.pdf), adopted on 17 March, and subsequent EU (and US) regulations have also extended the travel ban and asset freeze imposed by SCR 1970 to further individuals and entities.

I'm sure you've been following the detail but I thought I would bring the narrative I started on 7 March up to date. The additional entities to which SCR 1973 extended the asset freeze were largely the same as those which the EU had designated on 10 March, as reported in my summary of 14 March, except that it also designated the National Oil Corporation (NOC). The US Treasury's Office of Foreign Assets Control (OFAC) followed suit on 22 March, also designating a long list of NOC subsidiaries and joint ventures. The EU Council implemented the resolution on 23 March, designating the NOC but only five NOC subsidiaries. Unlike the US, the EU did not explicitly designate the Arabian Gulf Oil Company (AGOCO) which is the NOC subsidiary in the eastern half of Libya. AGOCO has declared itself independent of the NOC and supportive of the Transitional Interim Council in Benghazi.

Earlier, on 15 March, OFAC had designated a long list of additional Libyan entities including, in particular, several Libyan banks and other financial institutions. The EU followed suit on 21 March with additional designations taking effect on 22 March with the publication of Council Implementing Regulation (EU) No 272/2011 (http://www.hm-treasury.gov.uk/d/public_notification_libya_220311.pdf) listing, among other economic and financial entities, the Gumhouria, National Commercial and Sahara Banks. Incidentally, as you may be well aware, LBBC member the British Arab Commercial Bank (BACB) has obtained US and UK licences exempting it from the asset freeze. Its position is clearly and comprehensively described on the home page of its website (www.bacb.co.uk).

I know that other members have also been applying to HM Treasury's Asset Freezing Unit (AFU) for licences, not least to allow companies to pay their Libyan staff in country from accounts with Libyan banks which are now subject to the asset freeze. I believe these licences are likely to be granted but have so far not heard of successful cases and would be grateful if members could let me know unattributably whether or not they have obtained licences for this purpose. It would also be helpful to know whether members have applied for licences to obtain payment from frozen Libyan assets of sums due under existing contracts, invoices or other instruments; whether these licences have been granted; and whether any payment has been obtained. I will treat all of this information in the strictest

confidence but would like to be able to tell other members who are contemplating a claim in general terms whether there is an history of success and what documents and conditions have been required to allow claims to be accepted.

Meanwhile, the political and legal aspects of the upheaval in Libya were considered last week at a roundtable at the Royal Institute of International Affairs (Chatham House) and at a seminar at the British Institute of International and Comparative Law (BIICL). I attended both.

The roundtable at Chatham House on 23 March concluded that Qadhafi would lose in the long-term but did not see his defeat as imminent. The roundtable considered a range of alternative scenarios but one serious possibility was a prolonged stalemate and a de facto separation of Libya into two halves. The humanitarian consequences would be dire and the implications for European policy and UN-sanctioned intervention would be highly damaging. Qadhafi had enough money and loyal support to sustain him until and unless he sustained more serious military setbacks than he had faced so far (Comment: he has since lost Ajdabiya and Brega). He had armed villages and towns as well as loyal tribes, adding a fourth corner to the conflict alongside his loyalists, the 'rebels' and coalition forces; the difficulty of restoring national unity and order after his departure has thereby been increased. A Libyan participant insisted, however, that national feeling, social cohesion and the desire to modernise their country would eventually trump separatism and tribalism once order had been restored with a good hope of permanence.

Meanwhile, the Interim Transitional National Council has been slowly getting its political act together, under a new 'Prime Minister', Mahmoud Jibril (former head of the National Economic Development Board) and 'Finance Minister', Ali Tarhouni (an exile since 1973 and economics lecturer at the University of Washington since 1985). Its military effectiveness is still distinguished more by enthusiasm than professionalism, organisation and heavy weapons but action by coalition air forces has been effective and creditable. (It has clearly enabled the opposition to turn the military tide around).

The roundtable supported keeping diplomatic lines open to Qadhafi and identifying intermediaries who might facilitate his negotiated departure from Libya. Sanctions should be adjusted to avoid prolonged damage to the livelihoods of Libyan citizens who might otherwise withdraw support from the opposition. Creative ideas were needed to deliver humanitarian aid to Libyans, particularly in towns under the control of the regime which was withholding agreement from the ICRC unless it operated under the banner of the pro-regime Libyan Red Crescent. The roundtable advocated political, economic and reconstruction support for the Interim Transitional National Council including the establishment of a regional 'central bank' and AGOCO's freedom to sell oil on its own account. It supported the involvement of a UN Commission to support Libya's reconstruction and its transition to a new constitutional and political structure - which would nevertheless need to be homegrown and Libyan-led: Libya was not short of good people. (There is a precedent for UN involvement since the Pelt Commission helped set up modern Libya before independence in 1951).

The BIICL seminar showed that some of the practical solutions advocated at Chatham House and perhaps being followed by the Coalition could bump up against international law. The Attorney General's advice on the legality of the No Fly Zone boiled down to the authority of SCR 1973 (<http://www.epolitix.com/1832-blog/blog-post/newsarticle/legal-basis-for-deployment-of-uk-forces-to-libya/>) but left many questions unanswered. For example, the BIICL seminar noted that a civilian becomes a combatant when he picks up a weapon and took the view that, while SCR 1973 authorises NFZ protection of civilian areas as well as

civilians, it would not validate aerial support for a 'rebel' advance, when the situation would become one of civil war, which is not covered by the SCR (but the reference to 'civilian areas' must give Coalition air forces quite a lot of leeway).

The SCR effectively rules out the supply of arms, military advisers and intelligence to the opposition, although paragraph 4 of SCR 1973 was seen as introducing some ambiguity to the application of the arms embargo imposed by paragraph 9 of SCR 1970 (by authorising Member States, "to take all necessary measures, notwithstanding paragraph 9 of resolution 1970, to protect civilians and civilian populated areas under threat of attack.."). And while a partial lift of sanctions for the area of Libya under opposition control could be consistent with international law, this would require a partition of Libyan territory with clear armistice lines, which would be hard to reconcile with the SCRs' commitment to Libya's territorial integrity and national unity - and which the Chatham House roundtable thought impracticable.

On the other hand, the investigation of the regime for crimes against humanity by the Chief Prosecutor of the International Criminal Court (Luis Moreno-Campo), commissioned by SCR 1970, could be suspended if a negotiated solution involved a promise of immunity from prosecution for Qadhafi and his partners in crime. There again, one eminent expert in international law said, somewhat unexpectedly, that targetting Qadhafi personally was permissible (although another equally eminent international lawyer disagreed).

Meanwhile, international developments continue. NATO is to take over control of enforcing the NFZ from the Coalition, to the dismay of France which is concerned that NATO will follow less aggressive rules of engagement against ground targets. On 25 March, the African Union, Libyan regime, European Union and Organization of Islamic Conference met in Addis Ababa and agreed on a roadmap involving "a political dialogue between the Libyan parties in order to arrive at an agreement on the modalities for ending the crisis" ([http://www.au.int/en/sites/default/files/communique - Libya_eng \[1\] 0.pdf](http://www.au.int/en/sites/default/files/communique_-_Libya_eng_[1]_0.pdf)). This roadmap will be one issue discussed on 29 March, when the British Government will convene the London Conference on Libya (<http://www.fco.gov.uk/en/news/latest-news/?view=News&id=573716882>).

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