Middle East and North Africa Programme:
Libya Working Group Summary

Libya Two Years On

February 2013

INTRODUCTION

This paper is a summary of discussions that took place during a Libya Working Group meeting held at Chatham House in February 2013. Participants outlined the challenges and opportunities surrounding the future of the constitution, the impact of ongoing security challenges on political and institutional development, and the state of the economy and international relations in Libya.

Some of the main findings of the meeting include:

- The unstable security situation within Libya remains a major obstacle for the engagement of foreign businesses in the country. Regional security concerns are also likely to influence short- to medium-term investment plans of major oil companies operating in Libya.

- The election of a Constitutional Committee might help minimize internal divisions. The constitution-drafting process that followed should not be protracted – one way to do this would be to use the 1951 constitution as a model.

- Libya's new democratic system may be better served by a parliamentary political model – presidential models are more likely to fail when applied to new democracies.

- The government's 'isolation' policy risks crippling the functioning of the government as many experienced officials could be excluded from the political system. The policy could also become a party political tool to abolish political opponents.

- Developing good relations with neighbouring countries remains a priority for the new Libyan administration. The outcome of the war crimes trials of former Gaddafi lieutenants will be crucial in determining international perceptions of Libya.

- Libya's economy remains vulnerable to shortages of qualified personnel and is significantly burdened by new government regulations that will limit overseas and banking-sector investment, such as plans to bar the use of non-Islamic finance in 2015.

The meeting was held under the Chatham House Rule and the views expressed are those of the participants. The following summary is intended to serve as an *aide-mémoire* to those who took part and to provide a general summary of discussions for those who did not.

The Chatham House Rule

'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.'

Security: challenges and consequences

A fractured security system

During an international conference held in Paris in February 2013, many states which had backed the Libyan uprising renewed pledges to support the new government in establishing and maintaining a stable security situation. Participants viewed this level of international commitment as an encouraging development.

Yet concerns were raised over the apparent lack of cohesiveness among Libya's different security forces, which often fail to collaborate on a coherent security programme. Issues around chain of command and authority structures have led to tension and mistrust.

One participant related an incident in which two branches of the security forces disagreed over which had been assigned to patrol a certain area. The incident escalated into a firefight.

Strained relations between the Supreme Security Committee (SSC) and the police were a major concern. The higher salaries earned by members of the SSC continue to be a source of tension between the two security establishments. Efforts to bring the SSC under the control of the Ministry of the Interior by integrating fighters into the regular police force have so far produced limited results. Participants recognized that Minister Ashour Shuail's integration efforts require careful planning and time, but emphasized that more could be done to speed up the process. The crucial importance of personalities and individuals was highlighted. The breakdown of this integration effort would be highly problematic, and this could be affected if these individuals step aside from their current informal roles. It is therefore important that their efforts are acknowledged.

In parts of the country militia groups are filling the gap created by the lack of local security structures and policies. In an effort to respond to international concerns over human rights abuses, the government is slowly closing down unauthorized detention camps as part of a broader effort to curb militant activity. However, the underlying confusion remains over who holds the authority and responsibility to police, both nationally and locally.

Disarmament was seen as an equally urgent issue. Amnesty initiatives have been partially successful, but it was noted that rumours about a 'payment for arms' scheme may have dissuaded many people from turning in arms 'for free'.

Participants emphasized that these are still early days, and agreed that the development of what is inevitably a complex security system, in a sensitive environment, will take time to resolve.

It was also agreed that even when working against each other, most security groups share the aim of establishing a new and democratic Libyan state, governed by the rule of law. One participant characterized the situation by saying, 'Libya is a mess, but it is a good mess.'

However, it was also clear that the fractured security system is a real and serious problem, which is hampering efforts to promote and secure the rule of law in many areas of the country.

Open for business: security and prosperity

In addition to the ongoing security challenges, discussion focused on the role of security in promoting growth and prosperity, and the serious impact that failure (or perceived failure) to reform the security sector could have.

Although in the long term it is hoped that Libya's economy will diversify from oil, in the short to medium term this is likely to remain the main source of growth and prosperity.

Participants were concerned that many foreign oil companies will be unwilling to operate in an environment that does not guarantee the safety of their staff and assets. Those who would continue to operate are likely to insist on a higher return in exchange for taking on the higher risks, for example, by charging higher day-rates for consultants and requiring lower fees.

Participants confirmed that the unstable security situation remains a major barrier to doing business in Libya, despite inviting opportunities and strong relations between oil companies and the government. Similarly, recent incidents in Algeria and Mali have caused significant concern among foreign businesses operating in south-western Libya. Although some suggested that regional incidents should not necessarily make the security environment any more difficult in Libya, others worried that the nature of the rebels as non-state actors has created the perception that their actions could spread into that country and across the region. Major oil companies already stationed in or near Libya will need to decide whether to stay and wait for the situation to improve, but risk missing opportunities elsewhere, or to cut losses in Libya by paying money to break their contracts and relocate elsewhere.

While some participants argued that ongoing restoration and development projects show that security does not have to be an insurmountable obstacle to

investment and growth, many stressed that the needs of foreign businesses, notably oil companies, will be a key consideration in the development of security strategies.

Designing the constitution

Discussion also focused on Libya's constitution. Participants considered the controversial delays to its development, and evaluated different models on which the final document could be based and the systems and institutions which it could recommend.

Which constitution?

Despite initial criticism of the decision to elect a Constitutional Committee (the UN mandate pushed for the immediate drafting of the constitution), participants felt that the in-depth examination of key issues, such as defining constituencies, voting registration and federalism, was vital to ensure the success of the final product. Contrasting this to Egypt's hasty constitutional drafting, participants were hopeful that a slower approach might reduce internal disagreements, and that the process will now run its course and ultimately produce a satisfactory outcome.

Some suggested that the constitutional drafting process could be hastened considerably by using the 1951 Libyan constitution as a model. While recognizing its limitations and the obvious need for modernization and revision, the 1951 constitution was a useful template, already designed to take account of Libya's specific circumstances, and should not be written off as a useful starting point.

Which system?

The constitution will have to address the question of which political system should be adopted.

The 'American-style' presidential system has widespread popularity around the world not only because of the significance of the United States in global politics, but also because of the natural tendency of most politicians and political figures to aim for a powerful presidential role.

Participants discussed the pitfalls of this model, especially as they apply to new democracies. In particular, it was pointed out that presidential models in new democracies are statistically more likely to fail than parliamentary models – the potential for conflict between a president and a parliamentary chamber is high as both believe that opposition from the other represents opposition to democracy

itself. Examples were given of occasions when presidents have dissolved Parliaments to 'safeguard democracy', or the other way round.

Libya would also have to decide on how to formally achieve decentralization, what level of federalism it hopes to adopt, and how. Again, it was suggested that Libya's 1951 constitution provided an intelligent and sensible starting point for this discussion, but there was some debate over how long it took to implement its provisions at its conception, and the level of armed enforcement that was required for it to be implemented.

The more recent problems faced by federalism were also raised, such as the setback of being branded as 'treasonous' by the previous prime minister. Islamist groups also continue to object to the policy, preferring to advocate a pan-Arab relationship across North Africa rather than a decentralization of power within Libya.

International examples of federal structures suggest that a flexible approach might be possible. Spain's system is deliberately 'bespoke', offering different rights for different needs – for example, enhanced language rights for the Catalans or fishing rights for other minority groups.

The question of federalism was seen as particularly delicate, given Libya's oil wealth. The assessment of participants was that discussions will inevitably focus not only on the devolution of political power and accommodation of minority groups, but also on the destination of revenues from natural resources.

The government machine: reform without destruction

The reform of the civil service emerged as an important theme. Although ministries dedicated to oil production continued to function well during and after the uprising (ensuring that 1.5m barrels of oil continued to be produced each day), other ministries have serious problems: excessive nominal staffing and insufficient effective staff, inflated salaries, corruption and inappropriate appointments.

Participants discussed the challenges inherent in the elimination of these problems without causing mass unemployment or institutional instability.

'Isolation': wrong time, wrong place?

Participants discussed the National Congress's 'isolation' policy, designed to prevent those who occupied senior positions under the old regime from holding similar offices under the new one.

Participants understood the need and desire for a clean start, but pointed out that ejecting some of the most experienced government officials, while at the same time not accepting foreign technical assistance, might lead to massive problems for the functioning of the government. New officials were seen as well-meaning but lacking experience.

Moreover, there remains little agreement over how this policy should be designed or implemented. One participant pointed out that if the restriction were applied to everyone who served under Gaddafi from 1969 onwards, it would encompass a very large number of Libyan officials. It was acknowledged that taking a government job used to be the norm and, in most cases, not an indication of untrustworthiness or unsuitability for holding office.

People valued government jobs for reasons of money, position and security. According to some participants, these people could still be an asset to the new system if they could be welcomed into it and given good reason not to fear the change. Paradoxically, isolation could put this welcoming strategy at risk for no tangible outcome. There were also suggestions that the policy could potentially become a party political tool, with different dates or levels of applicability selected by each party to exclude its political opponents.

There was agreement that the civil service must function properly if any new government is to succeed, and serious questions were raised over the wisdom of applying this potentially destabilizing policy at a time when the situation is so fragile.

Slimming down

Further down the ladder, the civil service has the opposite problem: that of being stuck with too many under-qualified personnel.

Gaddafi's regime tried to slim down the civil service, but his attempts met strong opposition, given the high pay of civil service posts and the security they offered relative to other work. The result was that the service became overstaffed and inefficient. Participants agreed the civil service will now need to be cut back significantly.

Corruption was also seen as a major problem that needs to be tackled – one civil servant was recently found to hold 107 government jobs.

To some extent, corruption became inevitable because of concerns about the future, which will remain under a policy of slimming the civil service down. However, with many civil servants unclear on their roles or duplicating one

another's work, progress in this area is essential to make Libyan institutions fit for purpose.

International status: trade, borders and international justice

Participants discussed Libya's international relations with both neighbouring and Western states, and with international bodies including the UN and the International Criminal Court (ICC).

The risk of unrest in Mali and Algeria spreading to Libya was discussed but largely dismissed, given the specific characteristics of the terrain and other factors. Recent conferences in Paris and London at which military allies promised continued support were also discussed, as was the importance to international relations of managing war crimes tribunals to international human rights standards.

Neighbours

Developing good relations with neighbouring countries was considered to be a key priority for the new Libyan administration, which, upon taking office, had met with Algerian officials to discuss border security and received delegations from Egypt and Tunisia.

Gaddafi managed to maintain good relations with the states and strongmen in the region. He built strong alliances with government and tribal leaders across West Africa, including Mauritania, where he donated large amounts of aid and technology. The new administration has sought to build on those relations, in recognition that it is still the largest actor bordering the Sahel.

However, participants suggested that much of Libya's current strategy is simply to encourage its neighbours to keep their internal problems in check, especially along the border regions. Although acknowledging that Libya's 4,448km long borders are almost impossible to close, participants raised concerns that the cross-border trade of illicit goods is creating a damaging perception of Libya and should be prevented as far as possible. The African Union meeting on the issue drew a positive response, but follow-through has been weak.

Participants discussed the possibility of the Sahel turning into a semi-permanent base for radical Islamist groups and insurgents, but concluded that this was unlikely, especially given that the unforgiving, mountainless terrain would not be well suited as a hiding-place.

Doubt was also expressed over the presence of Islamic actors in Libya pushing for 'Islamic bridging' with other states: participants described Libya's Islamic

groups as 'manageable' and emphasized differences between the approaches of Libyan Muslim Brotherhood groups and those in other countries.

International actors: potential pitfalls

A major concern was how the international community would react to the forthcoming war crimes trials of former Gaddafi lieutenants as they have not been handed over to the ICC.

The treatment of these high-profile prisoners, both in detention and at their trials, will be closely scrutinized by the international community, which will see any breach of their human rights as a poor reflection on Libya's commitment to change and political development. Capital punishment sentences will be scrutinized particularly closely.

Nevertheless, participants acknowledged that if the trials were to be held in accordance to international standards, the Libyan state could enhance its own authority while satisfying the international community – a 'win-win' situation.

The economy: oil, investment and ice cream

Participants examined the challenges facing the private sector, foreign direct investment, and the ongoing need to diversify Libya's heavily oil-dependant economy. Many agreed that the economy is functioning well in many areas, but remains vulnerable to shortages of qualified personnel, and significantly burdened by regulations designed to limit overseas and banking-sector investment.

Private vs public sector

Participants noted that public-sector salaries remain considerably higher than what the private sector offers. This imbalance has led to a lack of technical skills and qualifications in many areas of the private sector. In turn, this lack of skilled and qualified labour is hampering Libya's export sector and international sales.

However, it was clear that in some areas the private sector is thriving: one participant suggested that Tripoli had the most ice cream shops per square mile in the world, and there is evidence of widespread investment in small building projects. Bank lending has financed some of this development, but much of the capital has been invested by entrepreneurs.

Some public-sector construction projects are also under way, though this was deemed unlikely to create many new jobs in the long run. Instead, participants

suggested that public-sector reform, and a real and effective development of alternatives to the oil industry, will be needed to support private-sector growth.

Overall, the oil sector was praised for its resilience in continuing to operate well, despite heightened security concerns, as it produced 1.5m barrels of oil a day even at the height of the uprising.

Access to finance

Many participants identified government regulations on investment as a major barrier to growth. Participants were particularly concerned about plans to bar the use of non-Islamic finance after 2015, suggesting the move might have major implications for the banking sector, as well as for the private sector more widely. The timeframe chosen to implement the new fiscal policy was also criticized; participants deemed it unwise to introduce such major and potentially destabilizing reform before growth is consolidated.

Decree 207, which lowers the ownership limit of Libyan assets by foreign investors from 65 per cent to 49 per cent, was also heavily criticized and described as unrealistic, impractical and unwise. Participants suggested that the significant limit reduction would be a serious disincentive for potential foreign investors, depriving Libya of a vital source of income that other regional neighbours would also be pursuing.

Conclusion

Participants were optimistic, on balance, about Libya's political and economic achievements over the last year, and acknowledged that deeper reforms will take time to take root. Yet many expressed frustration over the slow pace of change and the perceived mismanagement of specific factors that are within the government's control, such as ill-advised financial regulations, which could slow economic growth.

Security concerns pervade discussions over political and economic development. Participants agreed that poor security has not prevented progress in some areas, but conceded that in the medium to long term a more stable security situation will be essential in order for a new law-based political system to be established.

ABOUT THE LIBYA WORKING GROUP

The Chatham House Libya Working Group aims to identify, analyse and discuss scenarios for political transition, state-building and economic reconstruction in Libya. The group enables timely discussion and analysis that is responsive to the dynamic situation, providing a forum for the sharing of expertise and the debate of new ideas.

Meetings take the form of multi-disciplinary roundtable discussions, held under the Chatham House Rule, bringing together experts from a wide range of backgrounds and sectors for a free and frank exchange of ideas. This project seeks to widen the framework of political debate on Libya, leading to innovative policy recommendations that influence critical policy decisions.

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The Middle East and North Africa Programme, headed by Dr Claire Spencer, undertakes high-profile research and projects on political, economic and security issues affecting the Middle East and North Africa. To complement our research, the MENA Programme runs a variety of discussion groups, roundtable meetings, workshops and public events which seek to inform and broaden current debates about the region and about UK and international policy. We also produce a range of publicly available reports, books and papers.

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