

Briefing on Operation Sophia

1. Introduction

- 1.1. On 18 May 2015 the Foreign Affairs Council approved Council Decision (CFSP) 2015/778, establishing a military CSDP operation that would involve attempting to disrupt the operations of people smugglers in Libya. This operation was originally named EUNAVFOR MED, but was later renamed Operation Sophia. (For convenience, this document uses the term “Operation Sophia” even when referring to the part of the operation conducted before the operation was given that name.)
- 1.2. We at the Quaker Council for European Affairs have been concerned about the possible consequences of Operation Sophia for refugees and migrants. Therefore, in March and April 2016 we conducted a short, focused advocacy project that included meetings with relevant staff from three of the Member State Permanent Representations, as well as with a representative of the EEAS.
- 1.3. The purpose of this briefing is to provide other civil society organisations (especially those that work more generally on migration issues) with the benefit of our experience in working on Operation Sophia, in the hope that this may help such organisations with their own advocacy.

2. Background

- 2.1. In early 2015 there were an unexpectedly large number of refugees and migrants crossing from Libya to Europe, on overcrowded, unsafe boats. This was facilitated by an illegal people smuggling industry. The industry had grown up in Libya largely as a result of the fact that there was a civil war in Libya at the time – law and order had broken down, and criminal gangs could operate openly. This caused concern in the EU partly because of concern about the number of refugees and migrants arriving in Italy, and partly because some of the boats were sinking, with the result that some refugees and migrants were drowning in the Mediterranean. It was in response to this situation that, on 18 May 2015, the Foreign Affairs Council approved Operation Sophia, which would involve sending a fleet of warships to seize the people smugglers' boats.
- 2.2. Federica Mogherini announced Operation Sophia as an operation against people smugglers, and not against refugees and migrants. However, Operation Sophia can only be understood in the context of the EU's response to the so-called “refugee crisis”. As is well known, the EU Member State governments are unable to agree on how to respond to the number of refugees and migrants arriving in Europe. To prevent the situation from (as they see it) getting any worse, the Member State governments are seeking to reduce the number of refugees and migrants reaching Europe – Operation Sophia is part of this process. If refugees and migrants are deprived of access to boats, they could be stranded in Libya. Reports from reputable human rights organisations show that Libya is far from being a safe country. Libya is a country where refugees and migrants are at high risk of violence, including (in the worst cases) wrongful imprisonment, torture, and rape.*
- 2.3. Operation Sophia is divided into several phases:
 - Phase 1 was the deployment and intelligence-gathering phase.
 - Phase 2A (the current phase) involves attempting to disrupt the operations of people smugglers by boarding, search, seizure, and diversion of people smugglers' boats on international waters.
 - Phase 2B would involve similar activities to phase 2A, but extending into Libyan territorial waters. Under international law, this would require either permission from Libya or a United Nations Security Council (UNSC) resolution.
 - Phase 3 would involve actions on Libyan soil aimed at putting people smugglers' boats out of use.
 - Phase 4 would be the withdrawal phase.
- 2.4. The most significant dates so far are:
 - **18 May 2015** – The EU Foreign Affairs Council approves Operation Sophia.
 - **27 July 2015** – Operation Sophia reaches full operational capacity. An EU-controlled fleet of warships is now operating in the Mediterranean.

* Jesuit Refugee Service Malta (2014) *Beyond imagination: asylum seekers testify to life in Libya*, available online at <<https://www.jrs.net/assets/Publications/File/Beyond-imagination-jesuit-refugee-service-malta-libya-report.pdf>>; Amnesty International (2015) *“Libya is full of cruelty”: stories of abduction, sexual violence and abuse from migrants and refugees*, available online at <<https://www.amnesty.org/download/Documents/MDE1915782015ENGLISH.pdf>>.

- **7 October 2015** – Operation Sophia moves from phase 1 (deployment and intelligence-gathering) to phase 2A (anti-smuggling activities in international waters).
- **9 October 2015** – The UNSC passes Resolution 2240, giving certain express powers to the EU in connection with Operation Sophia. However, these powers only extend to international waters.
- **17 December 2015** – Representatives of the two main factions in Libya sign the Libyan Political Agreement, providing for a “Government of National Accord” (NGA) to restore order and to end the civil war. This deal is backed by the UN, and by other international actors including the EU.
- **30 March 2016** – GNA leaders arrive in Tripoli, the Libyan capital, to take up power. Nonetheless, Libya remains highly unstable. There are still armed groups (including the Islamist group ISIS) that reject the authority of the GNA, and some level of armed violence continues in Libya.
- **18 April 2016** – The new Libyan prime minister Fayez Serraj addresses the EU Foreign Affairs Council by video link. He states that he does not, for the time being, give permission for Operation Sophia proceed to phase 2B (anti-smuggling activities in Libyan territorial waters).
- **25 April 2016** – At a summit meeting between President Obama and the heads of government of France, Germany, Italy, and the UK, there is discussion of whether NATO's migration control activities in the Aegean Sea could be extended to the part of the Mediterranean near Libya. If this goes ahead, the ships engaged in Operation Sophia could end up operating side by side with American ships. A decision is expected at the NATO summit meeting in Warsaw on 8-9 July 2016.

- 2.5. While Operation Sophia is not a search and rescue operation, the ships engaged in the operation are subject to the rule of international maritime law under which a ship must rescue people whose lives are in danger at sea. Therefore, the ships engaged in the operation do save the occupants of the boats from drowning – over ten thousand lives have been saved so far. Anyone saved is brought to Italy in the first instance, and anyone who claims refugee status is allowed to apply for asylum. Anyone suspected of being a people smuggler is prosecuted under Italian law. (EU ships cannot legally return those it saves from drowning to Libya, as some of them may be protected as refugees under international law – the non-refoulement principle applies.)
- 2.6. For a mixture of political and legal reasons, the EU is unlikely to progress Operation Sophia to phase 2B without both the GNA's permission and another UNSC resolution. Even after that, the EU would be unlikely to progress Operation Sophia to phase 3 without both the GNA's active cooperation and yet another UNSC resolution.
- 2.7. Operation Sophia is being kept under review by the EU Political and Security Committee and the EU Foreign Affairs Council. There will be a formal review of the operation in summer 2016, as technically the Foreign Affairs Council's approval of the operation expires in late July 2016 (one year after the operation reached full operational capacity). This review will take the form of the naval command producing a (classified) “strategic review” document, which will then be considered by the Political and Security Committee and the Foreign Affairs Council. A decision will then be taken on the reauthorisation of Operation Sophia. This process will be treated as a technical process rather than as a political one, and so the opportunities for civil society input will be limited.
- 2.8. Given the current political situation in Libya, together with the possibility of a Russian or Chinese veto in the UNSC, it may be a long time before Operation Sophia proceeds beyond phase 2A (if it ever does proceed beyond phase 2A). The re-enforcement of Operation Sophia by forces under the NATO banner seems a more likely development, at least for the immediate future. Another possibility is that the EU could provide resources to the Libyan coastguard to undertake activities similar to those planned for Operation Sophia.

3. The current and possible effects of Operation Sophia, and of related activities off the Libyan coast

- 3.1. The fact that Operation Sophia is currently only permitted to operate in international waters has a major impact on what the operation is able to achieve. While in principle the EU fleet is supposed to seize boats and arrest people smugglers, in reality the people smugglers are largely able to protect themselves and their boats by remaining within Libyan territorial waters. Only the more junior members of the people-smuggling gangs venture out into international waters. Likewise, the people smugglers restrict the use of their more valuable wooden boats to within Libyan territorial waters. Only cheap rubber dinghies that are easy to replace (because they are mass-produced in China) are sent out into international waters. Therefore, at present, most of what Operation Sophia does is to save refugees and migrants from drowning. While Operation Sophia is also able to seize a few low-value boats and to arrest a few junior people smugglers, the EU fleet's ability to do this is limited. Overall, Operation Sophia is achieving very little of its stated purpose.

- 3.2. However, if Operation Sophia proceeds to phase 2B, it will become easier for the EU fleet to seize boats. If Operation Sophia proceeds to phase 3, it will become easier still. As discussed above, if refugees and migrants are deprived of access to boats, they could be stranded in Libya, where they would be in serious danger of violence.
- 3.3. There is also a risk – difficult to estimate – that the people smugglers would be driven to engage in practices that would increase the refugees' and migrants' danger of drowning (e.g. forcing more people onto each boat, when the boats are already overcrowded).
- 3.4. Moreover, if the EU provides resources to the Libyan coastguard to undertake activities similar to those planned for Operation Sophia, then the Libyan coastguard would be free to return anyone it saves from drowning back to Libya. The non-refoulement principle would not apply in this case. More generally, we do not know what human rights standards would be applied by the Libyan authorities in that situation – they may not be as rigorous as European human rights standards.
- 3.5. On 9 April 2016 the UK *Guardian* reported on a plan for phase 2B according to which the EU fleet would attempt to turn boats full of refugees and migrants back to Libya. If this report is true, then the plan would represent an attempt to take advantage of a possible legal loophole – so long as refugees and migrants remain on the boat in which they left Libya, it is at least arguable that they are not under EU jurisdiction, and that therefore the non-refoulement principle does not apply to them. The EU would therefore be able to avoid the consequences of the non-refoulement principle even without the cooperation of the Libyan coastguard.
- 3.6. Quite apart from the possible effects on refugees and migrants, Operation Sophia (or similar activities) could have an effect on the situation in Libya. The EEAS and the relevant staff of the Member State Permanent Representations appear to be fully aware of this, and to be genuinely committed to the success of the Libyan political agreement. They will therefore wary of doing anything that could increase the instability in Libya.
- 3.7. It is difficult to predict what the consequences of NATO involvement would be. Potentially, the more actors become involved, the more difficult it will become to hold any of them to account for any consequences.

4. How civil society organisations might approach Operation Sophia

- 4.1. As described in paragraph 3.1 above, Operation Sophia remains relatively harmless for now. In fact, as it is saving refugees and migrants from drowning, it is currently doing more good than harm! However, it is unlikely that EU policy-makers will remain content with a situation in which Operation Sophia is not achieving its real purpose, and we would therefore expect EU policy to develop over the coming months. If new circumstances makes it look likely that Operation Sophia, or some related activity off the Libyan coast, will be harmful, then civil society organisations may wish to incorporate a critique of this into their broader critique of EU migration policy.
- 4.2. We would therefore recommend a “watch and wait” approach to Operation Sophia. Interested civil society organisations would be well advised to keep track of developments, and to be ready to advocate against any developments that are likely to be harmful. So, for example, if the EU authorities pursue a policy that strands refugees and migrants in Libya, civil society organisations should argue that this is inhumane. Similarly, if the EU authorities find some way around the non-refoulement principle (e.g. by providing resources for the Libyan coastguard to force refugees and migrants to return to Libya), civil society organisations should criticise this.
- 4.3. The EU authorities (specifically, the EEAS and the relevant staff of the Member State Permanent Representations) appear to be highly image-conscious where Operation Sophia is concerned. They are keen for Operation Sophia to be perceived as a search and rescue operation, even though it was never designed as one. Similarly, they are keen that the drowning of refugees and migrants is blamed entirely on the people smugglers, and not on the EU, in spite of the fact that the people smugglers are kept in business by the EU's refusal to provide safe routes into the EU. This image-consciousness implies that they are likely to take criticism from civil society organisations seriously. Civil society organisations may therefore have a role to play in shaping future policy.