

## A Dangerous Precedent

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Secretary of State Condoleezza Rice's visit to Libya last week represents the final step in a decades-long U.S. effort to reform and rehabilitate the rogue state. A charter member of the U.S. Department of State's list of State Sponsors of Terrorism, after its nuclear program was disclosed in 2003, Tripoli demonstrated contrition and agreed to compensate American victims of a 1988 terrorist attack. Libya was scratched from the list in 2006, and this past August Washington struck a deal with Tripoli that removed the final hurdles in normalizing the bilateral relationship.

The Bush administration considers the reintegration of Libya to be among its crowning foreign policy achievements and a roadmap for other rogue states. Indeed, in 2006 Secretary Rice described Libya as "an important model as nations around the world press for changes in behavior by the Iranian and North Korean regimes." Despite the self-congratulations, however, the agreement is not the unqualified success it is portrayed to be. The rollback of Libya's nuclear program was a strategic achievement, but it was not without a political and moral cost.

In fact, the August deal that paved the way for Rice's trip contains an unprecedented arrangement in which victims of a U.S. retaliatory strike in response to Libyan state-supported terrorism will receive compensation. The accord has profound implications for U.S. counterterrorism and military policy.

Back in 2003, Libya agreed to dismantle its WMD programs and compensate U.S. victims of the 1988 Pan Am Lockerbie attack in exchange for removal from the terrorism list and normalization of relations. Tripoli paid most of the \$10 million per family, but balked at paying in full when Washington did not follow through on its pledge to remove Libya from the list. The administration was unable to do so because in 2004, Libya was implicated in a plot to assassinate Saudi Crown Prince Abdullah.

Washington eventually removed Libya from the terrorism list in 2006, but normalization of relations remained in limbo until last month, when an agreement was signed to provide the outstanding compensation for the Lockerbie victims, as well as for those killed and wounded in the 1986 Libyan-sponsored attack on the La Belle Disco in Germany.

The August deal known as the "U.S.-Libya Comprehensive Claims Settlement," establishes a fund in excess of \$1 billion to cover Lockerbie, La Belle, and any future U.S. terrorism-related damages claims against Libya. But the settlement also stipulates that the fund will compensate Libyans who were killed and injured during the U.S. military retaliation for the La Belle disco bombing. Some 40 Libyans were killed and 80 wounded in the April 1986 U.S. airstrikes. Libyan courts have rendered judgments against the United States in these matters.

Assistant Secretary of State for Near East Affairs David Welch, who helped pen the settlement, said this mechanism would "give fair compensation to the claimants from both sides for the past incidents and . . . will enable us to move ahead toward a normal relationship." While the agreement succeeded in breaking the logjam, the terms of the deal are extremely problematic.

On the face of it, the quid pro quo implicitly equates the intentional targeting of civilians (i.e., terrorism) with unintentional collateral damage incurred during a legal act of self defense. The administration's embrace of moral equivalency to seal the deal is stunning. In a surreal twist of events, Libyan leader Muammar Qaddafi -- who ordered the attack on the La Belle -- could be eligible for compensation for the death of his adopted daughter, who was said to have been killed in the U.S. counterstrike.

More problematic than the disturbing moral implications, however, are the legal ramifications for Washington of the agreement. The United States has never accepted the legal obligation to pay compensation for unintentional collateral damage incurred during legitimate military actions, and nothing in the Geneva Conventions specifies it. Even though the fund will be financed by Libyan and U.S. corporate contributions, there is a very real danger that the Libya settlement could serve as precedent for future claims of this sort.

In Iraq, U.S. Armed Forces routinely pay compensation in cases of wrongful death to help mitigate the hostility of the local population, but these payments are voluntary.

To help ensure that the Libya settlement does not become the standard, the White House should immediately clarify that compensation for Libyan victims are ex gratia -- non-obligatory -- payments and not precedent setting. Regrettably, even if the White House does so, the damage may already be done.

By equating those killed in the U.S. counterstrike on Libya with American victims of Libyan terror the administration has inadvertently muddled a principled position on terrorism that differentiates between terrorist and counterterrorist operations. It is a message that will not be lost on Washington's enemies.

David Schenker is director of the [Program on Arab Politics \(http://www.washingtoninstitute.org/templateI02.php?SID=1&newActiveSubNav=Arab%20and%20Islamic%20Politics&activeSubNavLink=templateI02.php%3FSID%3D1&newActiveNav=researchAreas\)](http://www.washingtoninstitute.org/templateI02.php?SID=1&newActiveSubNav=Arab%20and%20Islamic%20Politics&activeSubNavLink=templateI02.php%3FSID%3D1&newActiveNav=researchAreas) at The Washington Institute. ❖

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