

Libya's Confident Defiance and ILSA

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Brief Analysis

The arraignment Friday of Brian Regan, an employee of the National Reconnaissance Office, on charges of espionage for Libya, once more places Colonel Mu'ammar Qaddafi's domain on the front pages. The secrets sold to Libya may have included information about American satellite over-flights which have in the past been able to provide early warnings about Libyan construction of facilities designed to produce or test weapons of mass destruction (WMD) and missiles. In the last two years, Libya's acquisition of missile technology and its pursuit of chemical weapons have raised alarms. The espionage episode comes at a particularly inopportune time, as the CIA's most recent assessment concludes, "Tripoli has not given up its goal of establishing its own offensive [chemical weapon] program."

Besides its continuing pursuit of WMD, another Libyan issue is the January 2001 conviction in a Scottish court sitting in the Netherlands of a Libyan intelligence agent Abdelbasset Ali Mohammad al-Megrahi for the bombing of Pan Am 103. The appeal process is due to begin in October, with the Libyan lawyers being assisted by Harvard professor Alan Dershowitz.

U.S. policy toward Libya relies heavily on sanctions. The Bush administration states that any relaxation of restrictions on U.S. companies will be contingent on Libya's acceptance of responsibility and paying of compensation to the Lockerbie families. In addition to restricting U.S. firms from economic transactions with Libya, the Iran-Libya sanctions Act (ILSA) authorizes a variety of penalties against foreign firms that invest in the Libyan oil or gas industry. Although throughout the congressional debate on ILSA, the Libyan angle seemed to have taken a backseat to Iran, the recent developments may renew interest in Libyan activities.

Libya's Confident Defiance

Historically, a confident, prosperous Libya is a state less prone to accept international mandates that it finds onerous. Since the suspension of UN sanctions in April 1999, the revival of Libyan economy has led to a corresponding unwillingness to recognize the legitimacy of the Lockerbie verdict. In the past year, Libya has become a magnet of international investments and one of the most attractive prospects for oil exploration activity. European petroleum giants, led by Italy's ENI, Spain's Respol and France's Total Fina Elf, have once more resumed their activities in Libya's oil and natural gas industries. Beyond the energy sector, both European and Asian firms have been busy securing contracts to refurbish Libya's infrastructure, airline industry, communication networks and even financial services. The scope of such investments has revived Libya's moribund economy that was mired in a deep recession for much of the 1990s. During fiscal year 2001, Libya's economy grew at an impressive 5.5 percent with a

projected rate for the next year to ease slightly to 5 percent. In the meantime, the inflation rate that peaked at 50 percent per annum in the mid-1990s has been contained and is now estimated to be 12 percent. Given the centrality of international investments to Libya's economic recovery, Tripoli is continuously seeking to adjust its foreign investment laws in order to attract more international capital. These economic transactions have been largely undisturbed by the conviction of a Libyan intelligence agent for the Lockerbie bombing. Indeed, throughout Europe's chancelleries and boardrooms, the conviction and the Lockerbie case seem distant memories.

European passivity has contributed to Mu'ammar Qaddafi's defiance, as he continues to castigate the conviction as "very funny and a farce." In line with the colonel's dictates, Tripoli persistently defies its obligation under United Nations resolutions mandating that it pay compensation to the Lockerbie families and acknowledge responsibility for the bombing. The Libyan Foreign Minister Abdel Rahman Shalqam has even gone so far as to equate the very discussion of compensation to "racism." The economic context of Libya's foreign policy is instructive. During the 1990s, when Libya's economy was on the verge of collapse and the international community maintained its multilateral sanctions, Tripoli seemed forthcoming and accepted UN demands for the handover of the suspects. Once international investors returned and oil rigs resumed their operations, Libya's diplomacy hardened and its incentive for compliance with the remaining UN resolutions evaporated. The lessons of the past decade reveal that there is a clear nexus between Libyan behavior and international resolve.

While Libya has had many successes, it has also had certain difficulties in securing commercial opportunities. Although Tripoli has been effective in drawing investors, it has not always proven a hospitable place for foreign investments. The absence of a coherent administrative structure, financial scandals in the Ministry of Finance and Central Bank and Tripoli's low standing among export credit agencies have hampered governments' attempts to fully exploit the lure of Libya's resources. The passage of ILSA further adds to the concerns of international investors who are already bedeviled by the arbitrary nature of Libya's legal and bureaucratic structures.

U.S., EU, and ILSA

The European Union's policy toward Libya is largely based on engagement. Although the EU still maintains an arms embargo against Tripoli, all other sanctions resulting from the Lockerbie episode have been lifted. Given the EU's aversion to sanctions, ILSA has emerged as a source of U.S.-EU tension. Although on the surface such allied disagreement can be seen as undermining the potential success of U.S. measures, the renewal of ILSA may serve a larger salutary purpose. The European policy of engagement and the U.S. path of containment can complement one another. The Europeans will provide the carrots and the U.S. will supply the sticks, that in tandem, can potentially make a constructive impression on Libya. Tripoli may appreciate that it cannot be fully integrated into the international financial community in absence of American approbation, and that its access to critical investments necessitates moderation of its policies and coming to terms with the Lockerbie mandates. The lure of European investments and the deterrence of U.S. sanctions can function harmoniously in pressing Libya in the right direction.

The ILSA legislation was not intended as a purely punitive measure, but as a basis for multilateral cooperation. The reality remains that U.S. and European allies do share many common concerns in Libya. Tripoli's attempt to acquire long-range missiles has already alarmed the Italian government, particularly given the 1986 precedent when Libya deployed such missiles against Italian national territory. On the Lockerbie issue, the United States and Britain share similar concerns, as the issues of compensation impacts British citizens who perished during the bombing. The Bush administration can potentially exempt countries from ILSA if they undertake additional measures in terms of denying dual-use technology to Libya and assisting the United States in deterring Russia and North Korea from selling missile technology to Tripoli. Both Italy and Britain, two key EU states, would find such an approach hospitable, as it conforms to their own national priorities. The point remains that ILSA is a more flexible legislation than its detractors acknowledge, and calls for a multitude of measures, including sanctions, to achieve U.S.

objectives. Under the rubric of ILSA, the United States can still search for ways of engaging the Europeans and devising a concerted strategy for gaining Libya's compliance with important national security determinations.

Conclusion

Libya remains a problem country. The renewal of ILSA could be an instrument for U.S.-European cooperation, or it could create tensions within the NATO alliance. Careful management of the legislation with an eye toward harmonizing the U.S.-European approach can make an important contribution to the advancement of objectives shared by both parties. ILSA may contribute to convincing Libya that it is not necessarily exempt from pressure just because it handed over the Lockerbie suspects, and that the United States remains committed to ensuring Tripoli's full compliance with the United Nations resolutions. The experience of past encounters with Qaddafi suggests that confronted with a determined U.S. policy, he may prove more amenable to the demands of the international community.

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