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S U M M A R Y

President George W. Bush has suggested that other nations—Iran, North Korea, Syria—follow the example of Libya, which increased its own security by ending links with terrorist groups and surrendering weapons of mass destruction and delivery systems. Some commentators are taking a second lesson from the Libya case: The United States will forgo its declared interest in democratization and reform if a country takes positive security-related steps and has enough petroleum to offer. The United States needs to correct this impression. It has the opportunity to do so through pursuing incremental political reform and human rights improvements in Libya even while relieving sanctions and developing relations. From pressing for repeal of limits on free expression to the prosecution of cases of torture, there are many ways Washington can use its leverage to urge long-term political change that will not come about through economic liberalization alone. ■

Libya: Security Is Not Enough

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The new U.S.–Libyan relationship vividly illustrates a conundrum the United States faces across the Middle East: Can the United States concurrently pursue multiple strategic goals—counter-terrorism, the elimination of unconventional weapons, and the promotion of reform and democracy?

The United States agreed to lift most sanctions and reestablish diplomatic relations with Libya in 2003–2004 because the government of Muammar Qadhafi pledged to abandon terrorism and weapons of mass destruction (WMD) programs. But Libya made no promises to improve human rights or undertake political reform. Some commentators wonder whether the United States has undermined its credibility as a reformer in the region by pocketing the WMD and terrorism gains and looking the other way at Libya's ongoing internal repressiveness.¹ Painful recent developments such as the reported Qadhafi-backed plot to assassinate Saudi Crown Prince Abdullah and the detention of peaceful dissident Fathi al-Jahmi, as well as unresolved past issues including the disappearances of

Libyan human rights activist Mansour Kikhia and Lebanese religious leader Musa Sadr, raise serious questions about Libyan integrity and accountability across the board.

On balance, the U.S. government was right not to let the perfect be the enemy of the good. Ending Libyan missile threats to U.S. forces in the Mediterranean, rolling up a clandestine nuclear program, and enabling families of Pan Am Flight 103 victims to receive compensation from Libya were results worth striving for. It was also important for the United States to establish that state sponsors of terrorism or proliferation could avert military action by changing their behavior and that the United States would keep its word by lifting international and bilateral sanctions once the original conditions were fulfilled.

But this good arrangement need not keep the United States and others from seeking still more improvements in the behavior of the Libyan regime. The United States must not renege on what has already been promised to Libya, but it can and should clarify quid pro quos for further



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steps to enhance Libya's stature—and do so early in the newly reestablished relationship. Libyan officials undoubtedly will resist, along the lines sketched out by Qadhafi's son, who told an interviewer in August 2004 that “we don't need Mr. Bush to teach us a lesson in democracy.” However, such a response is the initial, public reaction of most Arab regimes to U.S. efforts to promote reform. Defensive reactions aside, what is important is changing the context in which leaders make decisions. Qadhafi must understand that he can no longer use violent, covert means to exact retribution for real or imagined offenses by Libyans or non-Libyans. Clearly, the alleged assassination plot against Crown Prince Abdullah, for example, will have to be addressed before the United States can consider removing Libya from the list of state sponsors of terrorism. Harsh treatment of peaceful Libyan dissidents, including disappearances and lengthy incommunicado detention, must also cease.

It would be inappropriate to conduct reestablished U.S.–Libyan relations in a pre–September 11 policy framework. If repression and injustice give impetus to anti-American sentiment and support for terrorism in much of the Arab world, then it is a mistake for the United States to ignore the need for change inside Libya. Stability is desirable and supplies of light crude oil are important, but fundamental change in Libya is just as important over the longer term. It is also naïve to believe that mere increased contact with the outside world—through diplomatic relations, commercial contacts, and World Trade Organization (WTO) talks—will lead to liberalization in Libya. The prospects for significant liberalization may seem dim while Qadhafi is in power, but failure to pursue a serious strategy to persuade Libya to change will discredit both the new U.S.–Libyan relationship and the broader U.S. initiative for Arab reform.

Dealing with Libya

In the late 1980s, the United States and the United Nations constructed a complicated

edifice of economic and other sanctions to punish and isolate Libya for its conduct and support of terrorism. Although Qadhafi focused diplomatic attention and resources on Africa to alleviate Libya's economic and political isolation from the West and Arab countries, sanctions evidently took their toll. Throughout the 1990s, Qadhafi sent signals of a desire for rapprochement with the United States and Europe. In 1999, Libya met a key UN Security Council demand by surrendering suspects in the Pan Am bombing to an international court, a move that led to the suspension of UN sanctions.² British and U.S. negotiators met with Libyan representatives intermittently from 1999 onward to persuade Libya to meet the remaining UN demands: forswearing the future use of terrorism, accepting responsibility for the bombing, and paying compensation. Under the leadership of Prime Minister Tony Blair, the British took a leading role in the negotiations, urging the United States along at critical junctures.

The September 2001 terrorist attacks in the United States and the looming war in Iraq affected both Libya and the United States in the negotiations launched in 2002-2003. Libya, for its part, showed increased eagerness to settle outstanding issues, fearing it was in the sights of influential neoconservatives in Washington.³ The United States made clear that although the Pan Am 103 affair could be settled on its own merits, Libya would have to give up WMD programs and long-range missiles as well as terrorism if it desired more amicable bilateral relations.

While the 2002-2003 negotiations were going on, Libyan lawyers and representatives of the families of the 270 victims of the Pan Am bombing worked out a deal in which Libya would pay \$5 million to \$10 million per victim. Five million dollars would be paid once UN sanctions were lifted, and the remainder if U.S. sanctions were lifted and Libya was removed from the U.S. government list of state sponsors of terrorism. Libya's formal renunciation of terrorism and acceptance of responsibility before the

From Defiance to Compliance

DECEMBER 1985

Under Libyan sponsorship, terrorists bomb El Al counters in Rome and Vienna airports.

APRIL 1986

Under Libyan sponsorship, terrorists bomb La Belle nightclub in Berlin.

DECEMBER 1988

Under Libyan sponsorship, terrorists bomb Pan Am Flight 103 over Lockerbie, Scotland.

SEPTEMBER 1989

Under Libyan sponsorship, terrorists bomb UTA Flight 772 over Niger.

APRIL 1999

Libya surrenders Pan Am bombing suspects for trial.

JULY 2003

Libya reaches agreement with the United States and the United Kingdom to accept responsibility for the Pan Am bombing, renounce terrorism, and pay compensation to victims' families.

DECEMBER 2003

Libya agrees to rid itself of WMD and missile delivery systems.

JANUARY 2004

Libya agrees to compensate victims of the UTA bombing.

SEPTEMBER 2004

Libya agrees to compensate victims of the La Belle bombing.

JANUARY 1986

U.S. naval forces patrol the Gulf of Sidra, and the United States prohibits direct trade with Libya under the International Emergency Economic Powers Act (IEEPA).

APRIL 1986

United States bombs targets near Tripoli and Benghazi.

JANUARY 1992

UN Security Council Resolution (UNSCR) 731 demands that Libya cooperate in apprehending suspects in the Pan Am and UTA bombings and cease all support for terrorism.

MARCH 1992

UNSCR 748 imposes air and arms embargoes on Libya.

NOVEMBER 1993

UNSCR 883 strengthens sanctions and closes loopholes.

JUNE 1996

United States enacts the Iran and Libya Sanctions Act (ILSA), in which it commits to sanction third parties contributing to Libya's ability to carry out acts of terrorism or acquire weapons of mass destruction (WMD).

APRIL 1999

UN Security Council suspends but does not lift sanctions.

SEPTEMBER 2003

UN Security Council formally lifts sanctions imposed by resolutions 748 and 883.

FEBRUARY 2004

United States lifts restrictions on travel to Libya and opens an Interests Section in Tripoli (1st Phase).

APRIL 2004

United States terminates ILSA applicability to Libya and withdraws objection to Libya's engagement in WTO talks (2nd Phase).

SEPTEMBER 2004

United States lifts IEEPA sanctions (3rd phase).

Security Council would be the final step, upon which the United States and United Kingdom said they would not object to lifting fully the sanctions imposed in 1992. In spring 2003, Libyan negotiators indicated their leadership's willingness to take these steps, as well as to eliminate unconventional weapons. By July 2003, Libya had satisfied all aspects of the resolution on Pan Am 103. In December, in a turn of events startling to those unaware of the ongoing negotiations, Libya agreed to surrender its WMD and missile delivery systems.

President George W. Bush and other U.S. officials hailed these developments as a major success in U.S. efforts to combat terrorism and weapons proliferation, although whether these developments were a success for quiet diplomacy or a result of the threat of preemptive strikes—or perhaps both—remains controversial.⁴ In the first phase of *quid pro quos*, after Libya took agreed-upon steps regarding its WMD programs, the United States in February 2004 lifted restrictions on travel to Libya, invited Libya to open an Interests Section in Washington, opened an Interests Section in Tripoli, and sent several prominent members of Congress to Libya. In the second phase, which began in April 2004, the United States terminated the applicability of Iran and Libya Sanctions Act (ILSA) sanctions to Libya, announced its intent to upgrade its Interests Section in Tripoli to a Liaison Office (which occurred in June 2004), and withdrew its objection to Libya's beginning talks to join the WTO. In the third phase, concluded September 20, 2004, the United States lifted International Emergency Economic Powers Act (IEEPA) sanctions, unblocked frozen Libyan assets, and established an ongoing U.S.-UK-Libya arrangement to discuss any future WMD concerns. The United States has also established a political dialogue with Libya on issues such as Libyan policy in Africa and Libyan domestic affairs, including human rights.

Dealing with Liberties

Practical reasons militate for giving serious attention to the U.S. engagement with Libya beyond the WMD and terrorism trade-offs. Continued Libyan human rights abuses will generate opposition to U.S.–Libyan relations in the U.S. Congress and elsewhere, and lack of development toward transparent, accountable governing institutions will also create obstacles to trade and direct investment. Although fundamental change in Libya is unlikely in the short term, significant improvements are possible. Steady improvement in human rights practices and development of economic and political liberties, however gradual, would create a sense of positive momentum and help put in place the building blocks of change.

Formulating a strategy to promote internal change in Libya should begin with an assessment of where the country stands with regard to political and economic liberalization and respect for human rights, which reforms would be the most meaningful, and which of these reforms seem most feasible at present. Such an evaluation should start by acknowledging that Qadhafi's grip on power appears to be firm and that he will make all the decisions for the present. Despite years of economic isolation and stagnation, no serious threats to Qadhafi's control have arisen. Government repression has managed to keep suspected dissidents either in prison—many of them detained for years without charge—or outside the country. In terms of its political system, Libya continues to function as a dictatorship despite the existence of quasi-populist governing institutions, as citizens are denied both the right and the ability to change their government.⁵

Enduring serious human rights problems in Libya include practices that contravene Libyan law, such as disappearances, prolonged incommunicado detention, and torture. Other human rights problems stem from Libyan laws themselves, which criminalize free expression and association and impose extremely harsh penalties, including the

death sentence and corporal punishments, for relatively minor crimes. Libya accepted a visit by Amnesty International in February 2004—the first by the organization since 1988—as part of Libya’s new era of openness toward the international community. Amnesty International’s subsequent report called on Libyan authorities to take immediate steps to ensure the rights to freedom of expression and association, protect human rights activism, end incommunicado detention, end torture, guarantee the right to a fair trial, abolish the death penalty, ensure

accountability for human rights violations, ratify human rights treaties, and cooperate with UN mechanisms.⁶

During the Amnesty International visit, Qadhafi raised the possibility of abolishing the infamous “People’s Courts” that are used to try political offenses and reducing use of the death penalty, and he acknowledged that Libyan authorities should inform families of detainees of the whereabouts of their relatives. In March 2004, he released well-known dissident Fathi al-Jahmi after appeals by prominent members of the U.S. Congress.

Kudos Abroad, Cudgels at Home

When leaders make the wise and responsible choice, when they renounce terror and weapons of mass destruction, as Colonel Qadhafi has now done, they serve the interest of their own people and they add to the security of all nations.

—President George Bush,
remarks at the White House, December 19, 2003

I was particularly struck at our earlier meeting with Colonel Qadhafi by his insistence, not only of Libya’s determination to carry on down this path of cooperation, but also his recognition that Libya’s own future is best secured by a new relationship with the outside world, and the recognition also of a common cause, with us, in the fight against al Qaeda extremism and terrorism.

—Prime Minister Tony Blair,
press conference in Tripoli, March 25, 2004

In recent years, the Libyan authorities have used the international context and the language of the ‘war on terror’ to further justify the continuation of a repressive policy at home which severely curtails the right of Libyan citizens to freedom of expression and association. The ‘counter-terrorism’ argument is clearly used as a new justification for an old practice, enshrined in Libyan law, of repression of all political dissent. . . . The Libyan authorities have not begun to address the gross human rights violations, to which hundreds of Libyan nationals have fallen victim in the past. These have included long-standing cases of political imprisonment and ‘disappearance.’

Libya: Time to Make Human Rights a Reality,
Amnesty International, 2004

Libyans do not have the right to organize into different political parties. While people do play a role in popular congresses, they do not affect the balance of power that remains squarely in Qadhafi’s control. Extra-governmental bodies, including the revolutionary committees and people’s committees, aid Qadhafi and serve as tools of repression. There is no significant legal opposition in Libya, and people’s political choices are subject to the domination of Qadhafi and his esoteric political system.

The Worst of the Worst: The World’s Most Repressive Societies,
Freedom House, 2004

But the hopes raised by Qadhafi's words and actions were short-lived. Al-Jahmi was detained again a month after his release, after speaking openly to the international media about the need for democratic reform in Libya. As of fall 2004, the Libyan government had not taken further steps to improve human rights.

Qadhafi has, however, shown more inclination to take steps toward liberalization of Libya's largely state-run economy, as evidenced by his 2003 appointment of reform-minded businessman Shukri Ghanem as prime minister. The United States has already initiated a dialogue with Libya on economic reform and privatization, notably during a June 2004 visit by Assistant Secretary of Commerce William Lash. During the visit, Libyan officials reportedly expressed a strong interest in reform, although they appeared to be undecided on specific steps. Pervasive corruption will continue to be a concern in privatization and other possible liberalization measures.

Persuading Qadhafi to cease human rights abuses and introduce meaningful political and economic reforms will be an uphill climb, and one that will require serious engagement. The United States has already rewarded Libya in important ways (agreeing to lift UN sanctions, lifting ILSA, lifting IEEPA sanctions, removing objections to Libya's entering WTO talks), and it retains significant leverage. Libya craves the recognition and normalization of its status that can come only when it is removed from the U.S. list of state sponsors of terrorism, when there is a full-fledged U.S. embassy in Tripoli, and when senior Libyan officials are welcome in Washington. Taking Libya off the terrorism list should be linked to the specific criteria already established, but the United States is free to take or not take other steps to improve bilateral relations. Merely raising such subjects with Libyan officials, without attaching any positive or negative incentives, is not enough. The United States should work closely with other European allies—particu-

larly the British but also the Italians, the EU, and others to the extent possible—so that Libya receives mutually reinforcing messages from several directions.

Comprehensive political reform, while highly desirable, is realistically a medium- or long-term objective. There is no immediate prospect of internally driven change in Libya, and the United States clearly has no intention of using the sort of force necessary to impose change. Even promoting evolutionary, rather than revolutionary, change will be challenging, because there are few Libyan institutions on which to build. The United States should not, however, take the easy road of relying on economic liberalization (or the increased contacts with the outside world that accelerated commercial activity will bring) to lead to political liberalization, as this strategy has proved fruitless elsewhere in the region.

Instead, the United States should integrate its current modest dialogue with Libya on political issues more closely with its economic and commercial dialogue. For example, various aspects of the Libyan judicial system create serious impediments to business and foreign investment as well as to human rights. The United States should consider engaging with Libya on a comprehensive program of judicial reform that would abolish the parallel People's Courts and enhance the independence, reliability, transparency, and efficiency of the regular court system. Libya could easily improve the climate for foreign investors as well as for Libyan citizens by revising the penal code to reduce the use of capital punishment and eliminate corporal punishment. Similarly, the United States should urge Libya to begin prosecuting torture offenses. Libya took a tentative step in this direction by charging several Libyans with the torture of suspects in the infamous HIV case in 2004.⁷ The United States, preferably in concert with Great Britain and other European countries, can present such steps to Libya as ways to enhance Libya's international stature and appeal to foreign investors, as well as to improve the lives of its citizens.

Libyan laws and practices that prevent freedom of expression and association should be another target of U.S. efforts to promote reform. In particular, the United States should call on Libya to repeal, as inconsistent with Libya's declared desire to rejoin the international community, laws and practices that criminalize Libyans' contact with or their dissemination of information to the outside world. In this regard, the United States should make a particular example of the case of Fathi al-Jahmi and attach a specific price—in terms of holding back some benefit desired by Libya—to his continued detention. This should be done in private, to prevent a situation where the Libyan government is unable to meet U.S. demands due to loss of face. Even though raising specific cases can create short-term tension in bilateral relations (witness the furor over Washington's withholding of a portion of supplemental aid to Egypt over the detention of civil society activist Saad Eddin Ibrahim in 2002), such measures often prove useful over the long term. Libya needs to learn that disappearances and prolonged incommunicado detention of peaceful dissidents will be costly in international terms.

Achieving any of the goals mentioned above—overhaul of the judicial system, revising the penal code, prosecuting torture offenses, repealing limits on free expression, stopping disappearances and incommunicado detention—would be intrinsically positive. More important, perhaps, each reform would help pave the way toward a freer economic and political system. Even under the best of circumstances, the Libyan system would need years of work to become transparent and accountable due to its extreme underdevelopment. On the positive side of the ledger, Libya has vast natural resources and a small population, giving its leadership a certain margin for maneuver. It will be important to promote the creation of institutions and changes in law that can outlive Qadhafi's tenure, when broader change will become more feasible.

In renewing its bilateral relationship with Libya, the United States should use the influence it now possesses to urge the Libyan regime to become a responsible player not only internationally, but also inside its own borders. Meeting this test will be critical to building the credibility of declared U.S. support for reform in the Middle East and to ensuring that the lesson other countries draw from Libya's example is a positive one. ■

1. See, for example, Mona Eltahawy, "Warming Up to a Dictator," *Washington Post*, July 13, 2004; Michael Rubin, "Same Qaddafi," *National Review Online*, June 29, 2004, available at <http://www.nationalreview.com>; and Claudia Rosett, "Dial a Dissident," *Wall Street Journal*, April 7, 2004.
2. For a discussion of the evolution of Libya's positions in the 1990s, see Ronald Bruce St. John, "Libya Is Not Iraq: Preemptive Strikes, WMD, and Diplomacy," *Middle East Journal*, vol. 58, no. 3 (Summer 2004).
3. The author was director for Egypt and North Africa at the National Security Council 2002-2003, during which time the Libyans sent many direct and indirect messages indicating their eagerness to resolve differences.
4. See, for example, the point of view put forward by President Bush, *State of the Union 2004*, January 20, 2004, available at <http://whitehouse.gov/stateoftheunion/2004/>, versus that of St. John, "Libya Is Not Iraq," or Flynt Leverett, "Why Libya Gave Up on the Bomb," *New York Times*, January 23, 2004.
5. See U.S. Department of State, *Country Reports on Human Rights Practices* (Washington, D.C.: 2003), available at <http://www.state.gov/g/drl/hrrpt/2003>.
6. Amnesty International April 2004 report available at <http://www.amnestyusa.org/countries/libya>.
7. Five Bulgarian nurses and a Palestinian doctor were convicted of deliberately infecting Libyan children with HIV and sentenced to death in May 2004; the convicted health workers say they had confessed under torture and are currently pursuing appeals.

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