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THE LOCKERBIE TERRORIST ATTACK AND LIBYA: A RETROSPECTIVE ANALYSIS*

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Following the horrific terrorist crime that saw Pan Am flight 103 literally blown out of the sky, an incredible journey of forensic investigations and intelligence began that ultimately resulted in a momentous court verdict in 2001. The forensic investigation alone into Pan Am 103, was one of the most intense, meticulous and expensive criminal investigations ever undertaken.

As many will recall, the initial theory was that Iran had effectively “subcontracted” this murderous project to Syria and Libya in retaliation for the U.S. downing of an Iranian jet. In fact, in the months before the Pan Am 103 bombing, a Syrian cell possessing barometric bombs had been arrested in Frankfurt. It was thought at the time that these bombs were to be placed on aircraft departing from Frankfurt to Britain. That theory changed dramatically eighteen months later after the discovery of a thumbnail sized microchip in the fields outside of London. This chip was forensically traced to a Swiss manufacturer which, in turn, was finally traced to Libya.

Rather than detail the actual components of the investigation, it is helpful to step back and consider the Pan Am 103 investigation and trial from a cost-benefit analysis perspective to determine whether U.S. interests were ultimately served. On the plus side, it is clear that the conviction of Abdelbaset al-Megrahi provided the opportunity for the world to gain at least a partial insight into the culpability and involvement of Libya in international terrorism. Al Megrahi was convicted and sentenced to a minimum of twenty years in prison before parole eligibility although the concurrent nature of sentencing in this case means that he may only wind up serving one month for each victim that he killed. In the criminal justice world, mass killers that benefit from concurrent sentences are described as

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* Presented at the War Crimes Research Symposium: “Terrorism on Trial” at Case Western Reserve University School of Law, sponsored by the Frederick K. Cox International Law Center, on Friday, Oct. 8, 2004

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getting "freebies". It is no less offensive and inappropriate in cases of terrorist murder.

A Scottish court found that al-Megrahi was "serving a foreign government," but the absence of any further prosecution left open the question of whether he was acting alone or possibly as a rogue agent. Additionally, his alleged accomplice was acquitted and the Libyan dictator, Muammar Gaddafi was never found to be criminally liable. Megrahi's conviction did however clearly demonstrate that the Libyan government itself was implicated in the conspiracy to commit the terrorist act and few believe that much gets done in Libya without Gaddafi's specific direction.

Despite this, while the trial focused international attention on Gaddafi's terrorist regime, Gaddafi himself continued to insist he had nothing to do with the bombing. Thus, notwithstanding U.S. intelligence, both classified and de-classified, the fact remains that the presumptive mastermind for many of the Lockerbie atrocity, Muammar Gaddafi, ultimately escaped criminal liability.

Libya was subjected to sanctions by the U.N. in 1992 after refusing to turn over the two suspects. Seven years later, the sanctions were suspended by the U.N. after Gaddafi extradited the suspects. However, rather than turn over the suspects to the United States or Britain, Gaddafi negotiated a special arrangement in which a Scottish court held in the Netherlands served as the venue for the trial. The result of this deal was that Gaddafi secured preferential treatment for the suspects, compared to the treatment they would have received had they been extradited to the United States.

After the conclusion of the trial in 2001, Gaddafi's reaction was consistent with his bizarre personality. He insisted that the evidence was fabricated, and that Megrahi was totally innocent, and he scoffed at the judgment that granted the victims' families $700 M in damages. Candidly, it should be acknowledged that Gaddafi, in his individual capacity, was able to negotiate an incredibly favorable deal using his inexplicable leverage with the international and European community. The net result was that he was able to insulate himself from any sort of criminal culpability or moral responsibility.

Indeed, shortly after the verdict was rendered, Libya resumed trade with virtually every country in the world except for Britain and the United States. During the period of international sanctions Libya sought international investments in its natural gas and oil industries. Spain and Germany wanted to invest in these industries, but, in the presence of international sanctions, chose not to do so. Even so, during this period, the Organization of African Unity (OAU) and the Arab League lobbied the non-aligned community to lift the sanctions. The members of both the Arab League and the OAU violated the sanctions. These member-nations continued to trade with Gaddafi and provided him with the aviation links that had been severed after the imposition of U.N sanctions.
The pressure exerted by the United States and the United Kingdom was effectively neutralized, in light of Gaddafi’s worldwide constituency. In the end, the resolution of the Lockerbie “dispute” could be said to have been “conveniently achieved.” Megrahi’s conviction absolved European nations of the need to continue imposing sanctions against Libya. Rather than pursue the issue of Gaddafi’s involvement in the plot as evidence of state-sponsored terrorism, the pretension was legitimately advanced that ‘justice’ had been achieved. After the verdict, the U.S. continued to apply sanctions against Gaddafi, but he was otherwise able to re-integrate himself into the world community.

Gaddafi, however, still felt the pressure and isolation from the continuation of U.S. sanctions during the civil lawsuit initiated by the families of the victims of Pan Am 103. The Libyan reaction to the guilty verdict was truly schizophrenic in nature. Gaddafi himself rejected it, but also accepted its consequences in some limited ways. In the end, however, the question was whether the United States could satisfy and reconcile the basic interests of the victims and our national security.

The conviction achieved through the trial, from an intelligence perspective, did not do justice to all the evidence that was collected and developed. This was because of the presence of intelligence that could not satisfy the burden imposed by the applicable evidence rules. Either the veracity of the intelligence could not be proven, or the intelligence was not “actionable intelligence” that could be corroborated in a court of law. This difficulty represented an unintended but profoundly important foreshadowing for post 9/11 terrorism trials.

To this day, the people that believe al-Megrahi coordinated, planned and executed this attack on his own could probably fit in a phone booth. This begs the questions of who provided support and resources to Megrahi and who ordered the attack and will they ever be brought to justice? U.S. officials declared that they would continue the investigation, but in reality, the 12 year odyssey and investigation has run its course. In looking beyond the criminal proceedings, another important question needs to be asked; did the prosecution have a deterrent effect on Gaddafi and his support for terrorism?

It must be acknowledged, even by those who have been critical of the trial, that Gaddafi ended his logistical support for international terrorism although the real motivation for Gaddafi’s decision still remains a matter of speculation. In late 2003, in another part of the extended story, the U.S. announced that Gaddafi had surprisingly agreed to forfeit his weapons of mass destruction in exchange for the U.S. terminating its sanctions. This process is underway but in typical Gaddafi fashion, the story has taken a bizarre twist.

Earlier in 2004, Gaddafi, himself, was named as a perpetrator in a plot to have the Saudi leader, Crown Prince Abdullah assassinated, supposedly as a result of a personal insult during an Arab leaders meeting. The person
alleging Gaddafi’s involvement in this plot was none other than Abdurahman Alamoudi, himself a notorious American based Muslim leader who founded the Islamic Society of Boston and the prison and military Islamic chaplaincy programs. Both of these entities of Almoudi’s are under intense scrutiny given the undeniable links within each to the propagation of Salafist extremist Islam within America itself.

Recently, Alamoudi pled guilty to charges associated with this plot, and is now serving a lengthy prison sentence. Alamoudi claimed at his sentencing that Gaddafi paid him to orchestrate a conspiracy to assassinate Crown Prince Abdullah. Of course, Gaddafi has denied any involvement in this plot, but one of his top intelligence agents was arrested in Saudi Arabia and has allegedly confessed to playing a role in this plot. At the same time, Gaddafi, according to U.S. officials has opened up his weapons of mass destruction facilities to full inspection -- the first time a rogue state that intended to acquire WMD was going to reverse its course.

In looking back at the Lockerbie trial, the question remains whether U.S. interests with respect to national security, justice, and deterrence were achieved. Did Syria and Iran get a pass? Did Gaddafi get away with murder? Clearly, the answer is “yes.” But the question remains whether, in fact, in a pre-9/11 environment, and with the inability to use actionable intelligence to retaliate immediately, did the U.S. have any other alternative?

It’s easy to say in a post-9/11 environment that there should have been an immediate military response. This is something that many believe was justified in 1986, when the United States retaliated against Gaddafi for the disco bombing in Germany, and would have been justified had the U.S. decided to take military action in the wake of Pan Am 103. However, considering that this was a pre-9/11 environment and that there was a delay in finding the actual intelligence, it was very difficult for the U.S. to unilaterally initiate some type of military response.

In hindsight, some U.S. interests were clearly served by the Lockerbie prosecution and Libya is apparently on the road to rejoining the non-terrorist world, albeit with closer scrutiny. It may be true that a more vigorous military response akin to the post 9/11 actions against the Taliban and Al-Qaeda would have been more effective but it is equally undeniable that Libya is no longer the threat it once was. Whether that’s because of a genuine change of heart in Mr. Gaddafi or a recognition on his part that ‘Death from Above’ comes in a Libyan version is debatable. What’s most important is that one more Middle Eastern Islamic tyrant appears to have got the point.