

Strategic Moral Diplomacy: Mandela, Qaddafi, and the Lockerbie Negotiations

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Understanding and mitigating the consequences of clashing moral perceptions should be a primary goal of diplomacy and foreign policy analysis. Personal interviews and primary documents about the Lockerbie negotiations are used to illustrate the dangerous collision of different moral claims in the international arena, the mistakes made by the United States and United Kingdom in handling this aspect of the negotiations, and South African President Nelson Mandela's use of strategic moral diplomacy to resolve the stalemate between Libya, the United States, and the United Kingdom. Mandela's strategy in these negotiations is an example of how an intelligent and pragmatic moral position, rather than the conventional image of an enemy as evil, can produce the desired strategic results—in this case, Colonel Qaddafi's handover of the two Libyan citizens accused of the Lockerbie bombing.

On October 29, 1997, South African President Nelson Mandela arrived in Libya to award Colonel Muammar Qaddafi the Good Hope Medal. The Medal, also referred to as the Order of Good Hope, is the highest honor that South Africa can bestow upon a citizen of another country—it would be given a year later to U.S. President Bill Clinton.¹ At the time, Colonel Qaddafi was a pariah in the international community. Libya had been under United Nations (UN) sanctions since 1992 for its refusal to hand over the two indicted suspects in the bombing of Pan Am Flight 103 over Lockerbie, Scotland, that killed 270 people.

“Those who say I should not be here are without morals,” Mandela said. “This man helped us at a time when we were all alone, when those who say we should not come here were helping the enemy” (Mandela Dismisses U.S. Opposition, 1997). When Qaddafi's turn at the microphone came, he said, “What we are facing is an attempt of domination from one power. All international proposals serve this evil purpose. The [United Nations] General Assembly should be overriding the Security Council” (Mekay, 1997). At first glance, it is puzzling that two such dissimilar men articulated this similar moral position. The reasons are embedded in two decades of international power relationships that have shaped several drastically different global perceptions of social justice, legal retribution, moral justifications, and the shape of the future world order.

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¹ The Medal (or Order) of Good Hope is named after the Cape of Good Hope at the southern tip of South Africa.

This article uses the Lockerbie negotiations to illustrate the collision of different moral claims in the international realm, with particular emphasis on President Mandela's use of strategic moral diplomacy to resolve the stalemate between Libya, the United States, and the United Kingdom. Mandela's strategy in the negotiations is an example of how a correct, if unpopular, moral position can produce the desired strategic results—in this case, Colonel Qaddafi's handover of the two Libyan citizens accused of the Lockerbie bombing. Through strategic moral diplomacy, Mandela successfully reframed the conflict situation and its outcome.

The moral perceptions held by the enemy, while implicit in the branch of political decision making that studies images of the enemy, has been understudied as a variable in its own right in the practice of foreign policy and diplomacy. While the tendency to perceive an enemy's intentions as immoral or evil has been well documented, this article concludes that it can be both strategically useful, as well as morally correct, to assume an enemy may have just moral concerns and give these claims credence. This strategy effectively grants the enemy a space from which he or she can reasonably speak to the issues at hand and negotiate. This is intelligent long-term security strategy as well as ethical foreign policy; it increases the acceptable options—the space for negotiation—for *both* sides of a conflict. For example, when Mandela morally legitimized Qaddafi and his claims, the United States and United Kingdom were less wary of the domestic (partisan) repercussions of negotiating with Libya, and Qaddafi was persuaded to trust Mandela as not beholden to Western interests.

Conventional Wisdom: Moral Misperception

Many foreign policy initiatives assume that enemy states are motivated by a handful of self-serving interests, all of which are judged to be evil and immoral. This assumption is not falsified by contrary evidence—studies in information processing show that contrary evidence is believed to be contrived and is ignored (Holsti, 1967; Jarvis, 1976; George, 1980; Reiber and Kelly, 1991; Herrmann, 2003). Studies of cognitive biases are based on the argument that people rely on several simplifying strategies, or rules of thumb, called heuristics (George, 1980; Khong, 1992; Larson, 1997; Heuer, 1999; Bar-Joseph and Kruglanski, 2003).² In other words, a person tends to see what she expects to see. As George (1980:62–63) has illustrated in his early work on situational versus dispositional attributions, people have the tendency to believe that one's own side was forced by the situation to behave badly, but is not bad by disposition. The other side is simply bad by disposition. These attributions become fixed and simplistic.

Thompson (1991:157) extrapolates, “They started first, we responded. They broke their word, we adjusted our position. They are offensive, we are defensive. They invade, we keep peace. They talk peace, but plan war. We mean peace, but reluctantly must also plan war. We would love to disarm as long as they disarm first.” Perhaps the best-known account of this problem is Brofenbrenner's (1961) study of how the Russian peoples' distorted view of Americans was a mirror image of American peoples' distorted view of Russians: *they* are the aggressors; *their* government exploits and deludes the people; *their* people are not really sympathetic to their regime; *they* cannot be trusted; and *their* policy verges on madness.³ Thompson emphasizes that whatever the origins of these perceptions, it is clear that these attributions have a capacity to be self-fulfilling and self-sustaining, and serve as a preparation for the use of force, which is justified by projections of evil.

Of course, the presence of moral reasoning, and its relevance to political decision making, is difficult to verify much less quantify. The weight of moral considerations

² George (1980:62–63) says a pronounced tendency toward consistency-striving is inherent in human behavior and not necessarily close-minded or irrational. An individual's striving for consistency need not arouse concern when his or her interpretations of new information are not clearly illogical and when the preexisting beliefs are adequately grounded in previous experience.

³ Summarized in Thompson (1991:156–157).

can be judged only by the participant's perception of its value, a perception that is inextricably wrapped around material objectives. Motives are cognitive and elusive, and actors may not admit purely selfish motivations to themselves, much less advertise them in public speeches and interviews. The methodological concerns are obvious. There are no scientifically valid measures of morality; there are no fool-proof ways to ascertain whether a moral statement is genuine or only calculated to garner domestic or international support. The mainstream in international security studies remains convinced that moral claims mask self-interested behavior motivated principally by power and material gains.⁴

These concerns, however, are outdated in their simplistic distinction between material and moral that recent decades of study in cognitive and social psychology belie (Holsti, 1976; Jervis, 1976; George, 1980; Nuestadt and May, 1986; Lakoff, 1996; Lakoff and Johnson, 1999; Renshon and Larson, 2003). Self-interest and ethical concerns are not mutually exclusive. Choices are rarely made starkly between political aims and moral duty. Empirical work in political psychology has consistently found that much more complex psychological processes are in play in moral justifications for decisions. Even in cases where the manipulation of public opinion is considered an outcome, studies have found that justifications appealing to moral principles are the most accepted and satisfactory of all accounts, both to constituents and to the actors themselves (McGraw and Hubbard, 1996).⁵

Further, moral philosophy suggests that issues of justification do not enter thought only after a decision has been made, but are part of the way a person explains the permissibility of his action to himself. Recent cognitive theories of metaphors have examined how we actually *think* in metaphors; we do not simply use them as language, e.g., argument as war, relationship as journey (Lakoff and Johnson, 1980, 1999; Johnson 1993; Lakoff, 1996; Slingerland, 2004).⁶ These metaphors—for example, nation as strict father, or nation as nurturing parent—shape different, often opposite, choices for moral action in international issues such as the appropriate use of sanctions, economic aid, and unilateral military action. The problem is that attempts to puzzle out, to truly understand, why the other model is reasonable, are few and far between.

An Alternative to Conventional Wisdom: Rules of Moral Salience

The idea that following certain moral rules or universals is a duty in and of itself is associated with the philosopher Immanuel Kant, who is quintessentially known for his Categorical Imperative (act only in accordance with that maxim through which you can at the same time will that it become universal law) and his connection of morality to rationality. Kant claimed that a priori truths exist that are known independent of sense experience and that morals are objective and always rational. A critique of Kantian universalism made by moral relativists as well as cognitive scientists is that the idea of universal maxims cannot embrace the individuality of agents—their cultures, psychobiographies, and situational values.⁷

⁴ For a summary of these arguments, and an excellent rebuttal, see Crawford (2002:83ff.).

⁵ McGraw (1998:131–132) identifies four variants of moral claim justifications that occur in politics. (1) Invocation of personal ethical standards, such as moral conscience, or any claim along the lines of “I believe this is the right/morally correct thing to do,” (2) Invokes shared political values. (3) Invokes moral claims that are not consensually shared (e.g., religion-specific, contestable values). (4) Claim of collective benefits (in best interests of nation or local community) appealing to utilitarian value of “the greatest good for the greatest number.”

⁶ Slingerland's (2004) subsequent work contrasts the Chinese metaphor of morality as bounded space, with the Western understanding of morality as accounting.

⁷ Lakoff and Johnson (1999:415–439) spend a chapter of their book *Philosophy in the Flesh*, “Kantian Morality,” explaining their claim that “every aspect of second-generation cognitive science is at odds with the account of reason that Kant requires” (438).

Moral philosopher Herman (1993) has developed a theory of moral judgment—Rules of Moral Salience—as a way moral universals can incorporate the individuality of agents. Her theory is based on the Kantian distinction of *good will*. (“Nothing in the world can be called good without qualification except for a good will.” *Groundwork of the Metaphysics of Morals* 4:4210.)⁸ The crux of Herman’s concern is:

if moral rules function as some kind of externally imposed grid, the intersection of moral rules with the particulars of action may leave what is significant to an agent in his action (perhaps even in an explanatory or justificatory way) unnoticed or, from his point of view, incorrectly described. He will be regarded (or find himself regarding himself) impartially and impersonally. And although impartiality may be a moral ideal, it is desirable for it to be realized without requiring from the outset that agents ignore what is personal and important to them. (Herman, 1993:74)

Herman’s rules of moral salience consider individual social and psychological aspects of practicing moral judgment. She focuses on the Kantian idea of being able to “will” one’s action to be universal as a test for moral judgment. Kant says that a moral agent must possess the capacity to be moved by principle, by a conception of the good. Her theory is that what remains important today about Kant’s theory is the *willingness* to act on one’s conception of the good.

Herman believes that the difficulty of tying moral judgment to rules is that rules ignore particular facts and cases that are morally relevant. She points out that people draw meaning and value from “the particular,” requiring context-attentive theory. Herman’s theory also presumes that individuals act under potentially differing rules of moral salience that may change over time and from situation to situation (the particular). This would give much greater leeway to what is morally permissible in political judgment than is presently accepted. “Willingness” deals with the broader aspects of intention. She believes that rules of moral salience, even if defective or ill conceived, can be forgiven if the agent’s willingness to act morally as he understands it is present (Herman, 1993:91). In other words, the action is wrong, but the person did not act wrongly. In short, Herman is tackling the problem of moral *perception*.

To summarize this section, most cognitive theories of political decision making focus on how psychological processes can harm relations between states: distrust, groupthink, improper use of analogies, biases of the enemy image, and so on. Prescriptions focus on how biases should be identified and minimized (Jervis, 1976:409–424; Jervis, Lebow, and Stein, 1985; Reiber and Kelly, 1991; Khong, 1992; Larson, 1997). This focus on minimizing mistakes in foreign policy decision making is important and useful; however, using case studies to illustrate and theorize about different strategies to *successfully reframe* conflict situations and their outcomes is the next logical step in this research agenda.⁹ Mandela’s strategic moral diplomacy in the Lockerbie negotiations is such a case.

⁸ Lakoff and Johnson (1999:437) extrapolate: “Being moral is doing your duty. Doing your duty is acting out of respect for moral law and nothing else. Therefore morality cannot be based on any feelings, needs, or purposes you might happen to have. Each version of the categorical imperative is a universal, unconditional, and absolutely binding moral law.” In their opinion, these Kantian concepts go against every concept of cognitive psychology that reveals how humans act from subconscious desires and needs.

⁹ In a recent overview of the literature of negotiation, Bazerman, Curhan, and Moore (2000) conclude: “the assumptions negotiators make about their counterparts and the ways they construe their situations are important predictors of negotiator attitudes and outcomes. *Although comparatively less researched, strategic re-framing of otherwise fixed conflict situations by individual negotiators may influence negotiator attitude and outcomes.* We consider a negotiator’sgement of these attributional and construal processes, through these and other means, to be a critical factor in the resolution of conflict” (emphasis added).

Moral Perception as Psychologically Embedded in Political Decisions

The Lockerbie negotiations illustrate how choices between morally salient duties are embedded in political philosophies and personal psychologies. Jervis (1976:239) has identified four variables that influence perceptual dispositions: experiencing events firsthand; the event occurred early in adult life; the event influenced the individual's career or country; and whether the individual is familiar with a range of international events that facilitate alternative perceptions. The first three points apply to both Mandela and Qaddafi and are apparent in their dispositions toward power relationships. Both led revolutions early in their adult lives that profoundly influenced their countries and their careers. Because of the different consequences of their actions (Mandela's prison term versus Qaddafi's successful coup), the fourth point distinguishes the two men—familiarity with a range of international events that facilitate alternative perceptions.

There exist several conceptual parallels between Qaddafi and Mandela that illustrate the psychological dynamic of moral perception. Qaddafi has fused together a devout Muslim outlook with a fierce nationalism in his policies. A hardworking leader, both charismatic and austere, it has been said "even his worst enemies do not accuse him of corruption" (Arnold, 1996:2). "He periodically withdraws from public life for meditation and renewal." Qaddafi's quixotic tendencies perhaps stem from his successful struggle against colonialism. The three decades of Italian rule that preceded World War II were disastrous for Libya. Wright (1982:48), author of *Libya: A Modern History*, writes that by the end of the war the Libyan people were politically unsophisticated, "undereducated" (illiteracy was established at 94%); "untrained and impoverished"; infant mortality was a "horrifying" 40%; and there was little trade and much unemployment.

Qaddafi came of age in the 1960s and was reportedly influenced by the civil rights movement in America, alongside other national struggles closer to home. Born in the desert to illiterate Bedouin parents, Qaddafi graduated from the University of Libya in 1963 and the Military Academy in the United Kingdom in 1965. He disliked Britain, was angered by the racial discrimination he encountered, and soon determined to overthrow the Libyan monarchy of King Idris, which he saw as neocolonialist and pro-Western (Arnold, 1996). A successful coup brought a 27-year-old Qaddafi to power in 1969. Convinced of the inherent inequity of the international order, he concluded that Tripoli should, in Ray Takeyh's words, be "unfettered by international conventions or rules. Rather, as a vanguard revolutionary state, Libya should help liberate the rest of the Third World and reshape its political institutions" (Takeyh, 2001). He immediately removed the British and American military bases from Libya.

Similarly, as a young man Nelson Mandela was leader of the African National Congress (ANC), a political opposition group that fought against the fierce oppression of blacks by the apartheid system set up by the white South African government. Mandela, a lawyer by profession, went underground as a freedom fighter in the late 1950s. By 1961, Mandela and others in the ANC planned sabotage attacks against the South African government to scare away foreign capital and weaken the economy in an attempt to bring the government to the bargaining table. The ANC was adamant that no human lives were to be taken, but "if sabotage did not produce the results we wanted," Mandela wrote, "we were prepared to move on to the next stage: guerrilla warfare and terrorism" (Mandela, 1998:204). In fact, the ANC did stage several terrorist attacks in the 1960s, but "their heart was never in it," explained Tom Lodge, head of the department of international politics at Witwatersrand University in Johannesburg. "They were intellectuals" (Interview, June 2003).

Mandela still acted as de facto leader of the ANC for the 27 years he was imprisoned, for the most part on Robben Island off the coast of Capetown. He grew to

know his guards, and many grew to respect him for his dignity. While many of the more militant Pan African Congress (PAC) prisoners refused to look at or speak to a guard, Mandela sought to understand them. Through the hardships of these years, he learned that treating his guards with respect meant he might get an extra blanket when it was cold. From these conversations, he also began to understand that Afrikaners were mainly driven by fear of the much larger black population. They did not believe blacks would ever truly share power with them; that the ANC's call for equal rights for everyone would quickly turn into a bloody revolution where Afrikaner families were hurt, and their property taken (Mandela, 1998). "These fears were reasonable," professor Tom Lodge would later say, "and Mandela saw them as such." After his release from prison in 1990, Mandela would spend a great deal of time allaying white fears through power-sharing and conciliatory gestures. "Mandela had a strong loyalty to his people, and he could understand that an Afrikaner might do immoral things out of this same sort of loyalty to his family or clan" (Lodge, Interview 2004). South African journalist and author Allister Sparks (2003:4) would later write about this aspect of Mandela's presidency:

the greatest achievement by far has been to avoid the bloodbath that was so widely predicted for so long by so many as the inevitable destiny of apartheid South Africa. Within the first two years of his presidency, Nelson Mandela had defused the threat of a counter-revolution by the white right and put an end to the internecine [black-on-black] violence...through a series of extraordinary gestures of reconciliation, which included drawing the Inkatha Freedom Party into his government, having tea with Betsie Verwoerd, widow of the chief architect of apartheid, Hendrik Verwoerd, and even visiting Percy Yutar, the Uriah Heep figure who was the prosecutor in the trial that sent Mandela and his colleagues narrowly past the gallows to their long, harsh incarceration. (Sparks, 2003:4)

Qaddafi's revolution was successful and he immediately ensconced himself as head of an authoritarian regime. He would have only a small range of exposure to alternative perceptions, and has subsequently been described as a somewhat naïve idealist in many ways, a bit of a strange Don Quixote, as Jakes Gerwel has commented (Interview, 2004). In contrast, Mandela was imprisoned for 27 years by the apartheid government, and through this experience became familiar with a range of alternative perceptions, from the militancy of the PAC prisoners also held at Robben Island, to the concerns of his Afrikaner guards should apartheid end. South African colleagues and scholars note that the successful peaceful transfer of power in South Africa was due in large part to Mandela's constant efforts to refuse to vilify white South Africans. This aspect of Mandela's domestic diplomacy was both moral and strategic.

The importance of these insights will hopefully be apparent as one reads the story of the Lockerbie negotiations below. The story is presented as it unfolded, incorporating personal interviews with several of the key players, because the details are quite important and become lost when summarizing portions of the case around variables. Afterward the lessons of the Lockerbie negotiations are tied to the theoretical notions of strategic moral diplomacy.

The Lockerbie Negotiations

On October 29, 1997, South African President Mandela was welcomed to Libya by a band playing bagpipes, and a crowd chanting in English, "Long live Mandela!" as he arrived to award Colonel Qaddafi the Order of Good Hope. The political and personal complexities caught in this snapshot off the coast of Libya were bizarre. President Mandela, a universally beloved political figure known for his maturity

and grace in the face of suffering, stood warmly alongside Colonel Qaddafi, who by most accounts is described as a mercurial, melodramatic, deeply religious revolutionary leader known to hate the West and support terrorist organizations with both training and funding.

The most controversial aspect of Qaddafi's foreign policy has been his covert and sometimes indiscriminate support for both legitimate and illegitimate political movements worldwide, including the Pan African Congress in South Africa, the Red Brigade in Italy, the Black Power movement in the United States, and the Irish Republican Army in the United Kingdom (El-Kikhia, 1997:148ff).¹⁰ He was widely believed to encourage hit squads such as the one that killed policewoman Yvonne Fletcher outside the Libyan embassy in London in 1984.

The two years of U.S.–Libyan relations leading up to Lockerbie are important to understanding later moral and legal claims. On December 27, 1985, terrorist bombings in Vienna and Rome airports killed 20 people, including five Americans. Intelligence agencies knew of links to groups in Iran and Syria as well as Libya and Palestine. The Israelis publicly blamed the bombings on a Palestinian terrorist faction led by Abu Nidal. A U.S. State Department special report was unable to cite any direct connection between Libya and the airport bombings, but responsibility is notoriously hard to place in such incidents.

With Iran, Syria, and Palestine as the other choices for culprit, the United States, for perhaps understandable strategic reasons, turned its sights toward Libya. For one, at the time of these bombings, U.S. intelligence agencies were deeply involved in the Reagan administration's secret arms dealings with Iran. Also, Libya was a more attractive target than other suspects because Qaddafi was relentlessly anti-Israel, believed to support extreme factions in hot spots all over the world, and opposed the more moderate Middle Eastern regimes of Jordan's King Hussein and Egypt's Anwar el-Sadat.

In March of 1986, a U.S. Navy taskforce attacked four Libyan ships, destroying two of them, and conducted raids against a radar site on the Libyan coast. There were no American casualties and no Libyan counterattack. This sort of small-scale attack on Libya occurred intermittently throughout the decade, presumably to prod Libya to respond in kind. For example, in August 1981, the White House initiated a series of U.S. naval war games inside the 120-mile limit claimed by Libya in the Gulf of Sidra. Navy jets shot down two Libyan Air Force planes about 60 miles off the Libyan coast. An enraged Qaddafi accused the United States of international terrorism.

On April 5, 1986, a bomb exploded in the La Belle disco in West Berlin, Germany, killing three people, including two off-duty American servicemen, and wounding 229 civilians, including 79 Americans. The U.S. Ambassador to West Germany, Richard Burt, claimed on the *Today* show three days later, "There is very, very clear evidence that there is Libyan involvement" (Hersh, 1987:9). Two days after his claim, an official with the German domestic intelligence unit said, "It is a fact that we do not have any hard evidence, let alone proof, to show the blame might unequivocally be placed on Libya."

On April 14, 1986, 18 American warplanes began a 14-hour round-trip flight to Tripoli, Libya, from Lakenheath Air Base in England. An in-depth article for the *New York Times* would later claim that the mission was to be the culmination of a five-year clandestine effort by the Reagan administration to kill Qaddafi, who was described by President Reagan as the "mad dog of the Middle East" (Hersh, 1987:1). Despite the official bombing orders of military sites, the mission actually targeted Qaddafi's home and the camouflaged Bedouin tent where he worked

¹⁰El-Kikhia says Qaddafi supported the ANC in South Africa; however, three officials interviewed in South Africa for this case study emphasized that Qaddafi supported the more militant PAC guerrilla movement against the apartheid regime.

(Hersh, 1987:3). While the Libyan leader survived the bombing, all eight of Qaddafi's children as well as his wife were hospitalized; his 15-month-old daughter, Hana, died several hours later. The bombing also killed more than 100 people in a nearby residential area. There was criticism from abroad, but the attack was strongly supported by the American public and Congress.

Pan Am Flight 103 Explodes

Two years later on December 21, 1988, at a few minutes past 07:00 hours, a bomb exploded in the forward hull of Pan Am Flight 103 over the quiet Scottish town of Lockerbie. The explosion killed 270 people from 20 countries.¹¹ Fairly early on, the investigation focused on evidence tying two Libyan intelligence agents to the bombing. At the time, there were conflicting claims concerning for whom the agents were working. (In intelligence circles, Libyan agents were known to carry out operations for Iranian, Syrian, and Palestinian terrorist organizations.)

A further complication in identifying the motive stemmed from the fact that in July 1988 a U.S. naval battle cruiser mistakenly blew up an Iranian airbus killing 290 passengers four days before the Muslim holiday, Id al Adah. Scharf (2001), the attorney advisor for UN Affairs at the time, a counsel to the U.S. Counter-terrorism Bureau, later the attorney Advisor to the UN in charge of writing the Security Council Resolutions that imposed sanctions on Libya, and the coauthor of the U.S. briefs before the International Court of Justice in the case of the United States vs. Libya, noted that it had not helped matters for Vice-President Bush to claim it was the Iranian's fault. "Bush basically said it was not our fault at all, it was the Iranian's fault for being in the wrong place at the wrong time, and they seemed to us to have been on the attack" (Scharf, 2001:10). Bush's claim was later found to be false, adding salt to the original wound. Scharf would later question the administration's motives for ignoring Iran as a suspect, "When Pan Am 103 blows up 4 days before Christmas, and we knew in the U.S. government that Iran was on the warpath against the United States, that the Ayatollah and the government officials had vowed to get revenge and specifically mentioned that they would target a U.S. civil aircraft, who would have been the first suspect?"

Scharf continues, "There is a popular conception many experts have that this was a hand-off. That Iran was still responsible. They may have still paid for it. . . That's one of the faults of [the later] trial. We do not know whether Iran or Syria or the Popular Front for the Liberation of Palestine played any role." (After finding a Libyan intelligence officer guilty, the judges would still not dismiss the notion that Iran could have been behind the bombing.) Scharf added that a member of the Popular Front for the Liberation of Palestine who was imprisoned in Germany after Lockerbie, Mr. Hafez Dalkamoni, said the group was paid to do the bombing by Iran, to avenge the shooting down of an Iranian airliner over the Gulf by the U.S. Navy in July 1988. Clearly, questions remained about who had ordered and paid for the bombing.

While Libya had an equal motive, it was a bit stale compared with the Iranian's. After a lengthy investigation, Scotland charged two Libyan intelligence agents, Abdel al-Megrahi and al-Amin Fhimah, with conspiracy, murder, and contravention of the Aviation Security Act. Questions and disagreements over the reasons for these indictments would remain for years. For one, when Saddam Hussein invaded Kuwait, the United States desperately needed to build a coalition and it had to start with Iran.

Immediately following the Scottish indictment in November 1991, the U.K. and U.S. governments claimed there was no evidence for the involvement of any other country and demanded that Libya surrender the pair for trial in Scotland. (The

¹¹Including passengers, crew, and people on the ground.

United Kingdom was the scene of the crime, and the Pan Am airliner was American.) Libya, in compliance with the 1971 Montreal Convention to Suppress Acts of Violence against Civil Aviation, arrested both suspects, appointed an investigating magistrate, and requested to see evidence against the two to decide whether they should be tried in Libya or extradited. The Montreal Convention of 1971, of which Libya, the U.K., and the U.S. had been signatories, stated that under these circumstances the accused could be tried under the law of their own country, which in this case was Libya. Of course, the problem for the United States and the United Kingdom was that Qaddafi's sudden respect for international legal procedures was suspicious.

International lawyers pointed out that there was no basis in international law for the demand that Libya turn over citizens suspected of crimes to another country. "The authority of such a demand must rest on an extradition treaty, and Libya has none with the United States or Britain" (Lewis, 1992). In addition, Libya offered to allow the two suspects to be interviewed by the United States and Britain, and proposed independent arbitration to decide the legalities of how to handle the situation. Besides turning over the two suspects, the U.S./U.K. joint statement also called on the Libyan government to disclose everything it knew of the crime, and to pay appropriate compensation. According to Norm McFayden, head of the Crown Office responsible for the investigation of international crimes, one of the most important aspects of the joint statement was that it formed the basis for later United Nations Security Council Resolutions.

Scharf (2001:10) said the two countries were setting the stage for UN sanctions. They were not using the "rule of law with the idea that we would get a conviction and have truth come out and have justice come out, that wasn't the idea. The idea was . . . to set the stage for the money bomb: UN sanctions." UNSC Resolution no. 731 (January 21, 1992) called on Libya to provide a full and effective response to British, American, and French requests to surrender those suspected of both the Lockerbie bombing and the 1989 bombing of a French airliner over the Sahara. In response, Libya scheduled a deposition of the two men, Abdel al-Megrahi and al-Amin Fhimah. So in February of 1992, journalists from around the globe trotted to Tripoli to witness what they understood was to be a legal examination of the two Libyan men accused of the Lockerbie bombing. Instead, the two men made what the *Economist* (Alive and Fairly Well, 1992) called a "bewildered 2-minute court appearance before being ushered away."

The judge then read a prepared statement. According to the same article in the *Economist*, the Libyan judge argued that despite repeated requests, Western authorities were refusing to hand over vital forensic and other evidence, including the airliner's black box, and so there was insufficient evidence to try a case. The judge then suggested alternative ways of giving the men a fair trial—the International Court of Justice, the United Nations, and the Arab League—and recommended that any trial should be held in a neutral country under international supervision. Western sources in Tripoli claimed that the Libyans were given sufficient evidence to establish the guilt of the two men—a summary of the facts—and that they should be handed over to the United States or Britain (Alive and Fairly Well, 1992).

A month later, in March of 1992, UNSC Resolution 748 imposed mandatory sanctions on Libya following its failure to respond to Resolution 731. This new resolution imposed arms and air embargos and a reduction of Libyan diplomatic personnel serving abroad. (By November, another UN resolution would strengthen these sanctions to freeze overseas assets and ban provision of oil equipment to Libya.)

As the air embargo took effect on April 16, Libyan passenger jets were turned back in flight from both Arab and non-Arab countries. Italy scrambled jet fighters to intercept a Libyan passenger jet approaching Italian airspace on its way to Zurich. Egypt turned back two Libyan aircraft trying to reach Cairo and cancelled all

flights to and from Libya (Lewis, 1992). Over the course of the year, Libya made several offers at compromise that involved conversations with the Vatican and Jesse Jackson and appeals to the International Court of Justice and the Arab League for support.¹² In August, Qaddafi held three days of fruitless talks with Egyptian President Mubarak and sought to speak directly to U.S. President Clinton.¹³

Qaddafi turned to the Saudi Arabians for help early in the dispute. Rihab Masoud (Interview, 2004), political minister at the Saudi Arabian embassy in Washington at the time, and present at all meetings between Prince Bandar bin Sultan, the Saudi Arabian ambassador to the U.S. and the principal actors in the Lockerbie negotiations, later explained that the concerns of both the United Kingdom and the United States were primarily driven by domestic concerns across administrations. The George H. W. Bush administration thought the issue a “hot potato,” one not prudent to handle with an election on the horizon. John Major told the Saudis that if he tackled the issue the Thatcher Wing of his party would devour him, and the left would use it to clobber him in upcoming elections.

As for Saudi Arabia’s interests in helping Libya, Massoud explained, “In Saudi Arabia, this is during the time when our Prince took over from the King who had been ill”—King Fahd was incapacitated by a series of strokes in 1995—“This was a new introduction to world issues. Also, things were going very badly in the Middle East peace process. We needed something to work.” But once the Saudi Arabians saw the political reality in both Washington and London, they backed away.

Colonel Qaddafi’s first champion in his effort to find an alternative legal solution would come from an unlikely source—the father of one of the Lockerbie victims.

Jim Swire’s Mission

Dr. Jim Swire’s daughter, Flora, was a last-minute passenger on Pan Am Flight 103, traveling to spend Christmas with her American boyfriend. Dr. Swire, formerly a medical doctor in the United Kingdom, became director of U.K. Families Flight 103 Victims, a high-profile association that sought justice for the Pan Am bombing. A tireless advocate, Swire held little power in the international political arena. But he felt he had to see Colonel Qaddafi to try and persuade him to allow the two Libyan citizens to be tried under Scottish law. He enlisted the help of an Egyptian journalist, Nabil Nagemeldin, to arrange the logistics (Swire, 2000).

A meeting in December of 1991, immediately following the indictment of the two Libyan suspects, would be the first of three meetings between Dr. Swire and “the Colonel,” as Swire referred to Qaddafi. Qaddafi steadfastly maintained to Dr. Swire throughout the decade that he believed his citizens were innocent and that he did not know how the disaster had been caused. “His position at the time was, and still remains, that Libya had nothing to do with it” (Interview via email, 2003). Both Swire and Qaddafi were aware of the perceived strangeness of their collaboration, but Swire later noted that, “common ground with the Colonel included the macabre situation that we had both had daughters killed by bombs” (Swire, Interview, 2003).

Robert Black, a professor of law at Edinburgh University, accompanied Swire in his later trips to Libya to argue the legal possibilities for an international trial. Since 1994, Black had proposed a trial under Scottish Criminal law, but in a neutral country, that is, not in Scotland (part of the United Kingdom) or in the United States. Massoud later explained that when the different legal options were con-

¹²The Arab League opposed the sanctions in 1991 citing the double standard of Israel.

¹³Jakes Gerwel claimed that Mubarak was actually the one who told Americans that Qaddafi would never keep his word. “When we were close to success, Mubarak tried to muscle in there, but there’s a public speech in Cairo where Qaddafi publicly repudiated Mubarak’s role in the matter. [UN Secretary General] Annan understood better than most that to get Qaddafi on-side was almost totally dependent on Mandela—on the issue of trust.” Interview with author, Capetown, July 2003.

sidered, “we noticed that every time an IRA incident took place, the perpetrator ran to Scotland. We discovered that Scottish law allows all sorts of things that are not allowed under the Crown’s law” (Interview, 2004). Alongside verdicts of guilty or not guilty, Scots law allows a verdict of not proven. Also, the Criminal Procedure (Scotland) Act 1995, section 273, makes provision for evidence to be given by witnesses who are outside the United Kingdom through the medium of a live television link (Black, 1999). This legal aspect was important to counter Qaddafi’s concern that Libyan agents would be demanded to appear as witnesses, and then forced to talk about his intelligence operations more generally.

Because under Scottish law jurors are not allowed to possess already formed opinions as to guilt or innocence, Black also proposed that such a court have a panel of international judges instead of a jury.¹⁴ The meetings ended with Qaddafi compromising that he would allow the two accused men to stand trial in the Netherlands under Scottish law. By this point, Qaddafi had argued for four years that the appropriate place for a trial was The Hague (ICJ). In February of 1998, the International Court of Justice would formally agree that it was the appropriate forum to decide the international legal issues.

The larger international community began to show frustration at what was perceived as arrogance or stubbornness by the two Western powers. UN representatives from Algeria, Egypt, Libya, Mauritania, Morocco, Syria, and Tunisia wrote a formal proclamation to the President of the Security Council in July arguing that there was no legal basis for the sanctions against Libya.¹⁵ The Organization of African Unity threatened to break the Security Council sanctions imposed on Libya unless the West found a solution to the Lockerbie deadlock. Colonel Qaddafi and the Libyan People’s Congress renewed its strong support for what had become known as the “neutral country trial solution.” The United States and the United Kingdom refused to entertain the idea of a “neutral country” trial. Over the years, U.K. sources put out at least six specific objections to the proposal, including insurmountable technical difficulties, that the proposal carried the implication that a fair trial could not be obtained in Scotland, and that accused persons should not be allowed to choose (or to have any say in) where they will stand trial.¹⁶

In May of 1997, Labour Party leader Tony Blair would become prime minister of the United Kingdom Democrat Bill Clinton had replaced George H. W. Bush in 1993. It was at this point, according to Massoud, that Saudi Arabia saw a new chance to approach the domestic obstacles that had stymied earlier attempts for negotiation with Washington and London. Massoud would later explain that Saudi Arabia realized it would need an ally to neutralize protestations from the left wings of the Labour and Democratic parties. “We needed someone. What better symbol than Mandela. He is the epitome of morality. He had so many symbolic roles as well as practical goals. His position in the left of Center of the whole international community gave legitimacy to such an agenda.” According to Jakes Gerwel, Mandela was asked by several African representatives to the nonaligned movement and the Organization of African Unity to get involved in the matter almost immediately after he was released from prison in 1990, even before he was president of South Africa. But “we really started negotiations after Mandela’s speech in Tripoli,” Gerwel (Interview, 2003) said. “The Saudis approached us to say they were interested, and we thought it would be good if we could work with them because the

¹⁴Swire notes that the international judges were eventually changed to a panel of Scottish judges, a change that did indeed reveal Mandela’s concern of the same country being complainant, prosecutor, and judge (Interview, 2003).

¹⁵The letter was from the Permanent representatives of Algeria, Egypt, The Libyan Arab Jamahiriya, Mauritania, Morocco, The Syrian Arab Republic, and Tunisia to the United Nations addressed to the President of the Security Council, July 1, 1998.

¹⁶Black (1999) describes each of these objections in detail, and his rebuttal to each.

Saudis are close to the Americans. The Saudis are something of a comforting, conservative presence.”

Massoud (Interview, 2004) explained, “Looking at this from a political analyst’s point of view, the U.S. and U.K. needed to cover their left side flank. That’s where Mandela’s strength is. Right of center is ours. So we thought between the two of us, we can then claim the political support that will allow the president of the U.S. as well as the prime minister in England to tackle this issue.” Moreover, Saudi Arabia held the Arab–Islamic card. Since Mandela had very good relations with the British, and not particularly with the U.S., the combination had a good chance of working.

“Reasonable Fears”: Nelson Mandela’s Moral Capital

South African President Nelson Mandela made a highly publicized visit to Tripoli by helicopter to see Qaddafi on October 22–23, 1997. At a banquet on the 22nd, Mandela declared, “the people of Libya shared the trenches with us in our struggle for freedom. You were in the front ranks of those whose selfless and practical support helped assure a victory that was as much yours as it is ours. We are therefore deeply moved to be amongst freedom fighters for whom the freedom of others was as precious as their own” (ANC documents, 1997). The stop in Libya was made en route to the Commonwealth summit in Scotland. The Commonwealth is especially sensitive to issues of colonization and racial oppression as well as self-determination and the distribution of global wealth.¹⁷ It was on Mandela’s return from the Commonwealth summit the following week that he would make another stop in Libya to award Qaddafi the Medal of Good Hope on October 29. At the Commonwealth summit, Mandela publicly warned Britain that it could not act simultaneously as “complainant, prosecutor and judge” in the Lockerbie case. While the Libyans had made similar statements for years, Mandela’s stature in the international community served as a megaphone to any proclamations he deemed to make about justice and fairness. Since its first postapartheid democratic elections in 1994, South Africa had moved from deep diplomatic isolation to “moral exemplar” in international politics (Hamill and Lee, 2001:37). “It is indeed another country,” South African journalist and author Allister Sparks (2003:4) would later claim.

Various explanations for Mandela’s defense of Qaddafi were indicative of a larger debate going on in South Africa at the time about foreign policy objectives and diplomacy. According to James Hamill and Donna Lee (2001:38) in their article “South African Diplomacy in the Post-Apartheid Era,” the two strongest criticisms were that post-1994 foreign policy had descended into an inexcusable “ad hocery” of case-by-case decision making without any discernible framework, and that South Africa’s foreign policy “was too driven by the whims” of President Mandela, and often his personal loyalties. Specifically, that Mandela had a tendency to make policy “on the hoof.” Both of these critiques were grounded in the belief that too often South Africa’s foreign policy had little to do with its national interests. Hamill and Lee ultimately argue that these criticisms are short-sighted and too harsh, that South African diplomacy was much more mature and linked to the national interest than its critics admit.

Whatever the reasons, when Mandela awarded Qaddafi the Medal of Good Hope and called him a moral leader, two tracks of diplomacy were set into motion that would ultimately resolve the Lockerbie stalemate. Mandela’s chief of staff, Jakes Gerwel, would team up with Saudi Arabia’s Ambassador to the United States, Prince Bandar bin Sultan, and together make tag-team (and sometimes individual) visits to Libya, the United States, the United Kingdom, and the United Nations. The meetings took place with no fanfare and information was privately and

¹⁷The Commonwealth is an organization of 54 sovereign states that gradually evolved out of the United Kingdom’s imperial past, usually through decolonization.

indirectly shuttled between Qaddafi and the two Western powers via Mandela's and Prince Saud's chosen diplomats, Gerwel and Bandar.

The second track of diplomacy set into motion was between the United States and United Kingdom and the international community. The two powers were thrown on the defensive by Mandela's dramatic entry into the fray. Robin Cook hastily invited UN experts to inspect the fairness and independence of the Scottish legal system and the conditions in Glasgow's Barlinnie prison, where a special wing had been prepared for the "remote possibility" that the suspects would ever be convicted (How the deal was done, 1999). The U.K. newspaper the *Guardian* also reported that Cook used a meeting after Christmas with U.S. Secretary of State Madeleine Albright to raise suddenly a "revolutionary proposal": calling Qaddafi's bluff by giving him what he and his supporters wanted—a trial on neutral ground.

Calling Bluffs

Mandela's advisors would explain later that actually several bluffs were being called. When the United States and United Kingdom were suddenly pushed to explain why they were making unreasonable legal claims, they claimed they refused to negotiate with Qaddafi because U.S. policy is never to negotiate with terrorists, and they were certain that Qaddafi's offers were only ploys to draw them into direct negotiations that would grant him a form of legitimacy in the process. The United States and United Kingdom were completely convinced that Qaddafi would never give the two men up for trial, no matter what was discussed.

So when Gerwel and Prince Bandar convinced Robin Cook to call Qaddafi's bluff, they were calling the U.K.–U.S. bluff as well. In other words, if the United States and United Kingdom truly believed that Qaddafi would not turn over the two suspects under any circumstances, then there was no reason to not grant Qaddafi what he requested. "You have nothing to lose," Gerwel told them. If Qaddafi was lying, Mandela and Prince Saud were the ones who would end up looking foolish and naive (Interview, 2003).

Gerwel and Prince Bandar would run into several such tricky situations as their diplomatic mission stretched across seven trips to Libya over the course of roughly a year. Gerwel's meetings in the infamous tent in Tripoli convinced him that Qaddafi was trying to find an honorable resolution. "I wouldn't want to live in his country, he has some strange ideas about how the world works," he said, but Gerwel believed Qaddafi had a strong sense of dignity and pride. "Late into the night, he would call and ask if we could talk again. He was really anguishing with the matter" (Interview, 2003).

The International Court of Justice (ICJ) ruled on February 27, 1998, that it had jurisdiction over the ongoing dispute between Libya, the United Kingdom, and the United States. *Keesing's* news archives for that month claimed the ICJ decision received widespread Arab and international support. A U.S. official described the ICJ ruling as merely a "technical decision," presumably implying that it held no normative weight. Libya maintained that, since the ICJ had decided that it had jurisdiction, the sanctions should be lifted, and the ICJ's final decision should be recognized as the means of settling the dispute. Libyan Foreign Secretary Omar Mustafa al-Muntasser told the UN Security Council that the sanctions inflicted on Libya "a suffering of severe magnitude, material and moral," and denounced the sanctions as a "collective punishment against the entire Libyan people as a result of nothing more than a suspicion regarding two of its citizens" (*Keesing's*, March 1998). A Libyan report to the UN estimated losses in billions of dollars with several thousand civilian deaths due to the shortage of usable medicines and serums because of the air embargo.

The U.S. and U.K. permanent representatives to the United Nations accused Libya of misrepresenting the facts on the ICJ's decision to hear the case, and called

for the continuation of sanctions. Further, they argued that the two Security Council Resolutions imposed upon Libya were superior to the Montreal Convention.

A month later, in March of 1998, U.S. President Clinton visited President Mandela in Johannesburg. South African government sources say that after discussing a variety of issues, Mandela asked for Clinton's aides to leave so that he could speak with the American president privately. After the doors closed behind the American aides, Prince Bandar unexpectedly dropped in for five minutes to participate in a talk about the Libyan sanctions. "We were surprised to find how little Clinton knew about this matter," Gerwel noted. "[National Security Advisor] Sandy Berger almost had a heart attack over having the president talk on something he hadn't been briefed on before. It was clear he actually knew very little about the matter."

Massoud (Interview, 2004), who was also at this meeting, later added that it seemed many of the facts about the negotiations had not been relayed to the president. For example, by this point, Libya had committed in writing to a trial under Scottish law, Massoud said, and to the two accused being imprisoned in Scotland if convicted. "The president was not even aware we had these commitments in writing."

In this private meeting, Mandela also urged President Clinton to bury the hatchet with Cuba and Iran, as well as Libya. Massoud would later explain that "America's image in the region suffered from a policy of sanctions that extended from the Mediterranean to the Bay of Bengal—Lebanon, Syria, Iraq, Iran, Pakistan, India. There were sanctions on Libya; there were sanctions on the Sudan. We told Clinton, for god sakes, you cannot run a foreign policy based on sanctioning people right and left, then basically waiting to see how things work out. You have to engage people, that's the whole concept of what a foreign policy is" (Interview, 2004). Moreover, earlier in the month, despite objections from the United States and human rights groups, South Africa established formal diplomatic links with Iraq and North Korea. Commentators suggested at the time that the decision would further undermine U.S.–South African relations following previous disagreements over the government's ties to two other U.S.-designated "pariah states," Libya and Cuba (*Keesing's*, March 1998).

"Clarifications"

By this point, the shuttle diplomacy between Gerwel, Prince Bandar, and Qaddafi was well under way. The men carried personal letters between Qaddafi and Mandela, and separately between Mandela and Blair and Clinton. These communications, for the most part, were direct and informal. Clinton would begin his letters with Mandela's tribal family name "Madiba"; Blair wrote to "Nelson"; Qaddafi's letters to Mandela invariably began "Historic Leader and Hero"; and Mandela's, in return, used the salutation "Brother President." On at least one occasion, Qaddafi's son hand delivered a letter to Mandela when he was visiting South Africa to attend a state function.

On August 24, 1998, the U.K. and U.S. governments "called Qaddafi's bluff" by announcing that the trial could take place on neutral territory in the Netherlands. Under the proposal, the two were to be tried by three Scottish judges at The Hague, the Dutch capital and the seat of the International Court of Justice, in the presence of international observers. The Dutch court was to administer Scottish law, under Scottish procedures, and Scottish rules of evidence.

Secretary Robin Cook described the plan as a "historic innovation in international legal practice." Madeleine Albright said the offer was a "take-it-or-leave-it proposition" and warned that it was "not subject to negotiation or change, nor should it be the subject of any additional foot-dragging or delay" (*Keesing's*, March 1998).¹⁸ Years later Gerwel would still show frustration when he spoke of this stage

¹⁸The Libyan government was also expected to satisfy the French judicial authorities with regard to the 1989 bombing of flight UTA 771.

of the negotiations. The refusal to negotiate further left many unanswered issues because they had not negotiated with the Libyans. It would take Gerwel and Bandar months to make ends meet, and now they could not say that they were “negotiating.” So they had to invent another term, “clarification.” Gerwel explained, “For months we had to go around *clarifying* things. For example, if the people were found guilty, where would they be kept? So the U.S. is saying we won’t negotiate further, but Qaddafi is not going to hand over these people until we clarify these things” (Interview, 2003).

On the same day as the announcement (August 24), the United States and United Kingdom presented a 28-page document to the UN Security Council outlining their plan, which included imprisoning the two men, if convicted, in the United Kingdom, and demanding that any witnesses called from Libya be included in the proceedings. The Security Council resolution and attachments set off alarms for several of the actors in the negotiations; in particular, paragraph 4 because of its demand that Libya “ensure that any evidence or witnesses in Libya [would be] promptly made available at the court in the Netherlands for the purpose of trial,” and paragraph 7, which, when coupled with the lengthy attachment, was vague about where the suspects would be imprisoned before, during, and after the trial.

In response, Qaddafi faxed a frustrated letter to the London embassy that immediately rejected any plan of imprisonment in the United Kingdom. The whole point of holding out against the sanctions for the past seven years, he said in exasperation, is that they not be imprisoned in the United Kingdom. He also believed the call for Libyan witnesses was a trick to try and arrest and interrogate other suspected Libyan intelligence agents.

On August 27, the UN Security Council unanimously adopted the resolution that welcomed the “U.S. and U.K. initiative” and decided that UN sanctions against Libya would be suspended immediately if UN Secretary General Kofi Annan reported to the Council that the two accused had arrived in the Netherlands for trial. In an interview with CNN that same day, Colonel Qaddafi said that he accepted the U.S.–U.K. proposal, provided that there were no “hidden tricks.” He called for more information about what might happen to the suspects if they were found guilty and whether they would be permitted to appeal (*Keesing’s*, March 1998).

Qaddafi had been concerned from the beginning that the United States and Great Britain were using a trumped-up trial to gain information about his intelligence operations through “questioning” the suspects where they could not be observed. As for the calling of new witnesses from Libya, Qaddafi believed this was merely code language for pulling other intelligence agents out of Libya to be inappropriately interrogated. The ability of the United Kingdom and United States to twist “paragraph 4” to infiltrate his intelligence services was a new problem.

Ironically, on September 23, 1998, a trial in absentia opened in the Tripoli Criminal Court of a number of U.S. officials involved in the April 1986 U.S. bombings of Libya. The defendants included former National Security Advisor John Poindexter, former member of the NSA Oliver North, and former CIA director William Casey (*Keesing’s*, September 1998:42528).¹⁹

“Take It or Leave It”

Several months of U.K. exchanges between Qaddafi and Annan, and a visit by Annan to Tripoli, were unable to budge the new imprisonment issue. Qaddafi sent a long personal letter to Mandela (December 25, 1998) that laid out point by point his concerns for Mandela to pass onto Blair during the latter’s visit to South Africa. Qaddafi explained that he believed Article 94 of the UN Charter suggested that if either of the two men were convicted they could be imprisoned in Libya under UN

¹⁹The case was immediately adjourned.

supervision. As for the sanctions, if they were merely suspended and not lifted, “the sanctions [would be] a permanent threat to be used at will,” he argued. Americans were “immoral” and “cowboys,” who thrived on the interference of the CIA and Zionists. He explained once again his frustration with the demand for compensation for massacre and material losses when Libya “had not been given these for the 1986 U.S. massacre and material losses.”

A flurry of phone calls between Mandela and Blair preceded Jakes Gerwel’s next visit to Tripoli. Mandela raised two points that concerned Qaddafi: the interrogation of Libyan agents and the distinction between “lift” and “suspension” when negotiating the sanctions. Blair assured Mandela that the United Kingdom would not be uncooperative on these matters; the United Kingdom had no “hidden agendas” or “undisclosed demands.” A special section of a Scottish prison would be designated with special international status and monitored by the UN.

After Gerwel’s and Bandar’s visit, Qaddafi wrote to Mandela on February 9, saying that only one thing remained—to draft a binding legal document. Qaddafi did not trust the verbal assurances of the United States. On February 17, Qaddafi gave to Gerwel a long list of pending problems and five demands each of the United States and United Kingdom. Around this time, the United States began to call for Annan to discourage the South African and Saudi Arabian envoys because Qaddafi might be getting “mixed messages.”

Ten days later Britain and America gave Libya an ultimatum of a one-month deadline to surrender the two suspects for trial. Swire, spokesman for the families of British victims, criticized the deadline for not contributing to diplomatic efforts. “It’s counterproductive,” he said, adding that Libya could not hand over the suspects now without appearing to be caving in to American bullying (Lockerbie ultimatum under fire, 1999). In Cairo, The Arab League called the deadline “a provocation” (U.S.–British Deadline to Libya Criticized, 1999). Although the UN Security Council did not formally support the deadline, UN Secretary General Annan countered that 30 days was “a reasonable period” for Libya to make a decision on the further clarifications that Libya requested about guarantees with regard to the suspects’ treatment in prison if convicted (UN Security Council Gives Libya 30 Days, 1999). Libya said it could not surrender the two men before reaching an agreement for a fair trial and assurances that the prisoners’ human rights would not be violated. (Presumably, Qaddafi’s underlying concern was that the former intelligence agents would be tortured for information about Libya’s intelligence services, and/or forced to give false testimony.)

Two days after the one-month deadline was given, Qaddafi wrote a six-page letter to Mandela pouring out his frustrations without reservation. The tone of the letter was of a man aggrieved and misunderstood. He trusted only Mandela and Saudi Arabia and was especially wary of the potential manipulation of the U.S. court system, using the recent example of the Rodney King verdict as an example. “There are lots of mines along the way,” he warned Mandela. “The Americans are immoral,” he said.

Diplomacy between Gerwel, Mandela, Bandar, and Qaddafi continued. Despite Qaddafi’s reservations, Mandela informed the world from Tripoli on March 19, 1999, that Libya was prepared to give the UN a firm date for the handing over of the two suspects. The day the announcement was made Qaddafi had flown in Mandela especially for the occasion. “He trusted us,” Gerwel said. “On that occasion, he said that he’s handing over his two Libyan ‘sons’ because Mandela is telling him to, so he will do so. And he said if they don’t keep their word—they being the U.S. and U.K.—they will be sinning against Mandela. He then rather chillingly said that it would be on the shoulders of Bandar and Jakes because we were the two who negotiated it” (Interview, 2003).

Mandela said in his address to the Libyan Congress, “At the outset, we must make a point which one would have assumed in this modern day needed no making. We

are speaking of two people suspected of a crime, not of people proven guilty. Too often the impression is given that Libya is harbouring convicted criminals” (Mandela, 1999). On April 31, 1999, the United States reaffirmed its designation of Libya as a state sponsoring terrorism. According to a Reuters report, “officials said these states had not directly sponsored extremist acts for some years, raising fresh questions about the political nature of the terrorism list designations.” The next day Libya asked the UN Security Council to force the United States to hand over nine Americans it accused of murder in the 1986 bombing of Tripoli and the port Benghazi. The request came three weeks after Libya complied with the Security Council demand that it hand over the two Libyans accused of planting the bomb on Pan Am Flight 103 (Libya: News and Views, 1999).

Following a lengthy trial, Abdel al-Megrahi was sentenced to life in prison in January 2001 after being found guilty of the mass murder of 270 people in the bombing of Pan Am Flight 103. His co-accused al-Amin Fhimah was acquitted and returned home to a hero’s welcome in Tripoli.²⁰ By February 2001, instead of lifting the sanctions, there were new demands from the United States and Great Britain: Qaddafi must take responsibility for the Lockerbie bombing and pay billions in compensation. An angry Mandela said the West had reneged on their pledge by not lifting the sanctions. They have “moved the goalposts” on sanctions, he said (Sampson, 2001). “The condition that Qaddafi must accept responsibility for Lockerbie is totally unacceptable,” he insisted.

Libyan Foreign Minister al-Muntasser reminded Kofi Annan in a letter that Libya had been the one to originally propose a trial in a third country. The U.S. and U.K. intransigence on the option was what resulted in seven years of sanctions, he said. Moreover, he believed the additional measures were contrived to justify keeping the sanctions against Libya. “The Libyan people will blame Qaddafi,” he complained. As for the scenario proposed for financial compensation, Muntasser pointed out to Annan that Saudi Arabia had not been asked to pay compensation for 9/11, for which its citizens were responsible, and Libya had not received compensation for the bombing of its citizens in 1986.

Mandela wrote formally to both Blair and current U.S. President Bush saying he was “personally saddened” by their decisions to demand additional criteria of Qaddafi after the fact of the verdict and despite previous assurances. He emphasized that Qaddafi had not been found guilty of a crime (he attached the ICJ legal opinion), which made their actions a dangerous precedent to set for heads of state. In frustration, he reminded the leaders that the United Kingdom and United States had previously committed in writing to permanently lifting the sanctions upon the fulfillment of very specific goals that had been met. Mandela copied the letters to Colonel Qaddafi and Prince Saud.

Massoud later questioned this interpretation of commitments. “I think the whole concept of taking responsibility was addressed from the beginning. I don’t think that the U.S. or the U.K. asked that Qaddafi take personal responsibility, but for Libya to take responsibility. From a moral point of view, he [should] take full responsibility for actions of his government, but from a legal point of view he is not criminally responsible” (Interview, 2004). Both Gerwel and Massoud remember the issue of reparations as being on the table from the beginning if the two men were found guilty. Yet Gerwel emphasizes that the negotiation team had in writing that

²⁰An Austrian professor who acted as one of five UN observers at the trial said the judgment made no sense unless it was a political compromise, explaining, “The present judgment is logically inconsistent. You cannot come out with a verdict of guilty for one and innocent for the other when they were both being tried with the same evidence. In my opinion, there seemed to be considerable political influence on the judges and the verdict. My guess is that it came from the United States and the United Kingdom. This was my impression.” The Innsbruck University professor said he had submitted his report on the trial to UN General Secretary Kofi Annan, who had forwarded it to the Scottish authorities (Lockerbie Verdict “Politically Influenced,” 2002).

the UN would lift sanctions upon the release of the two men for trial. The bilateral sanctions between the United States and Libya were never part of the negotiation, Gerwel explained, meaning that taking responsibility for the bombing and paying reparations could be legitimately introduced only for the U.S. bilateral negotiations for lifting of sanctions, but were not conditions for lifting the UN sanctions (Interview, 2003).

And the Beat Goes On. . .

On May 3, 2001, the United States, a founding member of the UN Commission on Human Rights, was voted off of the 53-member panel. The U.S. Congress responded by withholding \$244 million in UN dues. (After a bit of necessary arm-twisting, the United States would be voted back on the panel 10 months later.) “The secret ballot is one of the most effective weapons in the UN arsenal,” a Southeast Asian diplomat said, “because it provides a true sense of the inner political feelings of most sovereign nations. We obviously sent a clear message about how we feel about the United States” (Deen, 2001). The Economic and Social Council (ECOSOC), which is the umbrella body for the Human Rights Council, is dominated by Third World Nations. A reporter for Third World Network, a nonprofit nongovernmental organization (NGO), claimed, “The U.S. record on human rights treaties has been dismal. It is only one of two countries—the other being Iraq—that has still not ratified the 1989 landmark UN Convention on the Rights of the Child. The United States has also held back ratifications on the treaty to ban landmines and the treaty to establish an International Criminal Court” (Deen, 2001).²¹

U.S. Representative Henry Hyde, chairman of the House International Relations Committee at the time, said: “This appears to be a deliberate attempt to punish the United States for its insistence that the commission tell the truth about human rights abuses wherever they occur. The machinations of international bureaucrats are irrelevant to the plight of the world’s oppressed people who yearn for the universal values of freedom and democracy to which the United States is deeply committed” (UN Human Rights Commission Boots U.S., 2001).

Stephen Zunes, chair of the peace and justice studies program at the University of San Francisco, likened the UN panel’s move to the chickens coming home to roost. “For over 50 years, the United States has used the Human Rights Commission to advance its ideological agenda, attacking the human rights records of countries America did not like, while defending and covering for regimes with as bad or even worse records that happened to be seen as strategic or economic allies” (Zunes, 2001).²²

On June 11, 2002, a small story ran in the U.K.-based *Financial Times*. Nelson Mandela, the former South African President, had emerged from an hour-long meeting with the convicted Lockerbie bomber, and called for the Libyan to be transferred to a Muslim country. The prisoner had complained of being harassed by fellow prisoners at Barlinnie prison in Glasgow, Scotland (Nicholson, 2002). The British Foreign Service position was that Libya had agreed to hand over the suspects to a third country and that if convicted by the Scottish court, they would be imprisoned in Scotland.

²¹*Third World Network* is an independent nonprofit network of nongovernmental organizations involved in issues of development, the Third World, and North–South issues.

²²As evidence, Zunes (2001) cites U.S. support for Suharto of Indonesia, Mobutu of Zaire, the Shah of Iran, Park of South Korea, Marcos of the Philippines, Pinochet of Chile, and “literally dozens of others.” “As recently as 2 months ago, the US cast the sole dissenting vote against a UN Security Council resolution to send unarmed human rights monitors to the Israeli-occupied Palestinian territories.”

Mandela, who endured 27 years in prison for his opposition to apartheid, told journalists that Abdel al-Megrahi, “has nobody he can talk to. It is a psychological persecution that a man must stay for the length of his long sentence all alone” (Nicholson, 2002). Mandela said that he would seek talks with Tony Blair and George W. Bush to transfer the prisoner to a Muslim country, trusted by London and Washington, where his family could visit him more easily.

In January of 2003, Libya was elected chairman of the UN Commission on Human Rights in a secret ballot backed by 33 members, with three countries voting against and 17 members abstaining.²³ U.S. State Department spokesman Richard Boucher said, “We find it unconscionable that people could find it possible to vote for a serious human rights offender like Libya to chair the Human Rights Commission” (U.S. Mission to the European Union, 2003). The U.S.-based Human Rights Watch was appalled and released a press statement that Libya had prohibited the formation of political parties, muzzled its press, and had in the past “been responsible for torture, ‘disappearances’ and the assassination of political opponents abroad” (Human Rights Watch Press Releases on Libya, 2002).

Colonel Qaddafi’s son, Seif Qaddafi, said that the Libyan government had released all political prisoners except for two categories, the Libyan Fighting Group that he described as “fanatical, violent, and headquartered in Afghanistan,” and the Muslim Brotherhood, whose case was at the time before the Court of Appeal. “Sure, we are not Switzerland or Denmark; we are part of the Third World and part of the Middle East,” he said, “but we are better than our neighbors” (Libya Takes Human Rights Role, 2003).

Fifteen years after the bomb exploded over Lockerbie, and in order to have the UN sanctions lifted, Qaddafi agreed to the two new criteria tacked on by the United States and United Kingdom after the verdict: Libya accepted responsibility for the bombing and agreed to pay up to \$2.7 billion in compensation to the families. On September 12, 2003, the Security Council formally lifted sanctions against Libya. The resolution was adopted by 13 votes in favor, and none against. The United States and France abstained.²⁴

Strategic Moral Diplomacy: Case Analysis

Acknowledging the Enemy’s Moral Universe

A handful of conflicting yet justifiable moral “universals,” or rules, were present in the case of the Lockerbie negotiations.²⁵ Certainly material objectives, attributes of power, and other personal preferences play a large role in which moral rule an actor sees as salient; in other words, in which moral rule will be acted upon. For example, from one perspective, terrorism is evil by definition, in any guise and for any reason, and must be punished. Despite the ambiguity of blame in the Lockerbie bombing itself, the fact that Qaddafi was a proponent of the use of terrorism, historically, was never ambiguous. For the United States and United Kingdom, because Qaddafi was a terrorist, he was by definition immoral and unworthy of

²³Africa was due to chair the next rotation of the Commission, and the regional group nominated Libya.

²⁴According to Massoud (Interview 2004), Saudi Arabia began secret direct negotiations between the U.S. and Libya in May of 1999 to lift bilateral sanctions. Meetings alternated between Bandar’s houses in Geneva and London.

²⁵The tensions between perceptions of rules are sometimes seen as a factor in social evolution as discussed in psychological terms in Kohlberg’s (1984) work on postconventional morality. For example, Max Weber’s (1922/1963:204, 209) work on the sociology of religion developed the theme that an inner religious faith does not require any sacred law, but only a “sacred inner religious state” that may sanction different maxims of conduct in different situations, and which is elastic and susceptible to accommodation. “The more a religion of salvation has been systemized and internalized in the direction of an ethic based on an inner religious state, the greater becomes its tension with and opposition to the world.”

dialogue or any appearance of direct negotiation.²⁶ His claims were believed to be a manipulative ploy to draw the United States and United Kingdom into direct negotiations, which would grant Qaddafi a distasteful legitimacy. So from the U.S. and U.K. perspective, placing sanctions against Libya and refusing to negotiate the legal aspects of the case was not only the correct moral response to the bombing of Pan Am Flight 103, but also the correct moral position to be taken against terrorism and rogue states in general.

John Bolton (1999), then senior vice-president of the American Enterprise Institute, and former assistant secretary of state for George H. W. Bush, summed up the neoconservative view of any U.S. compromises in an article for the *Weekly Standard*.

Although many felt that [Clinton's] compromise offer gave away too much, dissent from Clinton's ploy was muted because of the administration's public and private assurances that there would be no further bargaining with Libya. Nonetheless . . . the Clinton administration gave in. First in a clear effort to insulate Qaddafi from criminal liability for the Pan Am bombing, which many believe he personally ordered, the administration conceded that the prosecution of the alleged murderers would in no way "undermine" the Libyan regime. Second, the United States and United Kingdom conceded that if convicted and imprisoned, the defendants would be "monitored" by the United Nations. This implicit admission that Scottish jails are not up to say, Libyan, standards is breathtaking, both for its deference to the "proper" treatment of international terrorists, and as a precedent for intrusive U.N. involvement in our criminal justice system.

For the United Kingdom and United States, the desire to contain a terrorist regime, and punish perpetrators of terrorism, was a more salient moral duty than following applicable international law and conventions that, in their opinion, would not result in adequate justice.

When Mandela awarded the Good Hope medal to Qaddafi, praising him as a moral leader against oppression, he bestowed upon Qaddafi a moral legitimacy, effectively acknowledging a moral universe from which he could negotiate.²⁷ This action gained Qaddafi's trust by emphasizing that Mandela was acting independently of the West; Mandela respected Qaddafi as a moral leader and man, which was very important to Qaddafi. "It was part of Mandela's strategy" Gerwel (Interview, 2003), later explained. "The mistake that many people make about Qaddafi, our government included, is that you'd rather keep him at your side than treat him as this crazy lunatic who doesn't know politics. Mandela knew that perfectly. Qaddafi has a naïve side to him. His whole politics are based on this Don Quixote character. So his being decorated by Mandela meant a hell of a lot to him. He trusted us. Doing this was to let him know we respect you, but then you must keep your word with us, and you must act honourably." Qaddafi would later name the stateroom where he was presented the medal *Nelson Mandela Hall*.

Cementing Qaddafi's trust was only half of Mandela's strategy. Mandela also spoke harshly to Qaddafi about his need to use language that was respectful of the United Nations even if he disagreed with it. Qaddafi's aides said he had never been spoken to like that before. He was taken aback by Mandela's harshness, but it did make a difference. Mandela's emphasis on understanding and respecting the enemy if at all possible—a lesson learned from his experiences in South Africa—was politically strategic, as well as morally sound.

Many South African as well as international scholars believe that Mandela's almost overpowering sense of loyalty was the driving motivation behind his defense

²⁶Via U.S. Department of State policy against state sponsors of terror.

²⁷I am grateful to Melissa Ince for her suggestion of the phrase "moral universe" to describe the enemy's worldview.

of Qaddafi or Castro or other outcasts who supported “the struggle” against apartheid. Although Mandela often referred to Qaddafi’s financial and military support of the guerrilla resistance to South Africa’s apartheid regime, it is inaccurate to explain Mandela’s support of Qaddafi as merely out of a sense of loyalty.²⁸ Albert van Rensberg, diplomatic assistant to South African Foreign Minister Alfred Nzo at the time, suggested Mandela’s involvement as coming from a different source, a deep sense of justice and fair play.

Often there is a need felt by Mr. Mandela to act as a counterweight. As an observer, I don’t think he was condoning everything Libya was doing, but that he felt there needed to be a counterweight to the U.S. driving its mandate too strongly; that there needs to be a debate going on instead of a one way pushing effort. The way South Africa has positioned itself internationally coming out of sanctions is one of inclusive diplomatic relations, meaning we prefer to have diplomatic relations with everybody and not have diplomatic sanctions. We don’t believe in them. Diplomacy is there for a reason. Even if you don’t agree with your enemy, you still have to keep that channel open. (Interview, 2003)

From Mandela’s perspective, the salient moral rule appears to be one of justice and fairness in the system, as well as some degree of loyalty for Qaddafi’s support in the military struggle against apartheid. One has the sense that he was moved less from a sense of loyalty to Qaddafi as an individual, than by what he represented, the idea that in some cases guerrilla movements using terrorist tactics were morally justified. Such was the case in South Africa, and Mandela appeared to want to emphasize the unfairness of labelling Qaddafi as immoral because of his military support of revolutionary movements.

From Qaddafi’s perspective, while an attack against American citizens might have been morally justifiable as a response to an unprovoked 1986 attack on his citizens and immediate family, he vehemently denied involvement in the Lockerbie bombing and claimed to seek only a fair trial for the two Libyan agents. Qaddafi claimed that his efforts were an attempt to thwart what he perceived as the immoral intentions of the United States to slander him and use the two accused men to gain privileged information about Qaddafi’s intelligence operations, possibly torturing the two agents in order to implicate him in the Lockerbie bombing.

Qaddafi’s only leverage in negotiating a different (just) scenario was refusing to release the two men for trial until his concerns were addressed. By international legal standards, Qaddafi was right in his protestations. He denounced terrorism, arrested the two accused, and followed international protocol according to the 1971 Montreal Convention. He requested a trial at the World Court. While there were material concerns, mainly economic incentives, for Qaddafi to release the two to the United States or the United Kingdom for trial, there were also material concerns of national security and personal safety incentives to keep the two men imprisoned in Libya. Yet from the beginning, Qaddafi said he was willing to strongly support a trial in a neutral third country. International lawyers said there was no basis for the demand that Libya turn over its citizens suspected of crimes to another country. But after standing outside the international system for so long, it was perhaps understandably difficult for the United States and United Kingdom to reconcile Qaddafi’s moral distaste for the international system with a sudden newfound respect for international law.

²⁸One alternative motivation, suggested by two prominent scholars in South Africa, was that Mandela’s ANC party merely needed an infusion of money for its upcoming 1999 elections (Greg Mills and Tom Lodge). When asked about these comments, Gerwel (Interview, 2003) replied that these claims were “utter nonsense. There’s this whole myth that Qaddafi supported the ANC, and intelligent people know that Qaddafi did not support the ANC, if he supported anyone it was the PAC.”

Moreover, Qaddafi's decision to accept economic sanctions that would dramatically weaken his states economic and diplomatic power, rather than give in to what he considered to be unjust demands from international powers, appears anathema to rational choice theory. Yet an intuitive explanation of Qaddafi's actions might accentuate the personal moral "power" that translates into regional respect, power he gained from refusing to cave in to Western ultimatums, and that resulted in Libya's election to chair the UN Commission on Human Rights. The present understanding of "power" as a rational choice preference needs to be reexamined to include moral power as an understandable and desired preference.

Conclusion

The Lockerbie negotiations, and Mandela's strategic moral diplomacy, illustrate the utility of acknowledging the enemy's moral universe, granting the enemy a moral space from which to negotiate. While some may critique this approach as less than rigorous, as a sugarcoated form of moral relativism, this case study suggests that there exist situations where this approach is not only strategically useful but also that the approach hones in precisely on a point of disagreement that should be rigorously addressed: addressed not through exhaustive analysis of rational choice models, but by actually listening to the stated concerns of the enemy, giving the benefit of the doubt to his or her justifications, and assuming the enemy is acting from within a moral universe that supports his or her decisions. And while this article has emphasized the mistakes made by the United States and United Kingdom in its perception of enemy, perhaps a parallel narrative could be written emphasizing Qaddafi's equally mistaken assumptions that the United States and United Kingdom had only evil motivations and intentions. The point is that these assumptions about a perceived enemy are quite commonly held by persons or states, and require conscious and consistent evaluation.

As described in the first section of this article, the idea of moral action as "will- ingness" to act on one's conception of the good was true in this case for each of the parties involved. Granting, or acknowledging the existence of several different conflicting valid moral arguments in a situation is an accurate diagnosis of human relations. It follows that acknowledging these alternative moral perceptions is fair, and useful to negotiation. It does not follow that all moral perceptions of a situation, choices of action, and potential consequences are equally compelling moral justifications.

Moral rules do not exist frozen in space and time, exclusive of personality, historical context, and power relationships that make them salient to persons. Philosophers Albert Jonsen and Stephen Toulmin (1988) have discussed at length in their book, *The Abuse of Casuistry: A History of Moral Reasoning*, that there can be a "tyranny of principles" where concentration on universal and invariable principles is damaging, where we cannot escape deadlock, where issues are drastically oversimplified, and standoffs are generated. This "tyranny of principles" feeds into what international legal scholar Martti Koskenniemi (2004) refers to as the problem of "over- and underinclusiveness" of rules—the danger of having to include cases in the future that one did not mean to include. Koskenniemi's legalist example is the danger of establishing "clear criteria" for cases requiring humanitarian intervention. If, for example, the international community clearly states that outside intervention is justified when, say, 500 are killed, then how do you handle the tyrant who purposefully kills only 490 (the underinclusive case)? In theory, this "clear criteria" would also allow the Vatican Swiss Guard to justify intervention in cases of abortion or euthanasia (the overinclusive case).

This danger of over- and underinclusiveness exists in foreign policy ultimatums such as never negotiating with terrorists, or of mandatory sanctions imposed on states designated as rogue. Robert Pastor noted after his role in the 1994 U.S.

negotiations in Haiti that, “It’s hard to persuade a nation to risk its children’s lives and to murder others unless the other side is evil. The problem is that once a people are convinced that they face a heinous enemy, it is hard to entertain serious negotiations” (Pastor, 1999:521). The past two decades show Libya, the United States, and the United Kingdom enmeshed in this tautology. In how many other international disputes might this be the case?

Alternative moral narratives of behavior are usually ignored, most recently by the casting of Qaddafi as capitulating to U.S. and U.K. demands after their invasion of Iraq. The claims that Qaddafi saw the handwriting on the wall of what is in store for immoral terrorist regimes, and responded by admitting his role in the Lockerbie bombing and dismantling Libya’s program of weapons of mass destruction, ignores a history of alternative facts and perceptions. The tendency to believe that good has won over evil in this case—moreover, that it has done so through the use of crushing sanctions and military campaigns against evil regimes—is particularly problematic. Historical analogies are prevalent in foreign policy decision processes (Neustadt and May, 1986; Jervis, 1976; Khong, 1992; Larson, 1997; Renshon and Larson, 2003); a lopsided, politically motivated explanation of this case, or any other, is dangerous for future deliberations on the merits of sanctions and preemptive war.

Perhaps the story of the Lockerbie negotiations means little of lasting consequence to international relations, but perhaps it means a great deal. Understanding and mitigating the consequences of clashing moral perceptions is a useful goal for public, as well as private diplomacy. In Mandela’s words, the Libyan negotiation “was an issue engaging the most powerful interests and bringing into play emotions and attitudes that have been divisively deployed in world affairs. ‘Lockerbie’ and ‘Libya’ had become landmarks in the media landscape of a world divided between good and evil, the reasonable and the irrational, saints and demons.” This article has described strategic moral negotiation as an alternative approach to the image of a political enemy as motivated by a handful of evil interests. Can the adversary’s moral position be accommodated and respected within strategic parameters in order to reach political goals? Surely the question requires the exercise of wisdom, discretion, and discernment in enforcing the rules we already have.²⁹ President Nelson Mandela’s strategic moral diplomacy in the Lockerbie negotiations is a model for the possibilities.

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²⁹Paraphrased from Jonsen and Toulmin (1988:9) in response to a hypothetical reporter who says we need to have a rule to prevent this “kind of thing,” referring to abortion issues. “Yet what is called for in this case. . . surely the issue is rather one for the exercise of wisdom, discretion, and discernment in enforcing the rules we already have.”

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