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The United States' 1986 Emergency Economic Sanctions Against Libya - Have They Worked?

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COMMENT

THE UNITED STATES' 1986 EMERGENCY ECONOMIC SANCTIONS AGAINST LIBYA - HAVE THEY WORKED?

I. INTRODUCTION

Former President Ronald Reagan enacted emergency economic sanctions[1] against Libya on January 7, 1986[2] following terrorist attacks on December 27, 1985, at the Vienna and Rome airports.[3] Convincing evidence indicated that the Libyan government supported the Abu Nidal terrorist organization,[4] which was responsible for the attacks.[5]

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1. An economic sanction can be defined as a course of action undertaken by a nation intended to prevent, regulate or otherwise hamper another state's economic activity for the purpose of changing its policies. *See* Moyer & Mabry, *Export Controls as Instruments of Foreign Policy: The History, Legal Issues, and Policy Lessons of Three Recent Cases*, 15 LAW POL'Y INT'L BUS. 1, n.1 (1983) [hereinafter Moyer & Mabry].

2. Exec. Order No. 12,543, 51 Reg. 875 (1986), *reprinted in* 25 I.L.M. 173 (1986) (prohibits exports, imports, and other trade aspects with Libya). Reagan passed additional sanctions the next day to freeze Libyan assets. Exec. Order No. 12,544 Fed. Reg. 1,235 (1986) (freezes all Libyan assets held by American banks or persons), *reprinted in* Documents Showing the Evolution of Sanctions Against Libya, 25 I.L.M. 173, 181 (1986) (hereinafter Evolution of Sanctions).

On June 23, 1986 the Department of the Treasury amended its regulations to further restrict the shipment of goods to the Libyan petroleum and petrochemical industry. U.S. GENERAL ACCOUNTING OFFICE, INTERNATIONAL TRADE: LIBYAN SANCTIONS 12 (1987) (hereinafter GAO REPORT). The government further amended the sanctions in June and July of 1986: 31 C.F.R § 550.560 (1989) (clarifying travel restrictions); 31 C.F.R. § 550.409.901 (1989) (tightening prohibitions on exports from the U.S. to Libya through third countries); and 31 C.F.R. § 550.605 (1989) (order to those U.S. corporations with affiliates engaging in Libyan transactions to report to the U.S. Department of Treasury). Bialos & Juster, *The Libyan Sanctions: A Rational Response to State-Sponsored Terrorism?*, 26 VA. J. INT'L L. 799, 801, n.5 (1986) [hereinafter Bialos & Juster].

3. *See* President's News Conference of January 7, 1986, 22 Weekly Comp. Pres. Doc. 22 (January 13, 1986), *reprinted in* Evolution of Sanctions, *supra* note 2 at 175 (discussing Qadhafi's involvement in the airport bombings and other terrorist acts).

4. The Abu Nidal Group ranks among the most dangerous, organized, and well financed Middle Eastern terrorist organizations. Evolution of Sanctions, *supra* note 2 at 190. The group calls for the destruction of ruling "reactionary" regimes such as Jordan, Egypt, and the Persian Gulf states. *Id.* Its ultimate goal is to use inter-Arab and intra-Palestinian terrorism to obtain the liberation of Palestine. *Id.*

Moreover, the Abu Nidal Group has boldly attacked Jordanian, Egyptian, and

Reagan designed the sanctions to achieve certain foreign policy goals[6] which included changing Libya's practice of supporting and assisting international terrorism.[7] In 1989 President George Bush extended economic sanctions against Libya.[8] This comment examines how effective the United States' emergency unilateral economic sanctions[9] have been in altering Libya's state policies toward international terrorism.

Section II identifies the current framework of both nonemergency and emergency economic sanctions. Identifying limited nonemergency sanctions is necessary to fully understand the context under which emergency sanctions were enacted. Nonemergency sanctions failed to coerce Libya into changing its policy of supporting terrorism. As a result, former President Reagan declared a national emergency and enacted emergency sanctions to deal with the Libyan threat.

Section III provides the actual analysis for measuring effectiveness. This section advances the argument that economic sanctions are most effective in the short to medium term, but less effective in the long run. As time progresses, the Libyan economy adapts to any adverse impact suffered under the sanctions. Despite long term ineffectiveness, economic sanctions play an important policy role in the U.S. government's ongoing efforts to curb international terrorism. These sanctions send a stern message to Libya that the United States will no

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United Kingdom interests. *Id.* Those countries have lost hundreds of lives to Abu Nidal hijacking and terrorism. *Id.*

5. *Id.*

6. Foreign policy goals are changes sought by the sender state (the state imposing the sanctions) in the political behavior of the target state (the state receiving the sanctions). G. HUFBAUER & J. SCHOTT, ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY 2 (1985) [hereinafter G. HUFBAUER & J. SCHOTT].

7. Scholars and politicians have encountered difficulty stating a working definition of "international terrorism". The United States Code defines international terrorism as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents . . . involving citizens or the territory of more than [one] country." 22 U.S.C. § 2656(F)(d)(1)(2) (1988). *See also* S. KADISH, IV ENCYCLOPEDIA OF CRIME AND JUSTICE 1529-1536 (1983) (generally discussing terrorism and international terrorism from a historical, analytical, and legal perspective).

8. On January 19, 1989 President George Bush publicly stated that he would continue the economic sanctions that his predecessor, former President Ronald Reagan, implemented. Since President Bush's statement, the original 1986 economic sanctions against Libya remain in effect. *See* U.S. DEP'T STATE BUREAU PUBLIC AFFAIRS, BACKGROUND NOTES: LIBYA 7 (Sept. 1989) [hereinafter BACKGROUND NOTES].

9. The term "unilateral economic sanctions" refers to sanctions applied by a single nation. Economic sanctions applied by two nations working together are referred to as "bilateral economic sanctions". The term "multilateral economic sanctions" refers to sanctions applied by more than two nations.

longer tolerate state sponsored terrorist acts. Economic sanctions are often a more pragmatic alternative to using military force because military action may compromise the United States' position in the international community. However, when Libyan supported terrorist acts are so heinous as to deserve stronger retaliation, military action serves as a viable option.[10]

II. The Purpose And Scope Of Economic Sanctions Against Libya

A. *The Purpose of Sanctions*

The Libyan economic sanctions are aimed at achieving three policy goals. First, the United States desires to coerce Libya into changing its terrorist policies or radical government.[11] The United States has viewed the policies of Libyan leader Colonel Mu'ammar al-Qadhafi with close scrutiny since he came to power in 1969.[12] Since his rise to

10. When United States intelligence identified Libya's involvement in a Berlin discotheque terrorist bombing that killed an American serviceman, the United States responded by launching an aerial bombing attack against targets near Tripoli and Benghazi, Libya in April 1986. Greenwood, *International Law and the United States' Air Operation Against Libya*, 89 W. VA L. REV. 933, 934 (1987).

Former President Reagan attempted to legally justify the bombing on two rationales. First, as a valid use of self-defense against anticipated Libyan attacks. *See generally Id.* at 937-948. Second, to "preempt" Qadhafi from supporting future terrorist acts. L. HENKIN, S. HOFFMAN, J. KIRKPATRICK, A. GERSON, W. ROGERS, & D. SCHEFFER, RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE 46 (1989) [hereinafter L. HENKIN].

The United Nations Charter regulates the amount of force that a member nation can apply against another state: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." U.N. CHARTER art. 2(4). The U.N. charter makes an explicit exception to article 2(4): "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." U.N. CHARTER art. 51. Reagan also asserted that the bombing did not exceed the right to self-defense articulated in article 51. Mr. Henkin disagrees. His interpretation of Article 51 does not recognize a right to use force to retaliate for past terrorist attacks. Instead, the right to self-defense only extends to concurrent attacks. L. HENKIN, *supra* note 12, at 62.

11. *See* Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CAL. L. REV. 1159, 1170 (1987) [hereinafter Carter].

12. On September 1, 1969 the Revolutionary Command Council (RCC) overthrew Libyan King Idris. The new regime converted the country from its former monarchy rule, to the present Libyan Arab Republic. Colonel Qadhafi and the RCC gov-

power, Colonel Qadhafi has focused Libya's foreign policy agenda on international terrorism[13] and subversion against moderate Arab and African governments. His 1980 attempt to overthrow the government of Hissen Habre in Chad resulted in international involvement and many casualties, before foreign leaders eventually divided Chad.[14]

The second goal underlying the economic sanctions against Libya focuses on punishing that country for its subversive terrorist policies.[15] The punishment aspect of economic sanctions remains the most fundamental rationale. Economic sanctions are imposed to punish a country for its policies or actions when direct military response may not be po-

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erned Libya exclusively until 1977. On March 3, 1977 Qadhafi convened a General People's Congress (GPC) as a means of facilitating citizen participation in the government. After this event, Qadhafi remained the de facto chief of state and Secretary General of the GPC until 1980. Despite the fact that he holds no official office, Colonel Qadhafi currently dictates Libya's foreign policy through appeals to the masses, security forces, and revolutionary committees. BACKGROUND NOTES, *supra* note 8, at 3-4.

13. Libya finances, trains, and even harbors international groups that share Qadhafi's revolutionary and anti-Western views. The Japanese Red Army, and the Popular Front for the Liberation of Palestine General Command have been identified as receiving Libyan assistance. *Id.* at 6. Qadhafi finances guerrilla movements, conferences for radicals, and terrorists in the Dominican Republic, El Salvador, Honduras, and Guatemala in order to subvert Latin American Countries and foster an anti-U.S. climate. DEPARTMENT OF THE STATE, LIBYAN ACTIVITIES IN THE WESTERN HEMISPHERE, 8 (August 1986). Qadhafi also provided financial assistance and military training to the former Sandanista government in Nicaragua. *Id.* at 1.

Six countries in the Western Hemisphere have Libyan "Peoples' Bureaus" (embassies): Argentina, Brazil, Cuba, Nicaragua, Panama, and Suriname. *Id.* at 5. Panama and Suriname do not have embassies in Libya for economic reasons.

Qadhafi likewise extends his political reach by organizing Islamic groups in Barbados, Curacao, Netherlands Antilles, and Nicaragua. These groups could very well be establishing intelligence groups under the pretense of "religious groups" *Id.* The Libyan also provide funding to Caribbean radicals in Antigua, Dominica, French Guiana, Guadeloupe, Haiti, Martinique, and St. Lucia.

Most recently, U.S. and foreign intelligence has discovered that Libyan factories are now producing mustard gas which can be used in chemical warfare. Despite the fact that Libya lacks long range missiles to deploy the mustard gas, this event has unquestionably alarmed certain countries. A group attempted to sabotage the plant by setting it on fire. Newsweek, March 19, 1990, at 33, col. 1.

14. Qadhafi withdrew most of his troops from Chad in 1981 after receiving intense international diplomatic pressure. The United States and France supported Habre. In 1983 3,000 French troops, along with the Chadian government forced Qadhafi to release some of his newly acquired Chadian territory. Nevertheless, Libya still occupies most of the Aozou strip separating the two countries.
BACKGROUND NOTES, *supra* note 8, at 6.

15. *See* Carter, *supra* note 11, at 1170.

litically feasible.[16] In any event, the United States government makes it clear that only so many terrorist acts will be tolerated before the U.S. retaliates with military force.[17]

The third goal of imposing economic sanctions against Libya centers on symbolically demonstrating U.S. opposition towards Libyan policies.[18] This rationale reflects not only an attempt to inform Libya that the United States is cognizant of its policies, but also to assure other countries and United States citizens that the U.S. government is "doing something" about Libyan sponsored terrorism. The Reagan administration hoped that U.S. economic action against Libya would encourage other countries to impose similar economic controls against Libya.

The preceding goals underlying the imposition of economic sanctions against Libya are consistent with U.S. foreign policy dealings with other countries. Through the Department of the Treasury (hereinafter "Treasury") the government imposes similar sanctions against Iran,[19] Nicaragua,[20] and South Africa.[21]

B. Scope of Nonemergency Sanctions

United States economic sanctions are broadly categorized as limits on: (1) United States government programs; (2) exports; (3) imports; (4) private financial transactions; and (5) international financial institutions.[22] United States laws grant the President wide latitude to impose economic sanctions for foreign policy reasons during nonemergency and emergency situations. Nonemergency controls provide the fundamental framework for economics.

16. *See* generally, Comment, *Economic Sanctions: An Effective Alternative to Military Coercion?*, 6 BROOKLYN J. INT'L L. 289 (1980) (hereinafter *Economic Sanctions*) (discusses the effectiveness of economic sanctions imposed by the United Nations on Portugal, Rhodesia, and South Africa).

17. *See supra* note 10 and accompanying text.

18. *See* Carter, *supra* note 11, at 1170.

19. 31 C.F.R. § 560 (1989) (Iranian transactions regulations enacted October 1987 have the effect of banning almost all imports from that country. Regulations were passed because of that country's extremist anti-western foreign policies).

20. 31 C.F.R. § 540 *et. seq.* (1989) (Nicaraguan trade control regulations).

21. 31 C.F.R. § 545 *et. seq.* (1989) (South African transactions regulations enacted to show disagreement with that country's policy of Apartheid rule, a system in which the white minority rules the African majority through a racist caste system).

22. Carter, *supra* note 11, at 1164.

1. Nonemergency Laws

(a) Export Controls

The Export Administration Act of 1979 (EAA)[23] provides an effective means of imposing economic sanctions on Libya through nonemergency laws. Substantive EAA provisions are divided into national security and foreign policy classifications.[24] Both sections authorize the President to regulate the exports of goods, technology, and other information.[25] All exports from the United States must have a general license. Sanctions can be more effectively imposed by making export licensing more difficult to obtain. Thus, certain items subject to stricter export controls for national security or foreign policy reasons require a validated license.[26]

Although the EAA lapsed in 1983, Congress enacted the Export Administration Amendments Act of 1985, (1985 EAAA) which effectively renewed major provisions of the 1979 EAA.[27] The Congressional policy of using export controls to prevent countries from supplying aid or giving sanctuary to international terrorists remains virtually unchanged.[28] However, the 1985 EAA imposed additional time limits on agricultural embargoes,[29] restrictions on the President's power to im-

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23. 50 U.S.C. app. § § 2401-2420 (1982 & Supp. V 1987).

24. Abbott, *Linking Trade to Political Goals: Foreign Policy Export Controls in the 1970s and 1980s*, 65 MINN L. REV. 739, 859 (1981) (hereinafter Abbott).

25. *Id.*

26. *E.g.* 15 C.F.R. § 776.16 (1989) (Pursuant to § 6 of the EAA a validated export license is required for foreign policy purposes to export: (a) Military vehicles and certain commodities used to manufacture military equipment identified on the commodity Control List under CCL listings 2018A, 1118A, 2406A, and 2603A, to any destination except Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Italy, and Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Turkey, and the United Kingdom. Therefore, a valid export license is required to export the above mentioned articles to Libya.)

27. 50 U.S.C. app. § § 2401-2420 (Supp. V 1987) (originally enacted as Pub. L. No. 99-64, § 102, 99 Stat. 120 (1985)).

28. 50 U.S.C. app. § 2402(8) (Supp. V 1987) declares that:

> [i]t is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

29. 50 U.S.C. app. § 2406(g)(3)(A)-(B) (Supp. V 1987).

pose foreign policy controls,[30] and created a new provision for preserving existing contracts.[31]

The President may also exercise control over exports through the Arms Export Control Act (AECA).[32] Congress empowers the President to control defense articles in order to ensure United States and world security.[33]Persons violating the requisite licensing requirements are subject to criminal penalties.[34] In 1978 former President Carter used the AECA to impose the first economic sanctions against Libya. The ban prohibited all sales of military equipment to Libya.[35]

Both the 1985 EAAA and the AECA effectively regulate United States exports to Libya. In *U.S. v. Malsom*,[36] the Court of Appeals for the Seventh Circuit upheld the defendants' convictions for attempting to export, exporting, and conspiring to export, implements of war and other controlled commodities from the United States to Libya without proper export licenses.[37] The appellate court rejected defendants' argu-

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30. 50 U.S.C. app. § 2405(f)(1) (Supp. V 1987) (the President may impose or expand export controls only after consulting with the Congress, including the Committee on Foreign Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate).

31. 50 U.S.C. app. § 2405(m)(1) (Supp. V 1987) (the President may not prohibit export or reexport of goods, technology or other information in performance of a contract executed prior to the date the President consults with Congress pursuant to 50 U.S.C. app. § 2405(f) (Supp. V 1987)).

32. 22 U.S.C. § 2778 *et. seq.* (1988) (originally enacted as Pub. L. No. 94-329, 90 Stat. 729 (1976)).

33. 22 U.S.C. § 2778(a)(1) (1988) states that:

> [i]n furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the Unites States Munitions List.

The munitions lists enumerates such articles as aircraft, amphibious vehicles, firearms, and military explosives. *See* 22 C.F.R. § 121.1 *et. seq.* (1989).

34. *See* 22 U.S.C. § 2778(c) (1988) (any persons violating the provisions set forth in § 2778 are subject to a fine of no more than $100,000 and imprisonment for no more than two years).

35. G. HUFBAUER & J. SCHOTT, *supra* note 6, at 620.

36. 779 F.2d 1228 (7th Cir. 1985).

37. *Id.* at 1230. Donald Malsom served as the general manager of co-defendant Tencom Corporation, a corporation engaged in supplying commercial and aviation equipment and procuring military equipment. In 1980 the defendant's corporation faced immediate bankruptcy. The company's president, Nedim Sulyak, obtained a con-

ments that they lacked criminal intent to violate export laws, and that the lower court erred in failing to suppress evidence seized from Tencom's headquarters.[38] The appellate court also found no lower court error in its decision not to order a mistrial due to widespread media coverage of Libyan military activities.[39] The prosecution presented sufficient evidence to refute each appellate argument.

Recently, in *U.S. v. Elkins*,[40] the Court of Appeals for the Eleventh Circuit upheld the defendant's lower court conviction for violating the EAA, AECA, and United States conspiracy laws.[41] The defendant's prosecution in *Elkins* stemmed from an investigation into the shipment of two Lockheed L-100-30 aircraft to Libya during 1985.[42] Both prosecutions in *Malsom* and *Elkins* illustrate how nonemergency export controls play an important role in combating Libyan sponsored terrorism. By imposing stringent licensing requirements the 1985 EAAA and AECA prevent United States citizens from providing Libya with military equipment that could be used to commit international acts of terrorism. *Elkins* clearly stated that export licenses for shipping planes to Libya would surely be denied due to the statutory export prohibitions.[43] The 1985 EAAA also requires that applications for export licenses to countries supporting terrorism be reported to various Congressional and Senate Committees.[44]

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tract for $20 million to sell aircraft parts to Libya for use on C-130 Hercules cargo transport planes and Chinook CH-47 Libyan helicopters. Tencom never applied for the requisite State or Commerce Department license. *Id.*

Tencom successfully shipped parts to West Germany, with an ultimate destination of Libya or Venice, Italy. Libya serviced its C-130 in Venice at a plant called Aeronavali. In February and August of 1981, Tencom also shipped C-130 engines and airplane propellers through West Germany to Libya. All of the above transactions violate export restriction of controlled military parts enacted during 1978. *Id.* at 1231-1232.

38. *See id.* at 1233.

39. *Malsom*, 779 F.2d at 1233.

40. 885 F.2d 775 (11th Cir. 1989).

41. *See id.* at 781, n.4. A lower court jury found the defendant guilty of violating: (1) the Export Administration Act of 1979, 50 U.S.C. § 2410(a); (2) the Arms Control Act, 22 U.S.C. § 2778(b)(2) and 2778(c), 22 C.F.R. § 121 *et. seq.*; (3) 18 U.S.C. § 1001; and (4) 18 U.S.C. § 1343. *Id.*

42. *Id.* at 779.

43. *Id.*

44. 50 U.S.C. app. § 2405(j)(1) (Supp. V 1987) provides that:

> [t]he Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on foreign Relations of the Senate at least 30 days before any license is approved for the export of goods or technology valued at more than $1,000,000 to any country concerning

(b) Import Controls

Executive authority to impose import controls for national security reasons comes primarily from Section 232 of the Trade Expansion Act of 1962.[45] On March 10, 1982, the United States imposed broader economic restrictions on Libya by placing an oil embargo on Libyan crude oil imports.[46] The Reagan administration hoped the embargo would cut off funds available for sponsoring terrorist activities.[47] The oil embargo resulted in a significant decline in United States-Libyan relations.

(c) Response to Libyan Involvement in Terrorist Acts

During the early 1980's the Reagan administration exhibited increasing intolerance towards Libya's involvement in international acts of terrorism. Former President Reagan responded directly to specific terrorist acts by passing certain nonemergency sanctions. In August of 1981, two Libyan SU-22 jets attacked two United States F-14 jets while the U.S. planes flew maneuvers over the Gulf of Sidra.[48] Two months after this incident, on October 28, 1981, the Reagan administration imposed controls on exports of small aircraft, helicopters, and aircraft parts to Libya.[49] The executive branch designed the ban to thwart Libya's ability to support military acts in neighboring countries.[50]

In November 1981, officials reported the Libyan Government's involvement in a plot to assassinate the United States ambassador to Italy.[51] Soon after officials revealed the assassination plot, terrorists made an actual assassination attempt on the United States Charge

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which the Secretary of State has made the following determinations:

(A) Such country has repeatedly provided support for acts of international terrorism.

(B) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of terrorism.

45. 19 U.S.C. § 1862 (1988) (originally enacted as Pub. L. No. 87-794, § 232, 76 Stat. 872, 877).

46. Bialos & Juster, *supra* note 2, at 805, n.20, *citing* Proclamation No. 4907, 47 Fed. Reg. 10,507 (1982), renewed by Proclamation No. 5141, 48 Fed. Reg 56,929 (1983).

47. G. HUFBAUER & J. SCHOTT, *supra* note 6, at 621.

48. M. SICKER, THE MAKING OF A PARIAH STATE: THE ADVENTURIST POLITICS OF MUAMMAR QADDAFI 116 (1987) [HEREINAFTER M. SICKER].

49. G. HUFBAUER & J. SCHOTT, *supra* note 6, at 620.

50. *Id.*

51. M. SICKER, *supra* note 48, at 117.

d'Affaires in Paris.[52] Then, on December 7, 1981, former President Ronald Reagan asserted that Colonel Qadhafi had sent assassination teams to the United States to murder him, former Vice President Bush, and former Secretaries Haig and Weinberger[53]. The executive branch responded to Libyan aggression by invalidating all American passports used for travel to Libya as a safety precaution.[54] Even today, no United States citizen may travel to Libya without a special validation on their passport.[55]

The Reagan administration also restricted exports of sophisticated oil and gas equipment, and technology destined for Libyan use.[56] Terrorist bombings at airports in Rome, Italy, and Vienna, Austria drew international outrage. In the wake of these incidents, the United States no longer idly accepted Libya's policy of supporting international terrorism. Government evidence indicated that Libya provided financial support and sanctuary to terrorists involved in the three incidents.[57]

C. *Scope of 1986 Emergency Sanctions*

1. Emergency Laws

On January 7, 1986 former President Reagan responded to Libya's involvement in airport bombings in Rome, Italy, and Vienna[58] by ordering widespread emergency economic sanctions against Libya.[59]

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52. *Id.*

53. *See Id.*

54. Bialos & Juster, *supra* note 2, at 805, n.18, *citing* 46 Fed. Reg. 60,712 (1981). The passport regulations states that:

> [t]his action is required by the unsettled relations between the United States and the government of Libya, and the increased threat of hostile acts against Americans. Travel to or residence in Libya by American citizens is hazardous, because of the continued anti-American stance and hostile actions of the Libyan Government. The Government of Libya has repeatedly demonstrated a willingness to direct hostile acts against the United States Government, is not in a position to provide diplomatic protection or consular assistance to Americans in Libya. Under the circumstances, there is an imminent danger to the physical safety of Americans traveling to or present in Libya.

Id.

55. *See* 22 C.F.R. § 51.73(a)(3) (1989) (requiring a specifically validated passport for travel to a country in which there is imminent danger to the health or safety of U.S. citizens).

56. Expansion of Foreign Policy Export Controls Concerning Libya, 47 Fed. Reg. 11,247 (1982) (now codified in pertinent part at 15 C.F.R. § 785.7(a)(1)(ii) (1989)).

57. *See supra* note 3.

58. *Id.*

59. *See Supra* note 2.

Reagan passed additional sanctions to freeze Libyan assets the following day.[60] The President derives statutory power to enact Libyan sanctions from the Emergency Economic Powers Act (IEEPA),[61] the National Emergency Act (NEA),[62] and the International Security and Development Cooperation Act of 1985.[63] Statutory language mandates that the IEEPA only be invoked to impose economic sanctions when "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States" exists.[64] Upon a determination that such a condition exists, the President must then declare a national emergency pursuant to the NEA.[65] The IEEPA simultaneously vests the President with power to enact sweeping import, export, and financial controls through licenses bans upon declaring the national emergency.[66]

Some controversy exists over Reagan's decision to utilize the IEEPA to invoke economic sanctions against Libya. Libya's continued involvement with international terrorism may not have constituted an "unusual extraordinary threat" for IEEPA purposes.[67] Reagan justified declaring a national emergency by citing Libya's increased involvement in terrorist activities, and the United States' failure to change these practices using current measures.[68] Few would deny that the minimal, nonemergency economic controls had little effect on altering Libya's policy of supporting international terrorism. However, Reagan's deci-

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60. *Id.*

61. 50 U.S.C. app. § 1701-1706 (1982 & Supp. V 1987) (specifically, former President Reagan invoked his power under 50 U.S.C. § 1631 (1982)).

62. 50 U.S.C. § 1601-1651 (1982 & Supp. V 1987) (originally enacted as Pub. L. No. 94-412 90 Stat. 1255 (1976)).

63. *See* 22 U.S.C. § 2349aa-8(a) (1988) (grants the President the power to prohibit articles grown, produced, extracted, or manufactured in Libya from being imported into the United States). *See also* 22 U.S.C. § 2344aa-8(b) (1988) (grants the President the power to prohibit U.S. goods or technology from being exported to Libya).

64. 50 U.S.C. § 1701 (a) (1982 & V Supp. 1987).

65. *See* 50 U.S.C. § 1621(a) (1982 & Supp. V 1987) (the section authorizes the president to declare a national emergency when he feels such a situation exists, or when faced with any special or extraordinary occurrence).

66. 50 U.S.C. § 1702 (1982 & Supp. V 1987) (enumerating the President's authority pursuant to the IEEPA).

67. *See* Bialos & Juster, *supra* note 2, at 809.

68. President's Letter to the Speaker of the House and the President of the Senate (January 7, 1986), *reprinted in* Evolution of Sanctions, *supra* note 2, at 174-175 (former President Reagan described his statutory power and reasoning for invoking the emergency sanctions).

sion to invoke the IEEPA still remains questionable. The airport bombings took place in countries far away from United States soil, and therefore did not directly threaten national security. A national emergency could be rationalized by arguing that since Americans travel abroad, random bombings at airports generally threaten the safety of American tourists.

(a) General Components of the Sanctions

Executive orders Numbers 12,543 and 12,544 are implemented by the Office of Foreign Assets Controls in the Treasury, through the Libyan Sanctions Regulations.[69] Since the Department of Commerce (hereinafter "Commerce") shares export control power with the Treasury, Commerce enacted regulations subjugating its export licenses to the emergency export controls.[70] The broad framework of the economic sanctions suggests that the Reagan administration sought to alter Libyan foreign policy by eliminating all United States trade contributions that could be used to either finance acts of terrorism, or provide the terrorists with actual weaponry. Libyan emergency sanctions loosely reflect the export, import and private financial transaction categories of economic sanctions.[71] The Treasury chose not to adopt sanctions limiting U.S. government program interaction with Libya. Poor United States-Libyan relations previously resulted in any such programs being canceled.[72] Similarly, the sanctions impose no limits on international financial institutions. Institutions such as the International Monetary Fund (IMF) and the Multilateral Development Bank (MDB)[73] exist

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69. 31 C.F.R. § 550 *et. seq.* (1989) (originally enacted as 51 Fed. Reg. 1354, 1358 (1986)).

70. *See* 15 C.F.R. § 790.7(a) (1989) (revoking all existing export licenses conflicting with 31 C.F.R. 550 *et. seq.*, on February 1, 1986 at 12:00a.m. Eastern Standard Time).

71. *See supra* note 22 and accompanying text.

72. Typical government programs are either categorized as providing foreign assistance or landing rights. Carter, *supra* note 11, at 1183. Primary programs include: "bilateral foreign assistance, low-interest credit, loan guaranties, special insurance programs, fishing rights, port access, aircraft landing rights, and passports." *Id.* The United States trade relationship with Libya previously involved mainly oil imports from that country most of the listed programs are inapplicable.

United States passports for travel to Libya are only permitted with a special validation from the Passport Office. *See* 22 C.F.R. § 51.73 (a)(3) (1989) (invalidating a passport to a country or area in which there is imminent danger to the public health or physical safety of United States travelers). Such passports are usually denied as a matter of general policy.

73. MDB's consist of the World Bank Group (the International Bank for Recon-

outside the United States' legislative jurisdiction.[74]

The Libyan economic sanctions only apply to a "United States person",[75] and to exports and imports directly controlled by the United States. A "United States Citizen" refers to any United States citizen, permanent resident alien, juridical person,[76] or any person within U.S. borders.[77] The jurisdictional reach of the sanctions only extends to United States citizens and U.S. controlled goods because the Reagan administration sought to avoid any extraterritorial jurisdiction[78] problems. Such problems arise when other nations refuse to cooperate with the United States' extraterritorial attempts at extending U.S. sanctions for fear that their own foreign or economic policies will be damaged.[79]

Although the U.S. cannot compel foreign governments to honor U.S. emergency sanctions, it can compel all U.S. citizens to comply with relevant provisions. Provisions against evading the scope of emergency sanctions ensure that creative individuals do not undertake complex transactions to avoid the reach of Libyan economic sanctions. The evasion section prohibits transactions designed to evade or avoid any of the established prohibitions.[80] For example, United States parent companies cannot transfer Libyan contracts to foreign subsidiaries to evade the sanctions.[81]

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struction and Development, the International Development Association, and the International Finance Corporation. Carter, *supra* note 8, at 1218, n.229), the Inter-American Development Bank, the Asian Development Band, and the African Development Bank. *Id.*

74. The United States has little policy influence over these banks since there is no common governing. For example, the IMF's primary concern is promoting international monetary cooperation and stability in foreign exchange. To fulfill this purpose it necessarily remains apolitical to world events.

75. *See* 31 C.F.R. § § 550.201 - 550.209 (1989).

76. The term "juridical person" is actually a misnomer. A "juridical person" does not mean person within the traditional context of the word. Instead it refers to a corporation, partnership, or sole proprietorship organized under United States Law. GAO REPORT, *supra* note 2, at 8.

77. 31 C.F.R. § 550.308 (1989).

78. Juridical power which extends beyond the physical limits of a particular state or country. BLACK'S LAW DICTIONARY 528 (5th ed. 1979).

79. *See* Feinberg, Economic Coercion and Economic Sanctions: The Expansion of United States Extraterritorial Jurisdiction, 30 AM. U.L. REV. 323, 324 (1981).

80. *See* 31 C.F.R. § 550.208 (prohibits "[a]ny transaction for the purpose of, or which has the effect of, evading or avoiding any of the prohibitions set forth . . . .").

81. GAO REPORT *supra* note 2, at 9.

2. Prohibiting U.S. Contract Performance

A provision banning United States performance of United States-Libyan contracts remains the most controversial emergency economic sanction. The Treasury stated that "except as authorized, no U.S. person may perform any contract in support of an industrial or other commercial or governmental project in Libya."[82] A literal reading of this provision suggests that United States persons are prohibited from entering into new contracts, and performing existing contracts with the Libyan government.[83] The U.S. government supports this interpretation. Workers under contract with Libyan oil companies immediately felt the impact of contract prohibitions when their employment contracts became void.

In *Chang v. U.S.*,[84] petroleum engineers under contract with Libyan oil companies brought an action against the United States alleging that the termination of their contracts and loss of wages resulted in a Fifth Amendment taking.[85] The Federal Circuit upheld the contract ban provision as constitutional. In reaching its decision, the court refused to raise the government's interference to the level of a Fifth Amendment taking.[86] The court reasoned that economic sanctions did not totally prohibit the plaintiffs from marketing their services; the workers could seek employment elsewhere.[87] The court further claimed that legitimate state interests of national security far outweighed any loss in wages suffered by the individual workers.[88] Most importantly, the court noted that any United States person who enters into a contract with a foreign nation to work in that nation, automatically becomes aware that his employment is contingent on good relations between the two countries.[89]

(a) Exceptions to the Prohibition of Contract Performance

The contract ban provisions lack any extraterritorial reach.[90]

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82. 31 C.F.R. § 550.205 (1989).

83. In actuality, all existing contracts are retroactively banned. Bialos & Juster, *supra* note 2, at 813.

84. 859 F.2d 893 (Fed. Cir. 1988).

85. *Chang*, 859 F.2d at 894. The relevant constitutional language provides that: "nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

86. *Id.* at 893.

87. *Id.* at 896.

88. *See id.*

89. *Id.*

90. *See supra* text accompanying note 74 (the Libyan economic sanctions only

Therefore, any person who is not a "United States citizen", "permanent resident alien", "juridical person organized under the laws of the United States", or "person in the United States" can freely perform contracts with the Libyan government. United States oil corporations and the Libyan government engaged in joint oil venture agreements[91] on Libyan soil when the sanctions were first imposed in 1986.[92] The Treasury granted five major oil companies[93] a limited hardship exception to the 1986 economic sanctions. If the Treasury compelled the oil companies to abandon their contracts, Qadhafi could have kept the lost profits.

The administration recognized Qadhafi's possible windfall and enacted limited exceptions for the U.S. oil company's benefit. First, the Treasury announced that United States firms must remove their property or sell it to Libya, Libyan nationals, or other persons who would not use the property in Libya.[94] Second, the Treasury granted the oil companies a limited license to allow them time to remove their materials from Libya.[95] The licenses authorized the companies to: (1) "continue ownership of their property;" (2) "sell Libyan crude oil at Libyan ports but not ship or distribute the oil"; (3) "participate in management decisions"; and (4) "continue paying their share of operating expenses."[96]

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apply to "United States" persons).

91. The joint venture can be classified as either concession agreements or exploration and producing agreements. Concession agreements with the National Oil Corporation required the United States Oil Companies to provide 49 percent of the operating expenses, taxes, rents and royalties in exchange for 49 percent of the oil produced and paid. The National Oil Corporation paid 51 percent of the expenses in exchange for 51 percent of the profits. Under exploration and production sharing agreements a smaller percentage of the oil produced was received in exchange of rents, royalties, and taxes. Operating expenses remained the same 49 to 51 percent ratio. GAO REPORT, *supra* note 2, at 16.

92. United States oil companies held exclusive rights to Libyan oil prior to 1973. In exchange the companies paid the Libyan government rent, royalties, and taxes. During 1973 the United States firms were required to sell Libya a 51 percent equity interest. The Libyan Oil Corporation supplied cash, and managed the operations. Libyan and Western European workers from countries such as Italy replaced United States oil field workers. In 1986 United States oil companies provided financing engineering and technology to the joint ventures. *Id.* at 15.

93. The five oil corporations included: Amerada Hess Corp.; Conoco, Inc.; Marathon Oil Co.; Occidental Petroleum Corp.; and W.R. Grace & Co. Bialos & Juster, *supra* note 2, at 824, n.78.

94. *Id.* at 824, *citing* DEP'T OF STATE ANNOUNCEMENT: LIBYAN SANCTIONS (February 7, 1986).

95. *Id.*

96. GAO REPORT, *supra* note 2, at 16.

On June 30, 1986, the Treasury revoked the temporary licenses. The oil companies entered into a standstill agreement with the National Oil Company and the government of Libya. The agreement provided for continued ownership rights for 3 years. The American companies could not receive any profits from newly produced oil, but they also incurred no obligation to pay expenses.[97] The rationale behind this limited exception proved questionable. At face value, limited exceptions seem equitable to corporations who have vested profits flowing from Libyan oil productions. Unfortunately, limited exceptions to the contract ban may have cushioned the sanctions effect on Libya. In any event, the standstill agreement ensures that United States oil companies will not totally loose their investments, thus creating an equitable resolution to the issue of who bears the loss.

3. Prohibiting Exports of Goods, Technology or Services

If applied properly, export controls may influence a country into changing its policies. The target country will succumb to the loss of trade from the sender, and adapt its policies in order to receive the needed goods or services. Ideally, export controls have the potential to be the most effective weapon in the arsenal of economic sanctions.[98]

Export controls are divided into three classes of exports: (1) direct exports to Libya; (2) exports to third countries for possible reexport to Libya; and (3) reexport of United States' goods to Libya from third countries.[99] All three classes of exports are subject to licensing requirements analogous to EAA requirements. Like the EAA requirements, the Libyan sanctions' export controls mandate that most goods and technology be subject to a general license.[100] Similarly, certain classes

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97. *Id.*

98. Indeed, the United States often applies export controls against a target country expecting positive results. These expectations accompanied the U.S. employed export controls against Iran, and the U.S. grain embargo applied against the Soviet Union when the country invaded Afghanistan. Moyer & Mabry, *supra* note 1, at 143. The Iranian export controls on machinery proved effective because Iran depended on the parts for the military and industry.

The Soviet grain embargo did not prove as effective, since the Soviet Union obtained grain from alternate sources. While drafting export controls, the administration remained cognizant to the fact that Libya did not totally depend on United States-source products and could possibly endure economic sanctions. GAO REPORT *supra* note 2, at 8. The Executive Branch no doubt realized that results similar to the Soviet grain embargo would probably follow.

99. *Id.* at 11-12.

100. *See* 31 C.F.R. § 550.801(a) (1989).

of goods require a "specific" license.[101] This type of license is the counterpart of the EAA's "validated" license.

(a) Direct Exports

Direct export controls are the strictest of the three controls. Goods, services, and technology directly exported to Libya from the United States must have "specific license[s]".[102] Three exceptions to the specific license requirement exist. Goods, services, and technology in transit before the effective date of January 9, 1986 are not restricted.[103] This exception appears logical since any goods, services and technology shipped prior to the effective date are legal.

The Treasury also exempts "publications and donated articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes."[104] These exceptions are made purely for altruistic reasons. The Reagan administration invoked the Libyan sanctions to prevent Qadhafi from obtaining materials that could be used for terrorist activities. No intention existed for prohibiting medicine or food for the needy.[105] The Treasury makes a third exception for exports authorized by the Department of Commerce.[106] Commerce allows such exports because the items do not directly enhance Libya's ability to support international terrorism.

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101. *See* 31 C.F.R. 550.801(b)(1)(2)(3) (1989) (detailing specific licenses requirements, application procedures, and information to be supplied on the application).

102. GAO REPORT, *supra* note 2, at 11.

103. 31 C.F.R. § 550.404(b) (1989).

104. 31 C.F.R. § 550.202 (1989).

105. This viewpoint is consistent with Reagan's remarks during a press conference held the day following the United States' bombing of selected Libyan targets. Ronald Reagan indicated that the United States had no quarrel with innocent Libyan people. Qadhafi and the terrorists are the United States' enemy. *See* ABC News Great T.V. News Stories, Mu'ammar Qadhafi: Libya's Radical Ruler, (ABC Video/MPI Home Video 1989) [hereinafter ABC Video].

106. 31 C.F.R. § 550.504 (1989). Commerce authorizes exports pursuant to the following regulations:

(a) 15 C.F.R. § 371.6, General license baggage: accompanied and unaccompanied baggage;

(b) 15 C.F.R. § 371.13, General license GUS: shipments to personnel and agencies of the U.S. Government;

(c) 15 C.F.R. § 371.18, General license GIFT: shipments of gift parcels.

(d) 15 C.F.R. § 379.3, General license GTDA: technical data available to all destinations.

Id.

(b) Export of U.S. Goods to Third Countries for Possible Reexport to Libya

A specific license must be obtained in order to export goods, services, and technology to a third country for possible reexport to Libya.[107] Treasury requires a specific license in light of the possibility that the items may eventually reach Libya. The specific license requirement allows the Treasury to monitor transactions more closely. Exports are permitted when: (i) "[t]he goods will be substantially transformed or incorporated into manufactured products before export to Libya;"[108] (ii) "[t]he goods will come to rest in a third country for purposes other than reexport to Libya;"[109] and (iii) "[t]he technology will come to rest in a third country for purposes other than reexport to Libya."[110]

On June 23, 1986, the Treasury amended its regulations to further prohibit exports. Exports are prohibited even if substantially altered, when the exporter knows the materials will be used in Libya in the petroleum or petrochemical industry.[111] Exports are also prohibited if the exporter knows the goods are scheduled for shipment to Libya without coming to rest in a third country[112] or the exported technology shall be transformed into products to be used in the petroleum industry.[113]

(c) Reexport of U.S. Goods to Libya from Third Countries

Reexport of U.S. goods to Libya from third countries differs from exports of U.S. goods to third countries for possible reexport to Libya in that the former involves the movement of goods from one foreign destination to another.[114] Reexported goods of United States origin come within the sole authority of the Commerce Department. Some of these reexport controls existed for foreign policy or national security reasons before the emergency economic sanctions took effect.[115] The

107. GAO REPORT, *supra* note 2, at 11.
108. 31 C.F.R. § 550.409(d)(1) (1989).
109. 31 C.F.R. § 550.409(d)(2) (1989).
110. 31 C.F.R. § 550.409(d)(3) (1989).
111. 31 C.F.R. § 550.409(a)(2) (1989).
112. 31 C.F.R. § 550.409(a)(1) (1989).
113. 31 C.F.R. § 550.409(a)(3) (1989).
114. *See* 15 C.F.R. § 770.2 (1989) (the term "reexport" includes: "reexport, transhipment, or diversion of commodities or technical data from one foreign destination to another").
115. GAO REPORT, *supra* note 2, at 12. Reexports are included in the "Emergency Sanctions" section of this comment because the application of the sanction is similar to the 1986 emergency sanctions.

1986 sanctions do not undercut Commerce's authority over reexport regulations.[116]

Commerce maintains a policy of generally denying reexport to four groups of technology: (1) Commodities controlled for national security purposes and related technical data and oil and gas equipment and related technical data not readily available outside the United States;[117] (2) goods and technology headed for the Ras Lanuf petrochemical processing complex;[118] (3) off-highway wheel tractors with carriage capacity of 10 tons or more except when used in reasonable quantities for civilian use;[119] and (4) aircraft, helicopters, aircraft parts, and other parts that could be easily converted to military use.[120]

Reexport of other classes of commodities are allowed in conjunction with a valid reexport license. Permissible commodities include medicine and medical supplies,[121] food and agricultural commodities,[122] items permitted under special general license provisions,[123] non-strategic products of United States technology manufactured in foreign countries,[124] and strategic products of United States technology manufactured abroad and exported before March 12, 1982.[125]

4. Prohibiting Imports of Goods or Services

(a) Direct Imports

Import controls are the second major tool for imposing economic sanctions against Libya. The Treasury's Customs Services Division reg-

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116. *See* 31 C.F.R. § 550.101(b) (1989) ("No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations").

117. *See* 15 C.F.R. § 785.7 (a)(1)(i) and (ii) (1989). Case by case exceptions are made for goods and technology outside of the United States on March 12, 1982. 15 C.F.R. § 785.7 (a)(2)(i)(A) and (B) (1989). Exceptions are also made for United States' articles that only comprise 20 percent of a foreign good. 15 C.F.R. § 785.7 (a)(2)(i)(C) (1989).

118. *See* 15 C.F.R. § 785.7 (a)(1)(iii) (1989). Case by case exceptions are made for goods and technology outside of the United States before December 20, 1983. 15 C.F.R. § 785.7 (a)(2)(ii)(B) (1989). Exceptions are also made for United States articles that only comprise 20 percent of a foreign good. 15 C.F.R. § 785.7 (a)(2)(i)(C) (1989).

119. 15 C.F.R. § 785.7(c) (1989).

120. 15 C.F.R. § 785.7(d) (1989).

121. 15 C.F.R. § 785.7(a) (1989).

122. *Id.*

123. *Id.*

124. *See* 15 C.F.R. § 785.7(a)(2)(i)(B) (1989).

125. *See* 15 C.F.R. § 785.7(a)(2)(ii)(A) (1989).

ulates goods entering the United States. At all borders and points of entry, customs agents determine whether or not to allow goods to enter the United States.[126] Treasury regulations prohibit goods or services of Libyan origin[127] from entering the United States unless specifically authorized.[128] Publications and materials imported for news service dissemination are exempted from the general import ban.[129]

(b) Indirect Imports

Imports into the United States from third countries of goods containing Libyan raw materials are determined by a "substantially transformed" standard. The Treasury allows the importation of goods containing Libyan origin materials from third countries when the Libyan raw materials are "substantially transformed."[130] Conversely, any goods originating in Libya transhipped from a third country to the United States are prohibited from entry, when not "substantially transformed."[131] The Treasury Department provides no explicit definition of "substantially transformed," but this term can be interpreted to mean changing the raw material into a new product.[132] Transhipment provisions have the effect of allowing "substantially transformed" Libyan crude oil into the United States. Whether or not the oil meets the "substantially transformed" test remains a subjective matter which may pose a risk to would be importers. To avoid "evasion" charges and other criminal penalties, the importer may wish to refrain from the transaction.[133]

5. Freezing Libyan Assets

Former President Reagan froze all transfers of Libyan assets in

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126. *See* GAO REPORT, *supra* note 2, at 13.

127. The term "goods or services of Libyan origin" within the context of Treasury regulations means: "(a) Goods produced, manufactured, grown, or processed within Libya; (b) Goods which have entered into Libyan commerce; [and] (c) Services performed in Libya or by a Libyan national who is acting as an agent, employee, or contractor of the Government of Libya, or of a business entity located in Libya . . . ." 31 C.F.R. § 550.303 (1989).

128. 31 C.F.R. § 550.201 (1989).

129. *Id.*

130. 31 C.F.R. § 550.408(a) (1989).

131. 31 C.F.R. § 550.408(b) (1989).

132. *See* WEBSTER'S NEW WORLD DICTIONARY 635 (1984) (the dictionary defines the word "transform" as (1) "to change the form or appearance of;" and (2) "to change the condition, character, or function of."

133. Bialos & Juster, *supra* note 2, at 827-828.

order to further increase economic pressure against Libya, and as a preventive measure against Libya seizing United States assets.[134] The Libyan assets freeze broadly affects most transfers of Libyan assets, including restrictions on judicial actions involving Libyan property. Specifically, the Treasury prohibits all unauthorized transfers of Libyan property, or property interests within the United States or controlled by U.S. persons, or their overseas branches.[135] Libyan sanctions prohibit almost all conceivable means by which one could transfer Libyan funds from the United States. Treasury's definition of "property" and "property interests" can be consolidated into four categories: (1) commercial papers and securities;[136] (2) tangible property;[137] (3) real estate and interests therein;[138] and (4) a variety of other financial property interests.[139] Securities registered in the name of the Government of Libya are also explicitly prohibited from being acquired, transferred, imported, exported, or endorsed.[140]

Freezing transfers of U.S. funds to Libya passes constitutional muster. In *Farrakhan v. Reagan*,[141] the district court rejected arguments that the freeze violated a religious group's right to engage in symbolic free speech by transferring funds to religious brethren in Libya.[142] The Free Exercise Clause does not mandate that a religious organization be allowed to transmit money to foreign governments during a national emergency.[143] The court reasoned that when the U.S. subjects a nation to national security controls, no alternative exists that

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134. 134. *Id.* at 832. Freezing Libyan assets gives the Executive branch a bargaining chip for negotiating the resolution of the declared emergency. *See Dames & Moore v. Regan*, 453 U.S. 654, 673 (1981) (the United States Supreme Court upheld former President Carter's Iranian assets freeze as a valid use of power pursuant to IEEPA in dealing with the declared national emergency).

135. 31 C.F.R. § 550.209 (1989).

136. *See* 31 C.F.R. § 550.314 (1989) (such items include money, checks, drafts, bullion, bank deposits, savings accounts, stocks, and bonds)

137. *Id.* (among other things: goods, wares, merchandise, chattels, stocks on hand, goods on hand, goods on ships).

138. *Id.* (real estate mortgages, deeds of trust, leaseholds, ground rents, vendor's sales agreements, and interests in rents).

139. *Id.* This category includes "royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent." *Id.*

140. 31 C.F.R. § 550.209(b) (1989).

141. 669 F. Supp. 506 (D.D.C. 1987).

142. *Id.* at 512.

143. *Id.* at 511.

permits an organization to speak through financial contributions. Such speech prevents the government from "effectuat[ing] its legitimate and compelling interest in national security."[144] Transfer freezes therefore pass constitutional scrutiny because the government's compelling interests outweigh any personal liberties.

Provisions defining the word "transfer" empower economic sanctions, § 550.210 *et. seq.*, to freeze Libyan assets gained via judicial actions. Among other things, the term "transfer" means "the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process. . . ."[145] No parties have directly challenged the freeze on Libyan asset transfers pursuant to judicial rulings in court, but the United States Supreme Court upheld the constitutionality of a similar freeze imposed on Iranian assets.[146] By requiring licenses for transfers of Libyan funds, the Treasury essentially requires that all United States' persons seek Treasury authorization to sue Libya.[147] Even if a party prevailed in the action, the party could not collect the judgment since all assets are frozen.

One cannot help but question the policy underlying this result. Since the sanctions are designed to financially weaken Libya, then judgments against that country should be allowed. However, this argument fails for two major reasons. Allowing private United States citizens to collect judgments against Libya would compel the United States government to either reopen certain financial and political channels to transfer the funds, or seize Libyan assets under United States control to satisfy United States court judgments. Neither alternative seems attractive. Reopening channels for transferring funds to satisfy judgments would erode the symbolic effect of isolating Libya.[148] Seizing funds could tempt Libya to likewise seize monies owed to American companies for their equity interest in Libyan oil fields. Despite its shortcomings, the policy denying judicial recovery against the Libyan

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144. *Id.*

145. *See* 31 C.F.R. § 550.313 (1989).

146. *See Dames*, 453 U.S. at 673 (freezing assets permit the President to maintain foreign assets as a "bargaining chip" for negotiating a declared national emergency).

147. Bialos & Juster, *supra* note 2, at 834.

148. If America deals with Libya on a limited economic basis, it could send Libya the messages that the United States government is not completely serious about enforcing the sanctions. Such a signal could jeopardize the "scare factor" underlying economic sanctions.

government remains within the true intent of the emergency sanctions. Economic leverage can only be applied against Libya if all channels between the U.S. and Libya are closed.

The Libyan assets freeze also incorporates extraterritorial features that control overseas subsidiaries of United States financial institutions.[149] Overseas subsidiaries are prohibited from relinquishing Libyan assets, securities, credit, or other financial or real property in which the Libyan government has an interest. In *Libyan Arab Foreign Bank v. Bankers Trust Company*[150] (hereinafter "*Bankers Trust*") the United Kingdom dealt the United States' assets freeze a heavy blow when it ordered the subsidiary of the New York incorporated bank to release Libyan funds.[151] The *Bankers Trust* holding raises questions as to whether the extraterritorial provisions can actually be applied to foreign subsidiaries if the country in which the subsidiary is located chooses to ignore the sanctions. In *Bankers Trust* the holding resulted as a matter of law.[152] To rectify future problems of nations ignoring the assets freeze, the United States needs other countries to enact similar laws.[153]

6. Regulating U.S. Travel to Libya

Finally, Treasury regulations generally prohibit travel to Libya from the United States, and from Libya to the United States. Unless authorized by license, any transaction by a United States person relating to transportation to or from Libya,[154] any transportation to or from the United States from Libya by any Libyan person by air or sea,[155] and airport ticket sales to any person on a plane stopping in Libya are

149. *See* 31 C.F.R. § 550.209(a) (1989) (assets freeze applies to U.S. persons and their overseas branches).

150. 26 I.L.M. 1600 (1987) (reproduced from the text provided by the High Court of Justice (Queen's Bench Division, Commercial Court)).

151. In *Bankers Trust* the Libyan Arab Foreign Bank sued Bankers Trust Companies English branch to seek release of over $131.5 million deposited in a "call" account. In reaching its decision to order a transfer of funds, the high court reasoned that "[a]s a general rule the contract between a bank and its customer is governed by the law of the place where the account is kept, in the absence of agreement to the contrary." *Id.* at 1614. Therefore, Reagan's Libyan assets freeze did not necessarily bind the United Kingdom.

152. *See id.*

153. *See infra* comment section III.A.1.(a) entitled "Improving economic leverage through multilateral support".

154. 31 C.F.R. § 550.203(a) (1989).

155. 31 C.F.R. § 550.203(b) (1989).

illegal.[156] The sanctions further prohibit a U.S. person from engaging in a transaction relating to travel by any U.S. citizen or permanent resident alien with the purpose of travelling to Libya or activities within Libya.[157] Licenses are not required for: (1) transportation necessary to assist a U.S. citizen or permanent resident in departing from Libya;[158] (2) travel taking place prior to February 1, 1986;[159] or (3) travel relating to journalistic activity.[160]

Minister Louis Farrakhan directly challenged the constitutionality of travel prohibitions, but the United States District Court for the District of Columbia concluded that he lacked standing to sue.[161] The 1986 emergency travel prohibitions cooperatively work with the 1981 ban on United States passports to Libya. Since December of 1981 a special validation has been required for such passports. The U.S. passport office usually denies such passports.

III. The Effectiveness Of January 1986 U.S. Economic Sanctions As A Deterrent Against Libya's Engagement In State-Sponsored International Terrorist Activities

A. *Standards of Success*

A "successful" economic sanction ideally induces the target country into altering its policies to meet the sender's requested policy changes.[162] The 1986 emergency sanctions should generally be considered effective if the sanctions achieve the first policy goal of discouraging Libya from supporting international terrorism.[163] Continued Libyan support of terrorist activities does not necessarily imply total failure. Economic sanctions may still achieve the second policy goal of punish-

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156. *See* 31 C.F.R. § 550.101(c) (1989).

157. 31 C.F.R. § 550.207 (1989).

158. 31 C.F.R. § 550.207(a) (1989).

159. 31 C.F.R. § 550.207(b) (1989).

160. 31 C.F.R. § 550.207(c) (1989).

161. *Farrakhan*, 669 F.Supp. at 509-510. On February 5, 1986, Minister Farrakhan denounced the Libyan sanctions at the Washington D.C. Press Club. He also stated that he intended to travel to Libya. On February 8, 1986 former United States Attorney General Edwin Meese, II told a Chicago paper that if Farrakhan travelled to Libya he would be prosecuted. Farrakhan did travel to Libya on March 12, 1986 and stayed until March 29, 1986. Farrakhan asserted that he did not use his passport to leave Libya. Meese never pressed charges. *Id.* at 508. Farrakhan lacked standing since he failed to show that he was immediately threatened with arrest for contemplated First Amendment Activity. *Id.* at 510.

162. G. Hufbauer & J. Schott, *supra* note 6, at 32.

163. *See supra* text accompanying note 11.

ing Libya for its policies.[164] The policy change standard of success can also be broadened to include achieving ancillary symbolic domestic and foreign policy goals.[165]

1. Economic Leverage Theory

Studies evaluating economic sanctions primarily adopt an economic leverage standard for measuring effectiveness.[166] In other words, the sender country attempts to apply economic leverage against the target country, hoping that the increased pressure will cause the target country to alter its policies. The power to apply economic leverage ultimately lies in the sender country's ability to control the supply of goods or funds required by the target country.[167] To fully exert leverage, the target country must be isolated from ideological or commercial allies who might supply substitute goods or purchase the country's exports.[168] Isolation ensures that the target state's economic costs of complying with the sending state's demands are less than noncompliance.[169]

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164. *See supra* text accompanying note 15.

165. *See supra* text accompanying note 18.

166. *See* Bialos & Juster *supra* note 2, at 842.

167. *See Economic Sanctions*, *supra* note 16, at 296.

168. *See id.* Other countries that are willing to help a sanctioned country avoid sanctions by supplying goods, undercut the sender country's successful implementation of sanctions. In 1967 South Africa and Portugal continued to supply Rhodesia with over $160 million worth of goods and fuel despite United Nations sanctions. *Id.* at 313. The aid lessened the affect of the sanctions. Therefore, sanctions ideally should be multilaterally imposed to truly isolate the target country from alternate supply sources.

169. *See id.* at 296.

FIGURE 1

UNITED STATES TRADE WITH LIBYA 1985 - 1989.

Date	Exports (Dollars)	(%)[a]	Imports (Dollars)	(%)[b]
1985	311,000,000	.15	47,000,000	.01
1986	46,200,000	.01	1,600,000	([c])
1987	101,000	([c])	7,322	([c])
1988	29,660	([c])	46,749	([c])
1989	2,621	([c])	0[d]	([c])

[a] Libyan portion of all United States exports for that year.
[b] Libyan portion of all United States imports for that year.
[c] Less than .01 percent.
[d] Commerce reports a zero figure, but this amount may actually be so small that it simply was not recorded.
Source: U.S. Department of Commerce

The United States simply lacks significant economic ties with Libya to control its economy via direct export controls. For example, as Figure 1 indicates, statistics show that in 1985 United States exports to Libya amounted to $311 million. After 1986 emergency sanctions, that amount dropped to $46.2 million. During the following years, the value of exports to Libya further declined until in 1989, as Figure 1 indicates, the values only amounted to $2,621. Such a sharp decrease suggests that refusing to sell Libya United States technology, goods, and machinery, or other resources may result in Libya lacking the personnel or supplies to run its oil plants. However, these effects are likely to only have a short-to-medium term impact on the Libyan economy.[170]

Other countries readily export technology, goods, and machinery to Libya. In 1987, Italy, Germany, the United Kingdom, and Japan exported $4.3 billion worth of such goods to Libya.[171] Libya particularly depends on Italy, Germany, the United Kingdom, and Japan for agricultural products since it is self-sufficient in few foods.[172] The small amounts of export dollars the U.S. derived from sales to Libya proba-

170. Bialos & Juster, *supra* note 2, at 844.
171. BACKGROUND NOTES, *supra* note 8, at 1.
172. BACKGROUND NOTES, *supra* note 8, at 5.

bly came from food, clothing and medicine sales to Libya. The Treasury permits direct United States exports of these goods to Libya.[173]

Economic sanctions regulating the export of U.S. goods to third party countries for possible reexport to Libya effectively supplement direct export controls. Current regulations focus on a business person's knowledge for determining whether or not to deny export. The Treasury prohibits exports when the exporter knows the materials will be used in the Libyan petroleum or petrochemical industry.[174] Exports are also prohibited if the exporter knows the goods are scheduled for shipment to Libya without coming to rest in the third party country or that the exported technology is to be transformed into products used in the petroleum industry.[175]

Without these more specific export controls, a loophole in the export prohibition scheme would exist. An ingenious exporter could circumvent direct export controls by shipping goods to a third party country and later exporting them to Libya. The "businessperson's state of mind standard" may create some degree of uncertainty when attempting to prove a subjective state of mind, but objective factors such as correspondence or testimony could go towards proving intent.

Reexport controls similarly fill a gap in the overall export prohibition scheme. Even though the government enacted certain aspects of the reexport controls before the 1986 emergency sanctions, the reexport controls contribute to the United States' ability to prevent Libya from circumventing the emergency sanctions. Commerce maintains "long-arm" control over United States manufactured goods subject to national security controls even after the goods arrive in third party countries.[176] By utilizing licensing provisions, Commerce prevents Libya from gaining access to American goods and technology by purchasing goods from a third party country willing to reexport the goods to Libya. The effectiveness of reexport controls therefore lies in their ancillary role as enforcers, as opposed to their active role as appliers of economic leverage.

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173. *See supra* note 105 and accompanying text.

174. *See supra* note 111 and accompanying text.

175. *See supra* notes 112-113 and accompanying text.

176. 15 C.F.R. § 785.7(a) (1989) states that:

> . . . a validated license or reexport authorization is required for all U.S.-origin commodities or technical data, as well as foreign produced products of U.S. technical data exported from the United States after March 12, 1982 subject to national security controls for which written assurances against shipments to Libya are required under § 779.4 of the Export Administration Regulations.

FIGURE 2

TOTAL IMPORTS OF LIBYAN CRUDE OIL, NATURAL GAS LIQUIDS AND REFINERY FEEDSTOCKS BY LIBYA'S OIL IMPORTERS EXPRESSED AS THOUSANDS OF METRIC TONS.

Country	1985	1986	% of change	1987	% of change	1988	% of change
France	3059	2426	-20.7	2158	-11.1	3778	75.1
Germany	9460	6717	-29.0	7077	5.4	11157	57.7
Greece	2906	1960	-32.6	2404	22.7	3630	51.0
Italy	13849	14257	+2.9	15477	8.6	17833	15.2
Spain	4315	6823	+58.1	4335	-36.5	4471	3.4
U.K.	1976	1860	-5.8	1491	-19.8	1967	13.8
U.S.	-	-	-	-	-	-	-

Source: Organization for Economic Cooperation Development, International Energy Agency

This chart shows how much crude oil, natural gas liquids, and refinery feedstocks were imported by Libya's major importers from 1985 to 1988. The United States no longer imports Libyan oil products. However, this chart includes the United States figures for sake of contrast. The following definitions are relevant for interpreting the chart:

CRUDE OIL - Mineral oil consisting of a mixture of hydrocarbons of natural origin, yellow to black in color, of variable specific gravity viscosity. It includes lease condensate (separate liquids) which is recovered from gaseous hydrocarbons in lease separation facilities.

NATURAL GAS LIQUIDS (NGLS) - Liquid or liquefied hydrocarbons produced in the manufacture, purification and stabilization of natural gas. Their characteristics vary, ranging from those of butane propane to heavy oils. NGLs are either distilled with crude oil in refineries, blended with refined petroleum products or used directly depending on their characteristics.

REFINERY FEEDSTOCKS - A refinery feedstock is a product or a combination of products derived from crude oil destined for further processing in the refining industry other than blending.

United States import controls are similarly ineffective under a traditional economic leverage model. In theory, Libya should be very vulnerable to economic sanctions which deprive the country of its oil export revenues.[177] The U.S. simply does not directly or indirectly import Libyan products in significant enough quantities for a decrease in importation to adversely effect the Libyan economy. Prior to the 1982 oil embargo,[178] United States imports of Libyan oil reached a high of $8.6 billion worth during 1980.[179] In 1983 the amount of Libyan crude oil imported into the United States dropped to $900,000 worth.[180] When former President Reagan implemented the 1986 emergency sanctions the U.S. only imported $1.6 million worth of Libyan crude oil.[181]

Moreover, Libya directly offsets any lost U.S. oil sales by selling to countries ready and willing to purchase its oil products. Libya primarily sells its oil to Italy, the Eastern bloc, the Federal Republic of Germany, Spain, France, Japan, and the United Kingdom. As Figure 2 indicates, during 1986 Italy imported over 14 billion metric tons of Libyan crude oil, NGLs, and refinery feedstocks. The next year, 1987, Italy imported nearly 15.5 billion metric tons for a net increase of 8.6%.[182] Italy drastically increased its Libyan oil products imports during 1988 when the country imported 17.8 billion metric tons. This figure represents a 15.2% change over the 1987 figures. Unless the United States can persuade Libya's major oil importers to cut back on their own oil purchases, U.S. import controls shall continue to have a limited impact on Libya's economy.[183]

The Libyan assets freeze likewise fails as an instrument to coerce Libya into altering its policy of supporting international terrorism. When the emergency sanctions froze Libyan assets, Libya held less than $1 billion worth of assets in the United States.[184] As is the case with U.S. export and import trade with Libya, the U.S. does not control a significant amount of Libyan assets to wield a large enough economic club against Libya. Instead, the United States mainly froze Libyan assets as a defensive measure to compensate U.S. oil firms in case Libya seized their assets.[185]

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177. Libya depends on oil for 99 percent of its export revenues. GAO REPORT, *supra* note 2, at 2.

178. *See supra* notes 46-47 and accompanying text.

179. BACKGROUND NOTES, *supra* note 8, at 5.

180. GAO REPORT, *supra* note 2, at 18.

181. *Id.*

182. During 1987 Libya earned $6.5 billion from oil sales to Italy, Eastern bloc Germany, the Federal Republic of Germany, Spain, France, Japan, and the United Kingdom. BACKGROUND NOTES, *supra* note 8, at 1.

183. *See* Bialos & Juster, *supra* note 2, at 845.

184. *Id.* at 845, n.151.

185. *Id.* at n.152.

Prohibitions against U.S. performance of United States-Libyan contracts are devised as an additional tool for applying economic leverage. In theory, removing skilled workers from Libya's oil industry should have caused oil production to cease. However, in practice, the ban yielded short-to-medium term success. In the short term, Libya may have lacked workers for their oil plants, but as Figure 2 demonstrates, Libya has obviously replaced these American workers. Libyan oil plants are continuously producing oil for export. In 1988, Libya exported 40,869,000 million metric tons of oil products to its major trade partners. This amount represents a 27% increase over the 32,183,000 million metric tons exported in 1986. Indeed, Libya could easily replace American workers with Italian workers. During 1984, 12,000 to 15,000 Italians lived and worked in Libya.[186]

(a) Improving economic leverage through multilateral support

Increased long-term effectiveness of U.S. economic sanctions against Libya invariably requires other nations to enact similar sanctions. Other nations have indeed expressed a willingness to address Libyan terrorism. On January 27, 1986 the European Community (E.C.)[187] intensified its efforts to fight international terrorism. Foreign Ministers of the twelve E.C. member states issued a statement in which they decided to: (1) establish a permanent working body to promote and monitor common action to discourage terrorism; (2) ban the export of military equipment to countries supporting terrorism; and (3) prevent their citizens and industries from taking commercial advantage of antiterrorism sanctions.[188]

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186. Bialos & Juster, *supra* note 2, at 817, n.64. Large numbers of Italians residing in Libya are a result from the 1930s and 1940s preceding World War II. At this time Libya came under Italian colonial rule. Mussolini intended to make Libya a "fourth shore" of Italy in which thousands of Italians could live and grow crops. When World War II ended the Allies liberated all of Italy's former colonies. Despite the failure of the fourth shore, Italy currently has a valuable trade partner in Libya. C. SEGRE, THE FOURTH SHORE: THE ITALIAN COLONIZATION OF LIBYA 182-186 (1975).

187. The European Community comprises Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, and the United Kingdom.

188. European Community News, January 28, 1986, *reprinted in* Evolution of Sanctions, *supra* note 2, at 207-208. The statement does not specifically mention Libya. However, the reference to the attacks at Rome and Vienna airports by the Abu Nidal Group, known to be sponsored by Libya leaves no doubt that the E.C. were referring to Libya. *See supra* notes 3-5, and accompanying text (documenting the bombings and Libya's support for the Abu Nidal Group).

Likewise, in 1986 the United States, Canada,[189] the Federal Republic of Germany (West Germany), Britain, Italy, France, and Japan appeared ready to take a unified stand against Qadhafi and his terrorist activities. The seven industrialized countries made Libyan sponsored terrorism a key topic of their 12th annual economic summit held in Tokyo, Japan.[190] The nations combined to produce a declaration on international terrorism.[191] The sole trade restriction included in the dec-

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189. On January 10, 1986, Canadian Prime Minister Brian Mulroney issued a press statement on international terrorism stating the governments measures to combat terrorism. *Reprinted in* Evolution of Sanctions, *supra* note 2, at 202. The government immediately ceased all financial assistance to Canadian firms pursuing business in Libya, and insurance coverage provided by the Export Development Corporation on new Canadian business activities in Libya. *Id.* at 203. The controls supplemented existing prohibitions against export military equipment to Libya. *Id.*

Canadian-imposed unilateral economic sanctions against Libya probably would have an effectiveness similar to the U.S.-imposed sanctions. Canada also lacks significant economic ties with Libya to exert economic leverage against that country. In 1988 Canada only exported $4 million worth of goods to Libya, and imported $49 million worth of goods. INTERNATIONAL MONETARY FUND, DIRECTION OF TRADE STATISTICS, 1989 Y.B. 257 [hereinafter IMF STATISTICS].

190. *See* The New York Times, April 29, 1986, at A6, col. 1.

191. The Tokyo summit declaration on international terrorism states in pertinent part:

> 1. We, the Heads of State or Government of seven major democracies and representatives of the European Community, assembled here in Tokyo, strongly reaffirm our condemnation of international terrorism in all of its forms, of its accomplices and of those, including governments, who sponsor it. . . .
> 2. [W]e pledge ourselves to make maximum effort to fight against [terrorism]. . . .
> 3. Terrorism must be fought effectively through determined, tenacious, discreet and patient action combining nationals measures with *international co-operation*. . . . Therefore, we urge all like-minded nations to collaborate with us . . . .
> 4. We specify the following as measure open to any government concerned to deny to international terrorists the opportunity and the means to carry out their aims, and to identify and deter those who perpetrate such terrorism.
>
> We have decided to apply these measures within the framework of international law and in our own jurisdictions[,] . . . and in particular of Libya, until such time as the state concerned abandons its complicity in, or support for, such terrorism. The measures are:
>
> - refusal to export arms to states which sponsor or support terrorism;
> - strict limits on the size of the diplomatic and consular missions. . . which engage in such activities . . .;
> - denial of entry to all persons, including diplomatic personnel . . . convicted of such a terrorist offense;
> - improved extradition procedures . . . in respect of nationals of states

laration implemented a policy of refusing to export arms to states sponsoring or supporting terrorism.[192] The Soviet Union, one of Libya's largest arms suppliers, later adopted the suggested ban on exporting arms to Libya.[193] However, Libya turned to alternative suppliers such as Greece, Brazil, and Yugoslavia for arms.[194]

The dozens of nations participating in the E.C. meeting, and the industrialized nations summit had a prime opportunity to enact widespread multilateral economic sanctions against Libya. Instead, the nations only agreed to a lone ban on military exports to Libya. Long-term economic leverage can only be properly applied against Libya if major markets and suppliers are eliminated.[195] Simply banning sales of military equipment to Libya does not solve the problem of cutting off Libya's ability to finance terrorist activities. Oil sales income provides the life blood for Libya's economy.[196] Proceeds from oil sales enable Libya to purchase machinery and transport equipment.[197] The United

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which sponsor or support terrorism;

- stricter immigration and visa requirements in respect of nationals of states which sponsor or support terrorism;

- the closest possible bilateral and multilateral cooperation between police and security organizations and other relevant authorities in the fight against terrorism.

5. We will maintain close cooperation in furthering the objectives of this statement and in considering further the measures . . . .

Reuters Wire Service, May 5, 1986 (emphasis added).

192. *Id.*

193. FEDERAL RESEARCH DIVISION LIBRARY OF CONGRESS, LIBYA: A COUNTRY STUDY xx (1989) [hereinafter COUNTRY STUDY].

194. *Id.*

195. *See supra* notes 166-168 and accompanying text.

196. Oil products constitute Libya's chief export product. In 1988, export sales to Libya's major market countries listed in Figure 2 amounted to nearly $5 billion. IMF STATISTICS, *supra* note 189, at 257.

197. *See* BACKGROUND NOTES, *Supra* note 8, at 1 (listing machinery and transport equipment as major imports).

States must convince Libya's major trade partners[198]—France,[199] Germany,[200] Italy,[201] Spain,[202] the United Kingdom,[203] and Japan[204]—to purchase oil elsewhere and sell their goods to another market. Together, these countries represent the majority of Libya's trade

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198. FIGURE 3
MAJOR LIBYAN TRADE PARTNERS 1985 - 1988
(IN MILLIONS OF U.S. DOLLARS)

Country	1985	1986	1987	1988
Exports				
France	706	321	435	492
Germany	1,930	882	1,056	1,381
Italy	3,268	1,765	2,170	2,316
Japan	7	7	0	5
Spain	1,004	864	740	600
U.K.	360	183	199	182
Imports				
France	268	248	266	318
Germany	568	564	562	697
Italy	1,380	1,039	1,226	1,382
Japan	281	216	330	663
Spain	190	137	141	138
U.K.	339	418	397	462

Source: IMF STATISTICS, *supra* note 189 at 257-258.

199. As figure 2 indicates, France imported 3.8 million metric tons of oil products in 1988 from Libya. In 1988 France exported $318 million worth of goods to Libya. *See supra* note 198.

200. As figure 2 indicates, Germany imported 11.2 million metric tons of oil products in 1988 from Libya. In 1988, Germany exported $697 million worth of goods to Libya. *See supra* note 198.

201. As figure 2 indicates, Italy imported 17.8 million metric tons of oil products in 1988 from Libya. In 1988 Italy exported $1.4 billion worth of goods to Libya. *See supra* note 198.

202. As figure 2 indicates, Spain imported 4.5 million metric tons of oil products in 1988 from Libya. In 1988, Spain exported $138 million worth of goods to Libya. *See supra* note 198.

203. As figure 2 indicates, the United Kingdom imported 1.7 million metric tons of oil products in 1988 from Libya. In 1988, the United Kingdom exported $462 million worth of goods to Libya. *See supra* note 198.

204. Japan exported $663 million worth of goods to Libya in 1988. *See supra* note 198.

income.[205]

Western European and other nations hesitate to criticize Libyan policies too loudly. Commentators suggest this hesitation stems from a dependence on Libyan trade, and Western Europe's close physical proximity to Libya.[206] The assertion that certain nations hesitate to criticize Libya's support of international terrorism for fear of jeopardizing their oil supply ignores a rudimentary fact. Oil could be purchased from other members of Oil Exporting Countries (OEC).[207] The U.S. government chose such an alternative in 1982 after passing the oil embargo against Libya.[208]

Immediately following the embargo, the dollar value of Libyan oil imported into the U.S. dropped from $8.6 billion to $900,000.[209] In 1988, as indicated by figure 2, the U.S. continued to import only a minuscule amount of Libyan oil products. The bulk of purchased oil came from other OEC countries.[210] If other OEC members are willing to sell oil to the United States during its Libyan oil embargo, certain members may also be willing to sell to other countries boycotting Libyan oil. It seems unlikely that other Arab oil producing countries would hesitate to supply former Libyan oil to markets solely because of Arab unity. Saudi Arabia's relationship with Libya remains strained at

205. In 1988, France, Germany, Italy, Spain, the United Kingdom, and Japan comprised $49.8 billion or 64.9% of Libya's total export income. *See* IMF STATISTICS, *supra* note 189, at 257-258. Likewise, in 1988, Libya purchased $36.3 billion worth of goods from these countries. *See id.* These purchases amounted to 47.5% of Libya's total import purchases. *See id.*

206. Bialos & Juster, *supra* note 2, at 818. The authors imply that if Libya's major trade partners criticize Qadhafi's terrorist policies too loudly, Libya could retaliate against the countries by decreasing their oil sales, or applying terrorist reprisals.

207. The IMF considers the OEC group to include Algeria, Indonesia, the Islamic Republic of Iran, Iraq, Kuwait, Libya, Nigeria, Oman, Qatar, Saudi Arabia, the United Arab Emirates, and Venezuela.

208. *See supra* notes 46-47 and accompanying text.

209. *See supra* text accompanying notes 178-180.

best.[211]

The rationalization that Western Europe hesitates to criticize Qadhafi too loudly due to its close proximity to Libya possesses some merit. The United Kingdom and other Western European countries periodically experience terrorist acts. The 1986 bombings of the Rome and Vienna airports support this proposition. Nevertheless, Western European nations must courageously take stern economic action against Libya to discourage Libyan support for international terrorism.

2. Symbolic Success

Despite the long-term inability of the 1986 emergency sanctions to apply economic leverage against Libya, other positive domestic and foreign policy results did materialize. The 1986 emergency economic sanctions have succeeded in achieving the long-term policy goal of symbolically demonstrating the United States' intolerance toward Libyan state-sponsored terrorism. United States Presidents most frequently apply export controls as tools to symbolically "demonstrate opposition" or "distance" the United States from repressive governments or similarly express disapproval of "extreme acts".[212] Libyan sanctions reflect both the Reagan and Bush administrations' disapproval of "extreme acts" of Libyan terrorist activities.

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210. FIGURE 4

Major U.S. Import Quantities of Crude Oil, NGL, And Refinery Feedstocks from OEC Countries for 1988 Expressed as Thousands of Metric Tons.

Country	Amount
Indonesia	9241
Iraq	17530
Saudi Arabia	52030
Nigeria	30177
Venezuela	28464

SOURCE: INTERNATIONAL ENERGY AGENCY, QUARTERLY OIL STATISTICS AND ENERGY BALANCES: 2ND QUARTER 1989 328 (1989).

211. COUNTRY STUDY, *supra* note 193, at xxvii.

212. Abbott, *supra* note 24, at 823. The United States' imposition of economic sanctions against South Africa to demonstrate opposition toward that country's racially oppressive system of Apartheid most vividly illustrates this premise. *See supra* note 21, and accompanying text.

a. Taking a Stand Against State-Sponsored Terrorism

Enacting economic sanctions fulfills the domestic policy goal of reassuring Americans that their government is combatting terrorism. While at first glance this may seem of minimal importance, the underlying purpose has serious political implications. The public bases the President's effectiveness on his ability to respond to international crises and threats. To achieve success in the public eye, the President must carefully tailor his responses to international incidents.[213] Public approval of how the President responds to international crises and threats translates into votes during reelection, and popularity for his political party.

The 1986 emergency sanctions have likewise shown long-term success in achieving the foreign policy goal of increasing international action against Libya and other nations sponsoring terrorist activities. Members of the E.C. and nations participating in the industrialized nations' summit took various non-military measures against Libya following the U.S. sanctions. Although the responses did not involve substantial economic sanctions, the measures nevertheless embraced the American idea that Libyan terrorism requires a response of disapproval by all nations.

At best, the travel ban achieves the third policy goal of symbolically demonstrating opposition against Libyan policies. Preventing U.S. citizens from travelling to Libya does not squarely fit into the sanctions arsenal as a tool for applying economic leverage. The ban mainly seeks to protect American citizens from Libyan reprisals. Theoretically, such a restriction succeeds over the long-term by informing western nations that travelling to, or residing in Libya poses a high safety risk.

IV. CONCLUSION

The 1986 emergency economic sanctions are an outgrowth of the Reagan administration's intolerance for Libya's policy of supporting international acts of terrorism. Nonemergency export and import controls failed to coerce Libya into changing its policies, so former President Reagan enacted widespread controls restricting exports, imports, finan-

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213. When word reached America that an American died in the 1986 airport bombings, public disdain for Qadhafi drastically increased. This public disdain transferred into political pressure for former President Reagan to "respond". After the bombing of Qadhafi's compound, few Americans expressed sympathy when preliminary reports indicated that Qadhafi died. *See generally* ABC Video, *supra* note 105. An argument can therefore be made for a general public approval of the bombing.

cial transfers, and contract performance between Libya and all U.S. persons. Unfortunately, in 1986 the United States engaged in little trade with Libya. Since the 1982 oil embargo on Libyan oil, the United States has purchased very few products from Libya. Nor has the United States sold a significant amount of machinery to Libya. From the beginning, these two factors doomed the goal of applying economic leverage against Libya to coerce the country into changing its policies. The sanctions only adversely affected Libya for a short period of time. As time progressed, Libya relied on is major trade partners such as Italy to buy its oil and provide the much needed machinery.

Despite only short-term success in applying economic leverage that adversely affected the Libyan economy, the sanctions realize long-term symbolic success. The sanctions convey to the American people and foreign nations a message that the U.S. will no longer stand idly by as Qadhafi commits acts of international terrorism. Moreover, other countries have followed the U.S. lead and enacted retaliatory measures against Libya.

Colonel Qadhafi remains a nemesis to the United States and other western countries. Intelligence reports indicate that Libya possesses the ability to produce mustard gas for use in germ warfare. President Bush realized the continued Libyan threat and chose to renew emergency economic sanctions against Libya. Other nations must staunchly support the "spirit" of the sanctions by enacting their own stringent economic controls against Libya. Alternative purchasers and suppliers allow Libya to earn the money it uses to finance international terrorism from other sources. Unless Libya's major trade partners join the battle, economic sanctions against Libya shall be confined to intangible symbolic success.

John Frederick Cooke