Testimony of Geoff D. Porter, PhD
Senate Foreign Relations Committee
"The al-Megrahi Release: One Year Later"
September 29, 2010

Mr. Chairman, distinguished members of the Foreign Relations Committee, I would like to thank you for the opportunity to testify about Libya, its government, its energy sector, and its relationship with the United Kingdom and Scotland. The release of Abdelbaset al-Megrahi was an important foreign policy goal of the Libyan government and, as such, there is little doubt that this issue had a broader impact on the relationship between Libya and the United Kingdom.

Qualifications

For the last decade I have been studying North African political developments. I have a PhD in Middle Eastern Studies, with a primary focus on North Africa. After leaving academia I worked in a consultant capacity for six years analyzing political risk for companies doing business in Middle Eastern and African countries, including Libya. My assessment of political risks in Libya is apolitical and based entirely on analysis of factual evidence.

I have attached my CV which provides more details as to my qualifications.

The Foreign Policy Relationship Between the UK and Libya Revolves Around Oil and Gas Exploration

The UK's relationship with Libya is predominantly related to commercial interests, and oil and gas exploration in particular.

Beginning in 2003, and perhaps earlier, British officials began a series of meetings with Libyan officials to discuss how Libya might re-establish its relationship with the international community. These discussions revolved around Libya giving up its Weapons of Mass Destruction Program and from the Libyan perspective, how Libya might again attract European and US investment to revive its declining oil production. Representatives of the US government have been reported to be in some of these meetings.

In March 2004 Prime Minister Tony Blair arrived in Libya to discuss a "new relationship" with Libyan leader Col. Muammar Qadhafi after it was announced that Libya would abandon its WMD program and would commit to further compensation for the families of the victims of the Pan Am 103 Lockerbie bombing. The same day, Prime Minister Blair announced that Royal Dutch Shell, a publically traded company that is 60% Dutch and 40% British, would sign a $513 million gas exploration contract with Libya. Later in May 2007**,** Tony Blair visited Tripoli and announced a $900 million oil and gas exploration contract for BP.

These public appearances of the British Prime Minister to announce oil and gas exploration deals underscore the role that hydrocarbon sector plays in UK-Libyan relations.

BP and Shell Oil Deals in Libya

Libyan oil reserves were critically important for global oil and gas companies during the period 2004-2008. Global oil demand was rising, as were prices, which rose from below $30/barrel in September 2003 to more than $147/barrel in July 2008. At the same time access to oil reserves had become severely constrained and Libya stood out as a potentially very profitable oil play. Libya had abundant reserves of high quality crude that was both cheap to extract and close to global markets. When international sanctions were dropped in 2004, international oil companies including those from the US, the EU, Russia, China, Japan and India jockeyed to gain access to the Libyan oil patch.

International oil companies that signed oil and gas exploration deals in Libya can be put into three categories. The first group is comprised of those companies that reclaimed dormant leases that they had been forced to abandon because of US and international sanctions in the 1980s. The Oasis group (Amerada Hess, ConocoPhillips, and Marathon Oil) falls into this category. The second group consists of companies that participated in four open bid rounds to lease tracts of previously unexplored areas. In this process, companies submitted bids and those with the bids most favorable to Libya won the right to explore the area on those terms. Winning bids were based on percentage of oil allocated to the Libyan National Oil Corporation (NOC), signing bonus, and development program. Bid rounds generally lead to terms that are favorable to the states that are organizing them, which is why they are a popular method of leasing oil and gas acreage to foreign firms, but the terms that the first three of Libya's four rounds produced were exceptionally onerous for foreign firms.

The third category is comprised of companies that negotiated bilateral deals with Libya to explore new areas for development. Many in the industry felt that while the bid rounds offered the advantage of a clear timetable for awarding acreage, bilateral negotiations with the NOC would yield better terms, even if discussions took longer. For its part, the NOC made clear from 2004 onward that it prioritized the bid round framework, but was also open to direct negotiations with oil and gas companies.

Only three companies in this time period negotiated bilateral exploration deals with Libya: BP, Royal Dutch Shell, and ExxonMobil. In 2005, Royal Dutch Shell struck a deal valued at approximately $513 million to explore oil and natural gas in an area spanning 7000 square miles. In 2007, BP signed a deal in Libya valued at $900 million for access to offshore acreage. BP heralded its deal as the largest single exploration commitment ever signed by the company. BP was awarded 18.955% production share, with the NOC taking 77.7% and the Libyan Investment Authority (LIA) taking the remaining 3.345%.[1] While some companies that won acreage through the bid round framework received less that 10% production shares, the average production share in the first bid round was 14.5%. ExxonMobil's production share for its acreage was 22.3%, whereas India's ONGC won a 28% production share. Although ExxonMobil's production share from its bilateral negotiations was not made public, the company committed to a five-year work program of 4000km of 2D and 2000km of 3D seismic analysis and at least one deep water well. ExxonMobil also committed to a training program for Libyan petroleum sector workers and broader support for Libyan education. Many factors influence how production

[1] "BP Libya Deal Details Set," *International Oil Daily*, May 31, 2007.

shares are divided among a project's stakeholders, including the scope of the project, capital expenditures, the prospectivity of the acreage, and the complexity of the overall project. Nonetheless, BP and Shell, both countries with close ties to the British government, were able to secure large deals for unexplored areas outside the bid round process.

The Importance of Abdelbaset al-Megrahi to Libya

Gaining the release of Abdelbasset al-Megrahi was a central foreign policy goal of the Libyan government for multiple reasons. First, Libya had consistently asserted that al-Megrahi was innocent of the crimes of which he was accused. Given numerous public statements from Libyan officials declaring al-Megrahi's innocence, it was politically impossible for the government to reverse its position and acknowledge the legitimacy of his conviction at the Hague or his incarceration in Scottish prison.

Second, al-Megrahi's tribal ties made his release important for the political viability of Qadhafi's continued leadership in Libya. One of the ways in which Qadhafi has managed to maintain support in Libya for 40 years is through tribal alliances. Qadhafi himself comes from the Qadhadfa tribe, whereas al-Megrahi comes from the al-Megarha tribe, which has historically played an important political role in Libya. Securing al-Megrahi's release was critical for ensuring the Megarha's continued support of Qadhafi's leadership.

In addition, Qadhafi has expressed on numerous occasions that his country made tremendous sacrifices when it abandoned its WMD programs in 2003, but those sacrifices had not be sufficiently recognized by the international community, nor had Libya be duly compensated for them. It is possible that Qadhafi expected Libya's checkered record in international affairs to be wiped clean after renouncing WMD and he thought that al-Megrahi's conviction for his role in the Lockerbie bombing should be part of that.

Lastly, Libya was marking the 40th year of Qadhafi's revolution in 2009 and the government wanted politically potent symbols to distinguish the event. Al-Megrahi's release would symbolize the Qadhafi family's enduring commitment to Libya's citizens and the restoration of Libya's role on the international stage.

Libya Uses Commercial Ties to Achieve Foreign Policy Aims

It is clear that Libya does not maintain a clear distinction between the government and the marketplace and the state often uses access to Libyan markets and natural resources in order to achieve foreign policy objectives. In other words it is willing to put pressure on oil companies in order to achieve its political aims.

BP indicated to the UK government that al-Megrahi's ongoing incarceration would pose challenges to BP's ability to continue to do business in Libya after it was awarded acreage. Like every company that does business in Libya, BP was well aware of the country's political risks. Al-Megrahi's release would reduce BP's exposure to political risk.

BP, perhaps more than other companies, was aware of the risks of doing business in Libya. After all, in 1971, Libya nationalized BP's assets in the country in response to developments in UK foreign policy. A diplomatic row between Britain and Libya occurred on November 29th and 30th of 1971, when the UK was set to withdraw its forces and grant independence to the sparsely inhabited Persian Gulf islands of Abu Musa, Greater Tunb, and Lesser Tunb. Then UK-friendly Iran, which had agreed to jointly administer Abu Musa with Sharjah (now a part of the UAE) unexpectedly seized and occupied Greater and Lesser Tunb.[2] Shortly after, on December 7 1971, the Libyan government nationalized "all the interests and properties of BP in the Hunt/BP deed of concession"[3] announcing that, "it had nationalized the assets of the British Petroleum Exploration (Libya) Ltd. in retaliation for Great Britain's failure to prevent Iranian occupation of Arab islands in the Persian Gulf."[4]

Other foreign oil companies, including Occidental Petroleum, Exxon, Mobil, Shell, and Texaco[5] were able to broker deals with Libya that kept them operational during a period of nationalizations and pullouts between 1973 and 1986, when all American oil interests were finally prevented from doing business in Libya[6].

Libya's nationalization of BP's assets was not done out of economic interest for Libya, but was clearly a punitive measure directed towards the government of Britain and its greatest financial asset, British Petroleum. In 1973, Libya nationalized the assets of a further nine foreign companies in order to express its opposition to US foreign policy positions at the time.

This approach has resumed since sanctions against Libya were dropped in 2004 and international oil companies returned. In 2009, Petro-Canada's Suncor lost 50% of its oil production in retaliation for Canada's criticism of al-Megrahi's release and the celebratory reception he received upon returning to Tripoli. Canadian Prime Minister Stephen Harper made public comments that he was displeased with the triumphant return that al-Megrahi received in Libya. Petro-Canada promptly saw its daily production halved, from 90000bpd to 45000bpd, at the order of the Libyan Government, according to Petro-Canada. Qadhafi also cancelled plans to visit Canada after the Prime Minister made his remarks. Libya said that Petro-Canada's production was halved to meet OPEC quotas, but no other oil company had its production disrupted.[7]

More recently, in 2010, representatives of US oil companies operating in Libya were chastised by the Libyan government after Qadhafi objected to comments from the US State Department. A State Department spokesman commented on Qadhafi's call for jihad against Switzerland for arresting his son Hannibal. Qadhafi viewed these comments as personally offensive and

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[2] "UAE renews calls for talks on disputed islands," *Arabian Business*, May 23, 2009.
[3] Robert B. von Mehren and P. Nicholas Kourides, "International Arbitrations between States and Foreign Private Parties: The Libyan Nationalization Cases," *The American Society of International Law*, July, 1981, 483.
[4] Winthrop G. Haight, "Libyan Nationalization of British Petroleum Company Assets," *International Lawyer, Vol. 6, No. 3*, 1972, 541.
[5] Andrew Carvely, "Libya: International Relations and Political Purposes," *International Journal Vol 28, No. 4*, Autumn, 1973, 711.
[6] *Library of Congress*, http://countrystudies.us/libya/60.htm(August, 2009).
[7] http://www.allbusiness.com/company-activities-management/company-structures/13233739-1.html

summoned the executives of US oil companies doing business in Libya to warn them that their businesses were in jeopardy over this row.

In other instances, the punitive aspect of Libya's manipulation of the commercial environment is starker. In 2008, Libya detained Swiss businessmen in Libya, including the employees of Nestle and ABB, in retaliation for the arrest of Hannibal Qadhafi, one of Col. Qadhafi's sons, in Geneva. Libya ultimately arrested and detained two ABB employees for almost two years – even after Hannibal Qadhafi had returned to Tripoli.

Based upon these and other instances, it is clear that Libya is willing to pressure companies doing business in Libya to attempt to achieve foreign policy aims.

Given these incidents, BP would clearly want to minimize its exposure to political risk in Libya and its vulnerability to Qadhafi's mercurial decision-making. One of the ways to do so was to urge the UK government to ratify a pending Prisoner Transfer Agreement between Libya and the UK. Al-Megrahi was the only prisoner that was contemplated to be transferred under the agreement. Al-Megrahi's transfer would remove one thorn in the side of UK-Libya relations and reduce the likelihood that BP would fall victim to Qadhafi's history of strong-arming foreign firms.

Other UK interests may have been wary of the political risks that al-Megrahi's ongoing incarceration posed and would have benefited either directly or indirectly from his release. Following the dismantling of the international sanctions regime against Libya in 2004, many European countries, including Italy, France and Russia, were competing to sell Libya new arms and defense technology. Al-Megrahi's release lowered one obstacle for UK arms manufacturers interested in competing with their European counterparts for their share of the Libyan market. In 2008, the UK government approved arms sales to Libya worth $18 million.[8] In May 2010, Britain's General Dynamics UK announced a $165 million deal to supply a tactical communications system to elite units of the Libyan army.[9]

-The UK may have also have been interested in attracting investments from Libya's sovereign wealth fund, the Libyan Investment Authority, which at the time had a market cap of US$60mn. (The fund now has approximately US$80mn to invest.) Were al-Megrahi to have remained in prison, it is unlikely that the LIA would have pursued UK investments.

Libya also made clear to Scottish authorities that bilateral trade and Mr. al-Megrahi's release were linked. In October of 2008, the Libyan Charge d'Affaires Omar Jelban wrote to Scottish First Minister Alex Salmond and said that he wanted to discuss two issues: the medical condition of Mr. al-Megrahi and enhancing current trade links between Libya and Scotland.

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[8] Freeing Libyan bomber 'boosted arms talks'. UPI, July 16, 2010 http://www.upi.com/Business_News/Security-Industry/2010/07/16/Freeing-Libyan-bomber-boosted-arms-talks/UPI-24251279298306/

[9] Libya Purchases Gear from General Dynamics UK. Andrew Chuter, DefenseNews, May 8, 2010 http://www.defensenews.com/story.php?i=3518749

In short, Libya is a country where diplomatic relations disproportionately impact foreign direct investment. Where relations are favorable, companies reap the benefits. When relations sour, companies bear the brunt of retaliatory measures.

Qatari Investment in Scotland and the al-Megrahi Connection

Not only was Libya interested in al-Megrahi's return – Qatar was as well. According to publicly released documents by Scotland, in June 2009, Scottish First Minister Alex Salmond received a delegation of Qatari officials. The meeting was focused on discussing Qatari interest in investing in Scotland and, notably, the Scottish banking system. Also expressed at the meeting was Qatar's interest in al-Megrahi's release. The Qatari delegation explained that Qatar currently held the chair of the Arab League, and that Libya had raised the issue of al-Megrahi's release during the League's last summit.

Conclusion

To conclude, the return of al-Megrahi was of great importance to Libya, and like it has in the past, it was willing to use its commercial leverage with the UK to ensure his release.