

5-1-2013

# The Recognition of the Syrian National Coalition under International Law: Whether the National Coalition Can Receive Arms

Daniel S. Strashun

Follow this and additional works at: [https://scholarship.shu.edu/student\\_scholarship](https://scholarship.shu.edu/student_scholarship)

---

## Recommended Citation

Strashun, Daniel S., "The Recognition of the Syrian National Coalition under International Law: Whether the National Coalition Can Receive Arms" (2013). *Law School Student Scholarship*. 312.  
[https://scholarship.shu.edu/student\\_scholarship/312](https://scholarship.shu.edu/student_scholarship/312)

**The Recognition of the Syrian National Coalition under International Law:  
Whether the National Coalition Can Receive Arms  
Daniel Strashun**

**I. Introduction**

In December of 2010, a Tunisian street vendor set himself on fire in front of a government building in Tunisia in response to the humiliating confiscation of his goods.<sup>1</sup> This act sparked protests that quickly spread to Tunisia's capital and caused Tunisian President Zine al-Abidine Ben Ali to flee to Saudi Arabia.<sup>2</sup> The Tunisian uprising was the first genuine revolution in the Arab world, which later provoked the ouster of the leaders of Egypt, Yemen and Libya.<sup>3</sup> It was generally believed that the uprisings in the Arab world would not spread to Syria because the Syrian government had the support of its religious minorities and had a previous reputation of torturing dissidents.<sup>4</sup> Yet, on March 15, 2013, the Syrian Arab Spring marked its second anniversary.

After two years of fighting, the Syrian uprising has created a humanitarian crisis that has resulted in the death of over 70,000 Syrians and the displacement of almost three and a half million refugees.<sup>5</sup> In addition, over two million Syrian children have been ravaged by disease,

---

<sup>1</sup> JAMES L. GELVIN, *THE ARAB UPRISINGS: WHAT EVERYONE NEEDS TO KNOW* 27 (2012) [hereinafter GELVIN].

<sup>2</sup> *Id.*

<sup>3</sup> Associated Press, *A Nation-by-Nation Look at Arab Spring Dictators and Their Fate*, HAARETZ, Jun 2, 2012, <http://www.haaretz.com/news/middle-east/a-nation-by-nation-look-at-arab-spring-dictators-and-their-fate-1.433990>.

<sup>4</sup> GELVIN, *Supra*, note 1, at 102.

<sup>5</sup> Office of the Spokesperson, U.S. Department of State, Fact Sheet, *U.S. Government Assistance to Syria*, Mar. 4, 2013, <http://www.state.gov/r/pa/prs/ps/2013/03/205623.htm>. [hereinafter March 2013 Fact Sheet].

malnutrition and trauma.<sup>6</sup> Some foreign policy scholars predict that the Syrian infighting could continue for more than three years before it is resolved.<sup>7</sup>

Since 1970, when Hafez al-Assad, an Alawi military officer, led a coup d'état and overthrew the Syrian president, the Assad family has notoriously governed Syria through the use of barbaric tactics to ensure the obedience and loyalty of its citizens.<sup>8</sup> For example, from 1979 until 1982, the Sunni Muslims led an unsuccessful insurrection that took place in Aleppo and Hama.<sup>9</sup> After the Muslim Brotherhood unsuccessfully attempted to assassinate Assad, Assad's younger brother, Rifaat called for an all out war and proclaimed that the regime would be ready to kill one million Syrians to defend its rule.<sup>10</sup> Ultimately, the revolt was suppressed, but not before the Syrian military was accused of murdering tens of thousands of civilians.<sup>11</sup> In 2000, Hafez al-Assad passed away and his son Bashar succeeded him, continuing his father's legacy.<sup>12</sup> According to the Human Rights Watch, the Assad regime established 27 "torture centers" in

---

<sup>6</sup> Holly Yan, *The Cost of War: 2 million Syrian Children Afflicted by Trauma, Disease, Malnutrition*, CNN, Mar. 13, 2013, available at <http://www.cnn.com/2013/03/13/world/meast/syria-civil-war-children>.

<sup>7</sup> Interview by Bernard Gwertzman with Ed Husain, Senior Fellow for Middle Eastern Studies, Council on Foreign Relations, New York, NY (November 14, 2012) available at <http://www.cfr.org/syria/no-easy-answers-syria/p29473>.

<sup>8</sup> FOUAD AJAMI, THE SYRIAN REBELLION, 28, (2012) [hereinafter THE SYRIAN REBELLION]. see Jerrold M. Post and Ruthie Pertsis, *Bashar al-Assad is Every Bit His Father's Son*, FOREIGN POLICY, Dec. 20, 2011, [http://www.foreignpolicy.com/articles/2011/12/20/bashar\\_al\\_assad\\_is\\_every\\_bit\\_his\\_father\\_s\\_son](http://www.foreignpolicy.com/articles/2011/12/20/bashar_al_assad_is_every_bit_his_father_s_son); see also Amnesty International, *Syria: New report finds systemic and widespread torture and ill-treatment in detention*, March 14, 2012, <http://www.amnesty.org/en/news/syria-new-report-finds-systemic-and-widespread-torture-and-ill-treatment-detention-2012-03-13>.

<sup>9</sup> *Id.* at 39-40.

<sup>10</sup> *Id.* at 40.

<sup>11</sup> BBC, *Syria Profile*, March 5, 2013, <http://www.bbc.co.uk/news/world-middle-east-14703995> [hereinafter *Syria Profile*].

<sup>12</sup> *Id.*

Syria.<sup>13</sup> Turkish Prime Minister Tayyip Erdogan controversially referred to Bashar Assad's recent "cruelty that was a response to people in Hama, Homs and Deraa" as the inheritance he received from his father.<sup>14</sup>

While Bashar Assad's government continues to rule Syria, the Syrian opposition movement in Syria has increased its legitimacy. In November 2012, several of the major opposition forces united as the National Coalition for Syrian Revolutionary and Opposition Forces ("the National Coalition"). The National Coalition continues to gain international support and has been internationally recognized by the United States, the United Kingdom, France and the Gulf Co-operation Council (GCC) as the "legitimate representative" of the Syrian people.<sup>15</sup> While these acts of recognition were an important preliminary step for the National Coalition, it does not allow the international community to grant the rebels lethal aid.<sup>16</sup> This paper will explore the critical issue of why the Syrian insurgency has not been able to receive military aid to date, even though it achieved international recognition.

---

<sup>13</sup> Ole Salvange *et al.*, *Torture Archipelago Arbitrary Arrests, Torture, and Enforced Disappearances in Syria's Underground Prisons since March 2011*, HUMAN RIGHTS WATCH, July 3, 2012, <http://www.hrw.org/reports/2012/07/03/torture-archipelago>; *see* Op-ed, Fouad Ajami, *Syria's War Hits the House of Assad*, WALL STREET JOURNAL, July 18, 2012, <http://online.wsj.com/article/SB10000872396390444873204577534952033063684.html>; *see also* Reuters, *Syria Running Torture Centre Network - Rights Group*, July 3, 2012, <http://uk.reuters.com/article/2012/07/03/uk-syria-rights-idUKBRE86205S20120703>.

<sup>14</sup> THE SYRIAN REBELLION, *Supra*, note 4, at 101. *See The Human Rights Crisis in Syria: Hearing Before the Tom Lantos Human Rights Comm.*, 112th Cong. 43 (2012) (statement of Radwan Ziadeh, Visiting Scholar, Kennedy School of Government at Harvard University)(stating the scale of torture and other ill-treatment in Syria has risen to a level not witnessed for years and is reminiscent of the dark era of the 1970s and 1980s).

<sup>15</sup> *Syria Profile*, *Supra*, note 11. *see also* Aljazeera, *GCC Recognizes New Syrian Opposition Bloc*, Nov, 12, 2012, <http://www.aljazeera.com/news/middleeast/2012/11/20121112175539534504.html>. The GCC represents Saudi Arabia, Bahrain, the United Arab Emirates, Oman, Qatar and Kuwait.

<sup>16</sup> John B. Bellinger III, Op-Ed, *U.N. Rules and Syrian Intervention*, WASH. POST, Jan. 17, 2013, [http://articles.washingtonpost.com/2013-01-17/opinions/36410395\\_1\\_syrian-opposition-assad-regime-intervention](http://articles.washingtonpost.com/2013-01-17/opinions/36410395_1_syrian-opposition-assad-regime-intervention). [hereinafter *U.N. Rules*].

Section II of this paper will explain what “recognition” means and what the different levels of recognition accomplish under international law. It will also apply the concept of recognition to the events of the Libyan Arab Spring. Section III will trace the development of the opposition’s formation of the National Coalition. Section IV will analyze the current legal status of the National Coalition under international law and will explain why the rebels have not been able to receive military aid even though they gained international recognition. Section V will offer suggestions for the success of the National Coalition and potential roadblocks it will encounter under international law. Finally, Section VI will offer predictions for the future of the Syrian opposition movement and discuss its connection to the greater Arab Spring movement.

## **II. Background of the Principle of International Recognition**

### **A. The Legal Background of the Principle of International Recognition**

The principle of “recognition” does not have an established, consistent definition and is an “eccentric area [that] is subject to various pronouncements of varying degrees of generality.”<sup>17</sup> As British Prime Minister Winston Churchill once wrote to United States President Franklin Delano Roosevelt concerning the recognition of the French Committee of National Liberation: “What does recognition mean? One can recognize a man as an Emperor or as a grocer. Recognition is meaningless without a defining formula.”<sup>18</sup> The act of “recognition”

---

<sup>17</sup> Ian Brownlie, *Recognition in Theory and Practice*, 53 BYBIL 197-198, 201 (1982). [hereinafter, Brownlie].

<sup>18</sup> 2 WINSTON CHURCHILL, *THE SECOND WORLD WAR* 137 (1954); II FRUS 173.

of a new government by an established government has multiple meanings with varied levels of legal and political significance depending on its context.<sup>19</sup>

“Diplomatic recognition,” the most legally significant form of recognition, refers to the willingness of the recognizing state to enter into a formal diplomatic relationship with the newly created entity.<sup>20</sup> It allows the two governments to exchange ambassadors and to establish embassies and makes the newly formed entity responsible for treaty obligations.<sup>21</sup> In addition, under the Vienna Conventions on Diplomatic and Consular Relations, the recognized government would be obligated to physically protect the recognizing government’s embassy and provide freedom of access to the embassy for all foreign nationals.<sup>22</sup> Recognition could also be an informal means of expressing political support for the new entity or a way to express an opinion on the group’s legal standing.<sup>23</sup>

An insurgent group can be “recognized” under two legally significant standards. It can be recognized as either the “representative of a nation’s people” or as the “representative of a state.” Recognition of an insurgent group as the “representatives of a nation’s people” implies

---

<sup>19</sup> Stefan Talmon, “Recognition of the Libyan National Transitional Council,” *American Society of International Law Insights* 15 (16) (2011), 1. [hereinafter, Recognition].

<sup>20</sup> See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 202 (1987) (Recognition of statehood is a formal acknowledgment by another state that an entity possesses the qualifications for statehood as set forth in § 201, and implies a commitment to treat that entity as a state); see e.g. Address of US Secretary of State Acheson to the Pan American Society of the USA, New York, Sept 19, 1949, “our long-range objectives . . . may, in fact, be best served by recognizing it [the new government] and thus maintaining a channel of communication with the country involved. . . .our act of recognition need not necessarily be understood as the forerunner of a policy of intimate cooperation with the government concerned” (Whiteman (ed.), *Digest of International Law* (1963), ii, 5.

<sup>21</sup> Recognition, *Supra*, note 19.

<sup>22</sup> Vienna Convention on Diplomatic Relations art. 22, April 18, 1961, 500 U.N.T.S. 95 (entered into force Apr. 24, 1964)[hereinafter, Vienna Convention on Diplomatic Relations]; Vienna Convention on Consular Relations art. 5, adopted Apr. 24, 1963, 596 U.N.T.S. 261 (entered into force with respect to the United States of America Dec. 14, 1967).

<sup>23</sup> Recognition, *Supra*, note 19, at 2.

the entity did not satisfy the legal criteria necessary to be recognized as a state and the recognition is not legally or diplomatically significant.<sup>24</sup> It represents a politically significant event that can boost the morale of the insurgents.<sup>25</sup>

Stefan Talmon, professor of Public International Law at Oxford University, argues that the recognition of an insurgent group as the “representatives of a nation’s people” provides it with four key political advantages:

(1) it grants legitimacy to their struggle against the incumbent government; (2) it provides international acceptance; (3) it allows the insurgents to speak on behalf on the nation’s people in international organizations and allows it to represent it in other States by opening “representative offices;” and (4) usually results in the grant of economic aid.<sup>26</sup>

In contrast, recognition of an insurgency as the “representative of a state” demonstrates that the insurgent group represents the nation in some legal or diplomatic capacity.<sup>27</sup> Consequently, the recognizing state must de-recognize the incumbent government and end formal diplomatic relations with the incumbent government.<sup>28</sup> That includes handing over the foreign embassy to the insurgents, and if requested to do so by the insurgents, ending the diplomatic status of the incumbent government’s diplomats.<sup>29</sup>

In 1947, Hersh Lauterpacht, a former member of the United Nations’ International Law Commission and a former judge of the International Court of Justice, developed the following four pre-conditions necessary to recognize insurgent movements:

---

<sup>24</sup> *see* Brownlie, *Supra*, note 17, at 198.

<sup>25</sup> Jill Dougherty, *What Will Recognizing the Opposition Accomplish*, CNN SECURITY CLEARANCE BLOG, Dec. 11, 2012, <http://security.blogs.cnn.com/2012/12/11/recognizing-the-syrian-opposition-what-does-it-really-mean/>.

<sup>26</sup> Recognition, *Supra*, note 19, at 2.

<sup>27</sup> *Id.* at 3

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

First, there must exist within the State an armed conflict of a general (as distinguished from a purely local) character; secondly, the insurgents must occupy and administer a portion of national territory; thirdly, they must conduct the hostilities in accordance with the rules of war and through organized armed forces acting under a responsible authority; fourthly, there must exist circumstances which make it necessary for outside States to define their attitude by means of recognition of belligerency.<sup>30</sup>

Recognizing states rarely use Lauterpacht's criteria as a formal means of recognition.<sup>31</sup>

The criteria to qualify for insurgent recognition does not have to be established by international law.<sup>32</sup> For example, African nations began to seek independence from their former European colonists. In 1963, the Organization of African Unity's Coordinating Committee for the Liberation of Africa (the "OAU") developed criteria to recognize insurgents as the sole legitimate representative of a people.<sup>33</sup> An insurgent group that fulfilled these criteria would be eligible for financial and moral assistance.<sup>34</sup>

The OAU established that the insurgency must be a "United Action Front" fighting against the incumbent power, meaning it must be "broadly based, have effective following and popular support" throughout the country and "have reasonable fighting strength."<sup>35</sup> Stated differently, a state can recognize an insurgency if it has the authority to "control and govern a substantial part of the state territory" and has the power to "engage in a widespread armed

---

<sup>30</sup> Hersh Lauterpacht, *Recognition in International Law* 176-178 (1947).

<sup>31</sup> See Sam Foster Halabi, *Traditions of Belligerent Recognition: The Libyan Intervention in Historical and Theoretical Context*, 27 *Am. U. Int'l L. Rev.* 321, 332 (2012) (quoting Richard A. Falk, *The Six Legal Dimensions of the Vietnam War*) (1968)).

<sup>32</sup> STEFAN TALMON, *RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW: WITH PARTICULAR REFERENCE TO GOVERNMENTS IN EXILE* 30 n. 48 (2001) [hereinafter Talmon].

<sup>33</sup> *General Report of the Goodwill Mission of the Coordinating Committee for the Liberation of Africa to the Angolan Nationalists, Léopoldville, July 13-15, 1964, reprinted in* John A. Marcum, *the Angolan Revolution vol 2: exile, politics and guerilla warfare (1962-1976)*, Appendix 2, at 304-307.

<sup>34</sup> Talmon, *Supra*, note 32.

<sup>35</sup> Mohamed A.E. Yousef, "Security Council Resolution 1973: A New Interpretation of the Notion of Protection of Civilians?" in 82 *ARAB SPRING: NEW PATTERNS FOR DEMOCRACY AND INTERNATIONAL LAW* 160 (ed., 2013).

conflict.”<sup>36</sup> These criteria are helpful to understand the complexities of recognition of the insurgent groups in the context of the Libyan and Syrian Arab Spring.

### **B. Insurgent Recognition Applied to the Libyan Arab Spring**

In the context of the Libyan Arab Spring, some countries in the international community recognized the Libyan National Transitional Council (“NTC”) even though it did not completely fulfill these criteria. The Libyan Arab Spring began in mid-February of 2011 when the Libyan people began to riot in Benghazi in response to the arrest of human rights activist Fethi Tarbel, who had worked to free political prisoners.<sup>37</sup> Only a few weeks later, on March 5, 2011, the NTC met in Benghazi and declared itself as the “sole representative for Libya.”<sup>38</sup>

On March 10, 2011, France became the first country to recognize the rebel forces as the “legitimate representative of the Libyan people.”<sup>39</sup> Then, on March 28, 2011, Qatar became the first Arab nation to recognize the Libyan rebels as the “legitimate representative of the Libyan people.”<sup>40</sup> By mid-June of 2011, Turkey, Jordan, Germany and Spain also recognized the rebels as the “legitimate representative of the Libyan people.”<sup>41</sup>

---

<sup>36</sup> Liesbeth Zegveld, *The Accountability of Armed Opposition Groups in International Law* (Cambridge: Cambridge University Press, 2002), 2. [hereinafter Zegveld].

<sup>37</sup> Reuters, *Timeline: Libya's Uprising against Muammar Gaddafi*, Aug. 21, 2011, available at <http://www.reuters.com/article/2011/08/21/us-libya-events-idUSTRE77K2QH2011082>. [hereinafter *Timeline*].

<sup>38</sup> *Id.*

<sup>39</sup> Alan Cowell and Steven Erlanger, *France Becomes First Country to Recognize Libyan Rebels*, N.Y. TIMES, Mar. 10, 2011, [http://www.nytimes.com/2011/03/11/world/europe/11france.html?\\_r=0](http://www.nytimes.com/2011/03/11/world/europe/11france.html?_r=0). [hereinafter Cowell and Erlanger].

<sup>40</sup> *Timeline*, *Supra*, note 37.

<sup>41</sup> Recognition, *Supra*, note 19, at 2.

Under international law, a nation can only have one *de jure* government.<sup>42</sup> A nation, however, can have one *de jure* government and a representative of the nation's people or a *de facto* government.<sup>43</sup> The recognition of the Libyan rebels, however, did not affect the recognizing nations' official diplomatic relations with the Qaddafi regime.<sup>44</sup> At that time, the Qaddafi regime remained the only Libyan government that had the authority to appoint Libyan ambassadors, "legally dispose of Libyan state assets abroad" and legally transfer title to State controlled oil and gas resources.<sup>45</sup>

Until the summer of 2011, the United States did not to grant any form of recognition to the NTC. In April 2011, the United States Ambassador to Libya stated, "Recognition remains a legal and an international obligations issue that we're still studying, and we have not made a definitive determination on that question... [W]e're a very legalistic country and we're looking at all the different complexity... of that question."<sup>46</sup> He further remarked there were issues with respect to "what constitutes a government" and what constitutes "precedence in United States history for recognition."<sup>47</sup> Even as late as May 12, 2011, the United States remained hesitant to recognize the Libyan rebels and felt there were potential "legal hurdles" to recognition.<sup>48</sup>

For the past few decades, the foreign policy of the United States, the United Kingdom and most other countries has been to only recognize newly created "states," but not newly

---

<sup>42</sup> *Id.* A *de jure* government is "[a] functioning government that is legally established." GOVERNMENT, Black's Law Dictionary (9th ed. 2009), *de jure* government.

<sup>43</sup> *Id.* A *de facto* government is "[a]n independent government established and exercised by a group of a country's inhabitants who have separated themselves from the parent state." GOVERNMENT, Black's Law Dictionary (9th ed. 2009), *de facto* government.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Press Release, U.S. State Department, The Political Situation in Libya, Special Briefing, Gene Cretz, Ambassador to Libya (Apr. 27, 2011), <http://www.state.gov/p/nea/rls/rm/161878.htm>.

<sup>47</sup> *Id.*

<sup>48</sup> U.S. State Department, Daily Press Briefing, Statement by Mark C. Toner, Acting Dept. Spokesman (May 12, 2011), <http://www.state.gov/r/pa/prs/dpb/2011/05/163280.htm>.

formed “governments.”<sup>49</sup> For example, if a new “geographic territory comes into existence,” such as Kosovo or Montenegro, the United States would decide whether to recognize the new state.<sup>50</sup> The United States and most other countries have generally avoided getting involved with the complicated diplomatic issues of recognizing insurgencies as legitimate governments.<sup>51</sup>

The United States State Department likely believed that “legal hurdles” to recognition existed because recognition of the NTC would constitute an “unusual departure” from its prior diplomatic practice of not recognizing insurgencies in any form.<sup>52</sup> In addition, the NTC did not have broad popular support throughout Libya and did not control or govern a substantial part of the Libyan territory.<sup>53</sup> Politically and geographically, it was not “truly inclusive” of the Libyan people.<sup>54</sup> If the United States had recognized the NTC without the NTC’s fulfillment of those criteria, it likely would have constituted an “illegal interference” in the internal affairs of Libya, a violation of the non-intervention principle of the Charter of the United Nations.<sup>55</sup>

---

<sup>49</sup> John B. Bellinger III, *Legal Questions in U.S. Nod to Libya's Opposition*, COUNCIL ON FOREIGN REL. (July 18, 2011), available at [http://www.cfr.org/libya/legal-questions-us-nod-libyas-opposition/p25489?cid=oth\\_partner\\_site-atlantic-firstake-legal\\_questions\\_in\\_us\\_nod\\_to-071811](http://www.cfr.org/libya/legal-questions-us-nod-libyas-opposition/p25489?cid=oth_partner_site-atlantic-firstake-legal_questions_in_us_nod_to-071811). [hereinafter *Legal Questions*].

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *U.N. Rules*, *Supra*, note 16.

<sup>53</sup> *Legal Questions*, *Supra*, note 49.

<sup>54</sup> William Wan and William Booth, *United States Recognizes Libyan Rebels as Legitimate Government*, WASH. POST, July 15, 2011, [http://articles.washingtonpost.com/2011-07-15/world/35237622\\_1\\_rebel-council-libyan-rebel-mahmoud-shammam](http://articles.washingtonpost.com/2011-07-15/world/35237622_1_rebel-council-libyan-rebel-mahmoud-shammam). [hereinafter Wan and Booth].

<sup>55</sup> *See Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*, princ. 2, U.N. Doc. A/RES/2625 (Oct. 24, 1970), [http://daccess.ods.un.org/access.nsf/Get?Open&DS=A/RES/2625\(XXV\)&Lang=E&Area=RESOLUTION](http://daccess.ods.un.org/access.nsf/Get?Open&DS=A/RES/2625(XXV)&Lang=E&Area=RESOLUTION) (stating that “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.”) [hereinafter *Declaration on Principles of International Law*].

Yet, on July 15, 2011, the United States formally recognized the NTC as the “legitimate government of Libya.”<sup>56</sup> The United Kingdom followed the United States and proclaimed the NTC as the “sole governmental authority” in Libya and dismissed all Qaddafi diplomats.<sup>57</sup> Under international law, an insurgent group can only be formally recognized as the government of a state if it exercised “effective control over the State’s territory.”<sup>58</sup> As of June 2011, the NTC controlled only the eastern parts of Libya, but the Qaddafi government retained control of Tripoli, the capital, and the western parts.<sup>59</sup> At the time the United States recognized the NTC, it did not control a “substantial part” of Libyan territory and could not claim to have “broad support” among the Libyan people.<sup>60</sup>

According to John B. Bellinger III, a former legal adviser to the State Department, the United States recognition of the NTC was “especially unusual” under international law because the NTC did not fulfill the criteria necessary for recognition as a *de jure* government.<sup>61</sup> In addition, although the United States declared that the Qaddafi regime “no longer has any legitimate authority in Libya,” the regime was still a functioning government.<sup>62</sup> The recognition thus also raised serious concerns concerning the principle of non-intervention.

The State Department was aware of the legal challenges that recognition of the NTC would raise. Former United States Secretary of State Hillary Clinton astutely cautioned that there were “various legal issues that remain to be worked through.”<sup>63</sup> Less than a month before

---

<sup>56</sup> *Timeline*, *Supra*, note 37.

<sup>57</sup> BBC News, *UK Expels Gaddafi diplomats and Recognizes Libya Rebels*, July 27, 2011, <http://www.bbc.co.uk/news/uk-politics-14306544>. [hereinafter *UK Expels*].

<sup>58</sup> *Recognition*, *Supra*, note 19, at 4.

<sup>59</sup> *Id.*

<sup>60</sup> *Legal Questions*, *Supra*, note 49.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

the United States decided to recognize the NTC, Harold Koh, the legal adviser to the State Department during President Barack Obama's first term, remarked:

“As a general rule, we are reluctant to recognize entities that do not control entire countries because then they are responsible for parts of the country that they don't control...[a]nd we are reluctant to de-recognize leaders who still control parts of the country because then you're absolving them of responsibility in the areas that they do control.”<sup>64</sup>

The “legal issues” that the United States dealt with related to the international obligations of Libya, such as who had responsibility for Libya's treaty obligations.<sup>65</sup> In addition, there were concerns the Qaddafi regime would be absolved from liability under the Vienna Convention and international human rights laws.<sup>66</sup> There were also diplomatic consequences of recognition such as whether the United States would enter into formal diplomatic relations with the NTC.<sup>67</sup> However, Qaddafi was killed in October of 2011; and in August of 2012, the NTC transferred their power to a newly elected assembly, ending the legal debate.<sup>68</sup>

The United States recognized the NTC, even though they knew it would raise many complicated international law questions.<sup>69</sup> Bellinger III claimed recognition of the NTC would be a means to provide it with greater political support, since the United States military support for the NTC was minimal.<sup>70</sup> Similarly, William Hague, the Foreign Secretary of the United

---

<sup>64</sup> *Libya and War Powers: Hearing Before the Comm. on Foreign Relations*, 112th Cong., 39 (2011) (statement of Harold Koh, Legal Adviser, U.S. Department of State).

<sup>65</sup> *Legal Questions*, *Supra*, note 49.

<sup>66</sup> Jason Ukman, *U.S. Recognition of New Libyan Government Raises Tough Legal Questions*, WASH. POST CHECKPOINT, July 19, 2011, [http://www.washingtonpost.com/blogs/checkpoint-washington/post/us-recognition-of-new-libyan-government-raises-tough-legal-questions/2011/07/19/gIQAb9BdNI\\_blog.html](http://www.washingtonpost.com/blogs/checkpoint-washington/post/us-recognition-of-new-libyan-government-raises-tough-legal-questions/2011/07/19/gIQAb9BdNI_blog.html). [hereinafter, Ukman].

<sup>67</sup> *Legal Questions*, *Supra*, note 49.

<sup>68</sup> BBC, *Libya's NTC Hands Power to Newly Elected Assembly*, August 9, 2012, <http://www.bbc.co.uk/news/world-africa-19183300>.

<sup>69</sup> *Legal Questions*, *Supra*, note 49.

<sup>70</sup> Ukman, *Supra*, note 66.

Kingdom, maintained that the United Kingdom recognized the NTC as the “sole governmental authority” of Libya because it was a “unique situation.”<sup>71</sup> Both the United States and the United Kingdom believed that recognition of the NTC would allow their governments to economically benefit the NTC through the ability to turn over frozen Libyan assets to the NTC, the recognized government of Libya.<sup>72</sup>

Despite concerns by members of the United States Congress that the recognition of the NTC was “premature” and there would be no accountability for the transfer of the unfrozen assets, the United States felt recognition was critical politically.<sup>73</sup> The turning point to the decision of the United States to grant recognition to the NTC was a presentation given in Turkey that outlined the rebels’ plan for a government that would be inclusive of the Libyan nation in a post-Qaddafi Libya.<sup>74</sup> The legal recognition of the NTC as the “legitimate government of Libya” was an oddity in foreign policy, and it remains to be seen if it will be relied upon as diplomatic precedent for recognition of an insurgent group. Although the OAU criteria for insurgent recognition were not closely followed by the recognizing nations during the recognition of the NTC, they were adhered to in the recognition of the Syrian insurgency.

### **III. Development of the National Coalition’s Formation**

In early March of 2011, a group of Syrian boys ages 10 to 15 scribbled some anti-Assad graffiti on the walls in Dara’a and were subsequently abused and tortured by Syrian military

---

<sup>71</sup> *UK Expels, Supra*, note 57.

<sup>72</sup> *Id.*

<sup>73</sup> Wan and Booth, *Supra*, note 54.

<sup>74</sup> *Id.*

officials.<sup>75</sup> In response to the disproportional brutality, the people of Dera'a protested the regime's actions chanting "peaceful, peaceful," thus sparking the Syrian uprising.<sup>76</sup> These anti-regime protests quickly spread to Banyas, Homs and the suburbs of Damascus, where the Assad regime responded through the use of military tanks to crush these protests.<sup>77</sup>

In October of 2011, in an attempt to create a united front against the Assad regime, opposition forces formed the Syrian National Council (the "SNC").<sup>78</sup> The SNC sought to represent an inclusive cross-section of Syria society and consisted of six members from the local coordination committees, five members from the Muslim Brotherhood and the tribes, five "independents," four Kurds, four liberal secularists, one Christian, and one Assyrian.<sup>79</sup>

Instead of focusing its efforts on gaining internal legitimacy within Syria, the SNC hoped securing external recognition would boost its credibility within Syria.<sup>80</sup> The SNC became dependent on international support and failed to create sustainable political leadership on the ground in Syria.<sup>81</sup> In addition, the SNC failed to unify the numerous rebel militias, a condition the Friends of Syria ("FOS") nations placed on the SNC before they would grant it financial assistance. Thus the SNC could not claim to represent the "bulk of the opposition."<sup>82</sup>

---

<sup>75</sup> THE SYRIAN REBELLION, *Supra*, note 8, at 73-74.

<sup>76</sup> *Id.* at 74.

<sup>77</sup> *Syria Profile*, *Supra*, note 11.

<sup>78</sup> The Guardian, *Syria's Rebels Unite to Oust Assad and Push for Democracy*, Oct. 2, 2011, <http://www.guardian.co.uk/world/2011/oct/02/syria-rebels-assad-national-council>.

<sup>79</sup> THE SYRIAN REBELLION, *Supra*, note 8, at 133.

<sup>80</sup> Yezid Sayigh, *The Syrian Opposition's Leadership Problem* 4-5, CARNEGIE ENDOWMENT FOR INT'L PEACE, April 3, 2013, <http://carnegie-mec.org/2013/04/03/syrian-opposition-s-leadership-problem/fx6u>. [hereinafter, *Leadership Problem*].

<sup>81</sup> *Id.* at 5.

<sup>82</sup> *Id.* at 9.

The SNC also sought to gain control over the large but unstructured Free Syrian Army (the “FSA”), which was led by defecting Air Force Colonel Riad al-Assad.<sup>83</sup> In September of 2011, the SNC attempted to create a Joint Military Command of Revolutionary Military Councils, which would control 75 to 80 percent of the armed rebels, but it could not persuade the prominent Islamic brigades or credible commanders such as the heads of the Homs and Aleppo Military Councils to join their “unified command.”<sup>84</sup>

Ultimately, the SNC did not unify the opposition because it could not gain support from “key minorities, religious and tribal figures,” the business community or the rebel fighters.<sup>85</sup> The SNC’s inability to unify the opposition led Hilary Clinton to declare that the SNC could “no longer be viewed as the visible leader of the opposition” and the Western nations did not trust it to distribute any contributions for humanitarian assistance.<sup>86</sup>

The Syrian opposition sought to create a more diversified body that could earn widespread international recognition and domestic legitimacy.<sup>87</sup> Seeking military and economic aid, in November of 2012, about 90 percent of the opposition groups, including the SNC, united to form the 60 seat National Coalition.<sup>88</sup> It reserved seats for various ethnic and minority groups that were absent from the SNC, including three for the Kurdish community represented by the National Kurdish Council, three for the Turkmen community and one for the Syria Business

---

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Neil MacFarquhar and Hala Droubi, *With Eye on Aid, Syrian Opposition Sign Unity Deal*, N.Y. TIMES, Nov. 11, 2012, [http://www.nytimes.com/2012/11/12/world/middleeast/syrian-opposition-groups-sign-unity-deal.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/11/12/world/middleeast/syrian-opposition-groups-sign-unity-deal.html?pagewanted=all&_r=0). [hereinafter, *Eye on Aid*].

<sup>86</sup> *Leadership Problem, Supra*, note 80 at 14.

<sup>87</sup> *See generally Id.* at 3, 15.

<sup>88</sup> *Eye on Aid, Supra*, note 85.

Forum.<sup>89</sup> The National Coalition also reserved seats for representatives of each of Syria's 14 provinces and reserved up to five seats for the Alawite Community, an important minority group, because President Assad is a member of that sect of Shiite Muslims.<sup>90</sup> However, jihadist rebel groups, such as the Jabhat al-Nusra refused to join the National Coalition.<sup>91</sup>

Although the National Coalition claimed to “more broadly” represent the opposition than the SNC, the facts do not support the claim.<sup>92</sup> The opposition inside Syria holds 20 percent of the seats in the general secretariat, the leadership body of National Coalition, and a slightly lower figure than the 35 percent it held in the leadership body of the SNC.<sup>93</sup> In addition, although the National Council allocated 14 seats to the representatives from each of Syria's 14 provinces, only two of these representatives were physically based in Syria.<sup>94</sup>

At the National Coalition's first general assembly in Cairo, SNC members and associates constituted 60 percent of the delegates and failed to gain representation from the Syrian Kurdish Opposition parties.<sup>95</sup> The National Coalition's composition led one commentator to remark, “there was a large element of make-believe,” when the FOS recognized the National Coalition as the “sole legitimate representative of the Syrian people,” when it previously denied recognition to the SNC.<sup>96</sup>

---

<sup>89</sup> France24, *Composition of New Syrian Opposition Coalition*, Dec. 11, 2012, <http://www.france24.com/en/20121112-syria-opposition-coalition-composition-khatib>.

<sup>90</sup> *Leadership Problem, Supra*, note 80 at 15; *Eye on Aid, Supra*, note 85.

<sup>91</sup> *Timeline, Supra*, note 37.

<sup>92</sup> *Leadership Problem, Supra*, note 80 at 15.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 16.

<sup>96</sup> *Id.*

#### IV. Current Legal Status of the National Coalition

When United States President Barack Obama recognized the National Coalition as the “legitimate representative of the Syrian people in opposition to the Assad regime,” he referred to it as a “big step.”<sup>97</sup> It was a politically and economically significant event for the National Coalition to receive international recognition as the “representatives of the Syrian people.” That designation, however, did not create any “new legal basis” for the United States to arm the Syrian rebels or intervene militarily against the Assad regime.<sup>98</sup>

The United States may be able to arm an insurgent group, without violating the non-intervention principle of the United Nations, if the entity qualifies as a state.<sup>99</sup> As a signatory to the 1933 Montevideo Convention on the Rights and Duties of States, the United States can only recognize a state if it fulfills four criteria.<sup>100</sup> The entity seeking recognition must have (a) a permanent population; (b) a defined territory the group controls; (c) a governing structure; and (d) the capacity to enter into relations with other states.<sup>101</sup>

The only way under international law the United States may find it legal to directly arm the rebels with lethal assistance is if the National Coalition gains control of a substantial part of Syrian territory and becomes “more inclusive and can legitimately claim to represent the

---

<sup>97</sup> Nour Malas and Jay Solomon, *U.S. Formally Recognizes Syria’s Main Rebel Group*, Wall Street Journal, Dec. 12, 2012, <http://online.wsj.com/article/SB10001424127887324339204578173272657834096.html>. [hereinafter, *U.S. Formally Recognizes*].

<sup>98</sup> *U.N. Rules*, *Supra*, note 16.

<sup>99</sup> *Id.*

<sup>100</sup> 165 L.N.T.S 19.

<sup>101</sup> *Id. see* Carl Schreck, *US Stops Short of Legal Recognition of Syrian Rebels*, RIA NOVOSTI, Dec 13, 2012, <http://en.rian.ru/politics/20121213/178118600.html>.

majority of Syrians.”<sup>102</sup> If the National Coalition fulfills those criteria and then requests weapons, there might be a legal basis for intervention in the Syrian conflict.<sup>103</sup> Currently, any foreign military assistance or intervention would be viewed as an “illegal interference” into the internal affairs of Syria, a violation of the second principle of the Charter of the United Nations.<sup>104</sup>

President Obama granted the National Coalition political recognition because the United States determined that it was “reflective and representative enough of the Syrian people.”<sup>105</sup> Similarly, the United Kingdom recognized the National Coalition because it formed “a broad and representative Opposition that reflects the full diversity of the Syrian people.”<sup>106</sup> The international community was thus able to support the new Coalition because it increased its legitimacy and credibility among women, minorities, religious leaders, civil society and was able to gain the participation of the local councils.<sup>107</sup>

Although the Syrian National Coalition gained political recognition as the “legitimate representative of the Syrian people,” it has not received any formal diplomatic recognition. Unlike in the case of the Libyan uprising, neither the United States nor any other nation has been willing to formally recognize the Syrian opposition movement as the “government of Syria.”<sup>108</sup>

---

<sup>102</sup> *U.N. Rules, Supra*, note 16.

<sup>103</sup> *Id.*

<sup>104</sup> Declaration on Principles of International Law, *Supra*, note 55.

<sup>105</sup> *U.S. Formally Recognizes, Supra*, note 97.

<sup>106</sup> Announcement, United Kingdom Foreign and Commonwealth Office, Foreign Secretary Welcomes Doha Agreement on Syrian Opposition, William Hague, United Kingdom Foreign Secretary (Nov. 11, 2012), <https://www.gov.uk/government/news/foreign-secretary-welcomes-doha-agreement-on-syrian-opposition>.

<sup>107</sup> Office of the Spokesperson, U.S. Department of State, Fact Sheet, *U.S. Government Assistance to Syria*, Feb. 22, 2013, <http://www.state.gov/r/pa/prs/ps/2013/02/205092.htm>. [hereinafter, February 2013 Fact Sheet].

<sup>108</sup> *U.N. Rules, Supra*, note 16.

The international community continues to maintain formal diplomatic relations with the Assad government and treats his regime as the legal government of Syria.<sup>109</sup>

France, one of the first nations to supply the Libyan Transitional Council with financial assistance and military support, believed the Syria rebels have not “been as organized and have no hold on significant amounts of territory,” sufficient to serve as the government of Syria.<sup>110</sup> Although France granted permission to the National Coalition to appoint an ambassador to France, the new ambassador will not be able to use the Syrian embassy in France because it belongs to the Assad government.<sup>111</sup>

The Arab world has been more supportive of the National Coalition. In February of 2013, Qatar became the first nation to hand over a Syrian embassy and to provide full diplomatic status to the ambassador from the National Coalition.<sup>112</sup> A month later, the Arab League formally handed over Syria’s seat to the National Coalition and allowed its member nations to arm the Syrian rebels.<sup>113</sup> The National Coalition will not be able to acquire Syria’s seat in the United Nations, however, because Russia and China will likely block any attempts.<sup>114</sup> At this

---

<sup>109</sup> See e.g., Office of the Historian, U.S. Department of State, *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Syria*, <http://history.state.gov/countries/Syria>.

<sup>110</sup> Cowell and Erlanger, *Supra*, note 39.

<sup>111</sup> Steven Erlanger, *France to Let Syria Council Establish Ambassador*, N.Y. TIMES, Nov. 17, 2012, [http://www.nytimes.com/2012/11/18/world/middleeast/syrian-opposition-council-to-establish-envoy-in-france.html?\\_r=0](http://www.nytimes.com/2012/11/18/world/middleeast/syrian-opposition-council-to-establish-envoy-in-france.html?_r=0) (stating France will find housing and an office for the new ambassador).

<sup>112</sup> BBC News, *Syria Crisis: Qatar Handing Embassy Over to Opposition*, Feb. 13, 2013, <http://www.bbc.co.uk/news/world-middle-east-21442871>.

<sup>113</sup> BBC, *Opposition Takes Syria Seat at Arab League Summit*, Mar. 26, 2013, <http://www.bbc.co.uk/news/world-middle-east-21936731>.

<sup>114</sup> Yezid Sayigh, *The Syrian Opposition's Very Provisional Government*, CARNEGIE ENDOWMENT FOR INT'L PEACE, Mar. 28, 2013, <http://carnegie-mec.org/2013/03/28/syrian-opposition-s-very-provisional-government/fu0z>. [hereinafter *The Syrian Opposition's Very Provisional Government*].

time, therefore, further diplomatic recognition will not help the National Coalition gain any further legitimacy.<sup>115</sup>

The National Coalition can further increase its legitimacy by acquiring “control and governance” of a substantial part of Syrian territory.<sup>116</sup> Although the National Coalition claims to control territory that covers 100,000 square kilometers and includes 10 million residents or 40 percent of the population, it must demonstrate it can adequately govern these areas better than the Islamic rebels.<sup>117</sup> Currently, the opposition forces have “the upper hand” in the northern and eastern parts of Syria.<sup>118</sup> The rebels also control over half of Aleppo, Syria’s largest city and most of the border crossings with Turkey and Iraq.<sup>119</sup> But the Assad government has maintained control over the coasts and the Alawite Mountains and has fought off the rebels in Damascus.<sup>120</sup> In addition, President Assad still has considerable support from the Syrian population, but it remains to be seen if his support will be sustained.<sup>121</sup>

Many Christians, which constitute 10 percent of the population, and significant numbers of Druze and Kurds, support Assad because they believe he will protect the minorities better than

---

<sup>115</sup> *Id.*

<sup>116</sup> *See Zegveld, Supra*, note 36.

<sup>117</sup> *The Syrian Opposition’s Very Provisional Government, Supra*, note 114.

<sup>118</sup> Fouad Ajami, Op-ed, *John Kerry’s Syrian Second Chance*, WALL STREET JOURNAL, Feb. 27, 2013, <http://online.wsj.com/article/SB10001424127887323884304578328680964414790.html>.

<sup>119</sup> *Leadership Problem, Supra*, note 80, at 29.

<sup>120</sup> *Id.*

<sup>121</sup> Jeremy Bowen, *Syria Rebels Gain Foothold in Damascus*, BBC, Jan. 28, 2012, <http://www.bbc.co.uk/news/world-middle-east-16771542>. [hereinafter Bowen].

the Sunni opposition.<sup>122</sup> In addition, the Alawite community, which constitutes 12 percent of the Syrian population, supports the Assad regime because he is an Alawite.<sup>123</sup>

The Alawites were a traditionally disadvantaged group prior to the Assad regime, but under the Assad regime they maintain a prominent role in the Syrian military and society and would be afraid to lose their privileged stature under a potentially Sunni Muslim government.<sup>124</sup> Although there have been considerable defections from the Syrian army, the Assad government has benefited from strong military support.<sup>125</sup> Similar to the Arab Spring protests in Bahrain, if Assad can keep control of the military, the opposition will have a tough time ousting Assad.<sup>126</sup>

The United States believes the National Coalition must increase its legitimacy among the Syrian people and continue to prove that it can be a viable alternative to the Assad government.<sup>127</sup> If the National Coalition can continue to unify itself, be inclusive of a broader range of Syrian communities and isolate the extremist elements of the opposition, there is a better chance the international community will feel it is legally permissible to arm the rebels.<sup>128</sup>

---

<sup>122</sup> *Id.* See United States Department of State, Syria-International Religious Freedom Report 2011, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>.

<sup>123</sup> Bowen, *Supra*, note 121. See Andrew Parasiliti, *It's Time to Engage Iran, Russia on Syria*, AL-MONITOR, July 25, 2012, <http://www.al-monitor.com/pulse/originals/2012/al-monitor/battle-for-syria-just-getting-st.html#ixzz2OQhR6hTG>.

<sup>124</sup> Zoltan Barany, *Comparing the Arab Revolts Comparing the Arab Revolts: The Role of the Military*, 22 J. DEMOCRACY, 28, 36 (2011) [hereinafter Barany]. However, on March 24, 2013, 50 Syrian Alawites gathered in Cairo to express their support for the National Coalition. It was the first time that members of the Alawite community have publicly supported the rebels. The support for the National Coalition developed out of fears that if the Assad's regime fails, they will be targeted by the jihadist rebels. See Aya Batrawy, *Members of Syrian Leader's Sect Backing Rebels*, ASSOCIATED PRESS, Mar. 25, 2013, [http://abcnews.go.com/International/wireStory/members-syrian-leaders-sect-backing-rebels-18802551#.UU\\_YKhm9aQc](http://abcnews.go.com/International/wireStory/members-syrian-leaders-sect-backing-rebels-18802551#.UU_YKhm9aQc).

<sup>125</sup> *Id.*

<sup>126</sup> Barany, *Supra*, note 124.

<sup>127</sup> Tony Karon, TIME, *U.S. Steps Up Aid, but Syria's Rebels Want Arms*, Mar. 1, 2013, <http://world.time.com/2013/03/01/u-s-steps-up-aid-but-syrias-rebels-want-arms/>.

<sup>128</sup> February 2013 Fact Sheet, *Supra*, note 107; see also U.N. Rules, *Supra*, note 16.

Alternatively, the United States might be able to arm the rebels or militarily intervene in Syria using the precedent that the Clinton administration established with the 1999 NATO bombing campaign of Kosovo, which protected the Kosovars from further “ethnic cleansing” perpetrated by the Serbs and Slobodan Milosevic.<sup>129</sup> Although most international lawyers did not view the intervention in Kosovo as “strictly legal,” they found it morally legitimate.<sup>130</sup> However, if the humanitarian atrocities continue in Syria, and the National Coalition does not meet the qualifications for recognition as the “government of Syria,” the United States may feel intervention is “morally, if not legally” justified.<sup>131</sup>

In March of 1999, after 300,000 Kosovars had been expelled from their homes and “ethnic cleansing” was commonly occurring, President Clinton authorized a NATO air strike against Serbia.<sup>132</sup> NATO conducted more than 30,000 sorties over 11 weeks and impaired Serbia’s ability to wage war on the Kosovars.<sup>133</sup> That campaign took place entirely without the authorization of the U.N. Security Council.<sup>134</sup> In addition, the International Criminal Tribunal for the former Yugoslavia indicted Milosevic for crimes against humanity.<sup>135</sup> The joint military and diplomatic campaign forced Serbia to withdraw its troops from Kosovo.<sup>136</sup> The campaign’s success allowed 700,000 Kosovars to return home two weeks after the fighting ended.<sup>137</sup>

---

<sup>129</sup> *U.N. Rules, Supra*, note 16.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Fouad Ajami, Op-ed, *A Kosovo Model for Syria*, WALL STREET JOURNAL, Feb. 10, 2012, <http://online.wsj.com/article/SB10001424052970204369404577211143509449410.html>. [hereinafter, *Kosovo Model*].

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Jon Western and Joshua S. Goldstein, *Humanitarian Intervention Comes of Age Lessons From Somalia to Libya*, 90 FOREIGN AFF. 48, 53 (2011). [hereinafter *Humanitarian Intervention*].

<sup>136</sup> *Id.*

<sup>137</sup> *Kosovo Model, Supra*, note 132

In addition, the international community used this humanitarian model to authorize an Australian led military force to help East Timor in their secession from Indonesia in 1999.<sup>138</sup> Similar regional military forces with the assistance of the U.N. or European powers were used to protect citizens in Sierra Leone, Liberia and Côte d'Ivoire (Ivory Coast).<sup>139</sup>

Similar to Kosovo, Syria faces an immense humanitarian crisis. Almost three and a half million Syrians have been displaced from their homes.<sup>140</sup> If diplomacy fails, President Obama might be able to apply the moral precedent used in Kosovo and intervene in Syria to prevent further massacres.<sup>141</sup>

## **V. Suggestions for the National Coalition and Potential Problems**

The long-term viability of the National Coalition will be based on its ability to expand its operations from exile in Cairo and develop a governing structure on the ground in Syria that can lead the Syrian people.<sup>142</sup> It must take a proactive role in shaping the future of all diplomatic, political and military decisions in Syria, whether or not the Assad government falls.<sup>143</sup>

In December of 2012, the National Coalition formed a military arm with the Supreme Military Council that has the support of 260 rebel commanders.<sup>144</sup> In order to demonstrate their effectiveness as a broad based governing body, the National Coalition must further expand its

---

<sup>138</sup> *Humanitarian Intervention, Supra*, note 135.

<sup>139</sup> *Id.*

<sup>140</sup> March 2013 Fact Sheet, *Supra*, note 5.

<sup>141</sup> *See e.g. U.N. Rules, Supra*, note 16.

<sup>142</sup> *Leadership Problem, Supra*, note 80, at 3.

<sup>143</sup> *Id.* at 16.

<sup>144</sup> Neil MacFarquhar and Hwaida Saad, *Rebel Groups in Syria Make Framework for Military*, N.Y. TIMES, Dec. 7, 2012, [http://www.nytimes.com/2012/12/08/world/middleeast/rebel-groups-in-syria-make-framework-for-military.html?pagewanted=1&\\_r=0](http://www.nytimes.com/2012/12/08/world/middleeast/rebel-groups-in-syria-make-framework-for-military.html?pagewanted=1&_r=0).

military arm and unite it with the Free Syrian Army and other rebel groups.<sup>145</sup> This body must establish itself as a moderate opposition movement that can control the fighters and prevent the jihadist rebels from gaining control of Syrian territory.<sup>146</sup>

Although there is no official count of rebel brigades, they have been prominently involved in crucial battles in Aleppo, Homs and Damascus.<sup>147</sup> The jihadists rebels, however, could represent as much as half of the armed rebels and have joined forces to form the Liberation Front for Syria.<sup>148</sup> The Islamist brigades also have been receiving the majority of the arms shipments that Qatar and Saudi Arabia donated to the rebels.<sup>149</sup>

The potential that the fall of Assad could create a vacuum that would allow Al-Qaeda and other Sunni Muslims extremists to gain control of Syria has caused hesitation in the international community's support for the National Coalition.<sup>150</sup> Some commentators even believe that the only certain outcome from the Syrian uprising is that the jihadists will have a major presence in Syria.<sup>151</sup>

---

<sup>145</sup> Peter Juul and Ken Sofer, *Planning for Syria in the Near and Long Terms*, CENTER FOR AMERICAN PROGRESS, Dec. 17, 2012, <http://www.americanprogress.org/issues/security/news/2012/12/17/48199/planning-for-syria-in-the-near-and-long-terms/>.

<sup>146</sup> *Id.*

<sup>147</sup> Ed Husain, National Review, *Syria: Why al-Qaeda is Winning*, Aug. 23, 2012, <http://www.nationalreview.com/articles/314685/syria-why-al-qaeda-winning-ed-husain>. [hereinafter *al-Qaeda*].

<sup>148</sup> Mariam Karouny, Reuters, *Syria's Islamist Rebels Join Forces Against Assad*, Oct. 11, 2012, <http://www.reuters.com/article/2012/10/11/us-syria-crisis-rebels-idUSBRE89A0Y920121011>.

<sup>149</sup> David E. Sanger, *Rebel Arms Flow Is Said to Benefit Jihadists in Syria*, N.Y. TIMES, Oct. 14, 2012, <http://www.nytimes.com/2012/10/15/world/middleeast/jihadists-receiving-most-arms-sent-to-syrian-rebels.html?pagewanted=all>.

<sup>150</sup> *Id.*

<sup>151</sup> *al-Qaeda*, *Supra*, note 147.

In addition, the National Coalition must also gain the trust and respect of the minorities including Alawites, Christians, Druze and Kurds.<sup>152</sup> It must be able to convince them that it can function as a viable government that will protect the rights of those groups in case the Assad government falls. The National Coalition must begin to demonstrate their effectiveness as a future transitional government by securely delivering medical and humanitarian aid to the four million Syrians who are in need of assistance.<sup>153</sup> As National Coalition Chairman al-Khatib admitted, “much of the relief aid has been stolen or looted by gangs exploiting the security anarchy.”<sup>154</sup>

The National Coalition must improve the delivery of humanitarian aid or the Islamist rebel groups who have been quicker and more efficient delivering humanitarian aid to the rebel controlled areas will dominate any transitional body.<sup>155</sup> These issues have led to limited non-lethal aid for the National Coalition and the recent resignation of Mouaz al-Khatib, the leader of the National Coalition since its beginning stages.<sup>156</sup> If the National Coalition can successfully adopt these measures, it will play a much more prominent role in Syria’s future.

## **VI. Larger Lessons from the Syrian Arab Spring**

---

<sup>152</sup> Chibli Mallet et al., *A Strategy Under International Law: How to End the Assad Dictatorship While Restoring Nonviolence to the Syrian Revolution*, 53 Harv. Int’l L.J. 144,148 (2012).

<sup>153</sup> March 2013 Fact Sheet, *Supra*, note 5.

<sup>154</sup> *Leadership Problem*, *Supra*, note 80, at 20.

<sup>155</sup> *Id.* at 19.

<sup>156</sup> *Id.*

The so-called Arab Spring has been portrayed in the media as “popular uprisings with democratic aspirations.”<sup>157</sup> Revolutions usually consist of “many groups hostile to the existing government, but not necessarily for the same reason.”<sup>158</sup> In the case of the Syria uprising, former United States Secretary of State Henry Kissinger argues that the Syrian Arab Spring is not a battle between democracy and a dictatorship, but a “fight of various ethnic groups for preeminence.”<sup>159</sup>

Although one report found that out of the Arab Spring countries, Libya had the smallest hope for democracy, the Syrian people’s chance for developing a true democracy are not that much greater.<sup>160</sup> In a post-Assad world, the lack of existing political structures in Syria will present great obstacles in the establishment of any model of democratic governance.<sup>161</sup> Since the Syrian people have suffered under a quasi-totalitarian rule for 43 years, they will face an uphill battle to establish a political system, a democracy or authoritarian rule.<sup>162</sup> According to the 2011-2012 World Press Freedom Index, Syria is ranked 176th out of 179 nations in press freedom.<sup>163</sup> Syria was also ranked 164th out of 167 nations on the Economist’s 2012 Democracy Index.<sup>164</sup>

---

<sup>157</sup> India A.R. Lakshmanan, *Kissinger Sees Little Hope for Mideast Peace*, BLOOMBERG, *Arab Spring*, Mar. 16, 2013, <http://www.bloomberg.com/news/2013-03-15/kissinger-sees-little-hope-for-mideast-peace-arab-spring.html>. [hereinafter *Kissinger Sees*].

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> Lucas Way, *Comparing the Arab Revolts: The Lessons of 1989*, 22 J. DEMOCRACY, 17, 25 (2011).

<sup>161</sup> Bassma Kodmani, Ex-member of the Syrian National Council, *Building a New Syria: Elements of a Political Settlement*, Address Before the Carnegie Endowment for International Peace (Nov. 9, 2012), transcript available at <http://carnegieendowment.org/2012/11/09/elements-of-political-settlement/eq5q>.

<sup>162</sup> *Id.*

<sup>163</sup> Reporters Without Borders, *2013 World Press Freedom Index: Dashed Hopes Follow Spring*, 2013, <http://en.rsf.org/press-freedom-index-2013,1054.html>. The ranking is partly based on a questionnaire sent to 18 freedom of expression NGOs and 150 correspondents and other

Unlike Libya, the Syrian Revolution is not a conflict between the Assad regime and the rest of the nation.<sup>165</sup> Both the Assad government and the rebels have supporters, and there are many Syrians who do not like the regime, but are concerned about a future Syria under a jihadist rule.<sup>166</sup> If it was a classical revolution to overthrow a dictator, some argue, Assad would be dead or out of power.<sup>167</sup>

The unstable nature of the insurgency has caused the United States and other nations to take a cautiously optimistic approach in dealing with the Syrian Opposition. Although the United States is wary of arming the rebels, it announced that it would not protest the lifting of the European Union (“EU”) arms embargo, which is scheduled to expire at the end of May 2013, unless all 27 of its members renew it.<sup>168</sup> Recently, the EU amended the sanctions to provide

---

journalists, researchers, jurists and human rights activists. Countries were given a score of between 0 and 100 for the following six criteria: pluralism, media independence, environment and self-censorship, legislative framework, transparency and infrastructure of news production. An additional score was calculated which reflected the level of violence against journalists.

<sup>164</sup> The Economist, *Democracy Index 2012: Democracy at a Standstill*, 2013, [https://www.eiu.com/public/topical\\_report.aspx?campaignid=DemocracyIndex12](https://www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex12). The Democracy Index analyzed 165 independent countries and two territories to show the status of regional and worldwide democracy. The index used 60 indicators grouped into five criteria: electoral process and pluralism; civil liberties; the functioning of government; political participation; and political culture. Each category had a rating on a 0 to 10 scale and the overall score is the average of the scores from the five categories. Each nation was then categorized by levels of regimes: full democracies, flawed democracies, hybrid regimes, and authoritarian regimes.

<sup>165</sup> Jeremy Bowen, *Syria Conflict: Neither Side is Backing Down*, BBC, Mar. 15, 2013, <http://www.bbc.co.uk/news/world-middle-east-21810015>. [hereinafter *Neither Side*].

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> BBC, *Syria Opposition Names Ghassan Hitto PM for Rebel Areas*, Mar. 18, 2013, <http://www.bbc.co.uk/news/world-middle-east-21834632>. See Michael R. Gordon and Mark Landler, *Move to Widen Help for Syrian Rebels Gains Speed in West*, N.Y. TIMES, Apr. 10, 2013, [http://www.nytimes.com/2013/04/11/world/move-to-widen-support-for-syria-rebels-gains-speed.html?\\_r=0](http://www.nytimes.com/2013/04/11/world/move-to-widen-support-for-syria-rebels-gains-speed.html?_r=0).

armored vehicles, non-lethal military assistance and technical aid to the opposition hoping it would protect the Syrian people.<sup>169</sup>

Although the United States has not committed to arm the rebels, it has been, along with British and French instructors, participating in the military training of senior Syrian army officers who defected.<sup>170</sup> The goal of the training is to eventually provide a “safe haven” for Syrian refugees and to provide a “counterweight” to the extremist rebel forces in the Northern parts of Syria.<sup>171</sup> In addition, the United States doubled their pledge to \$250 million in non-lethal assistance to the National Coalition and other civil society groups, including communications and computer equipment, generators and medical supplies.<sup>172</sup>

Proponents of arming the rebels argue that the lack of arms shipments to the rebels has caused negative military and political repercussions. The decision to not arm the rebels has allowed the jihadists to grow stronger and caused the United States to lose out on an opportunity to develop strategic relationships that could be valuable in a crucial post-Assad transitional period.<sup>173</sup> This viewpoint also argues that weapons should be given to the rebels to offset the

---

<sup>169</sup> Lyse Doucet, BBC, *Syria Arms Ban Debate Intensifies in Europe*, Mar. 18, 2013, <http://www.bbc.co.uk/news/world-21826085>.

<sup>170</sup> Julian Borger and Nick Hopkins, *West Training Syrian Rebels in Jordan*, THE GUARDIAN, Mar. 8, 2013, <http://www.guardian.co.uk/world/2013/mar/08/west-training-syrian-rebels-jordan>.

<sup>171</sup> *Id.*

<sup>172</sup> Office of the Spokesperson, U.S. Department of State, Fact Sheet, *Secretary Kerry Announces Doubling of U.S. Non-Lethal Assistance to the Syrian Opposition and New Humanitarian Aid for the Syrian Crisis*, Apr. 20, 2013, <http://www.state.gov/r/pa/prs/ps/2013/04/207810.htm>; see also March 2013 Fact Sheet, *Supra*, note 5.

<sup>173</sup> Paul Richter, *Kerry Says U.S. Looking to Accelerate Fall of Syrian Regime*, L.A. TIMES, Feb. 27, 2013, <http://www.latimes.com/news/world/worldnow/la-fg-wn-syria-assad-kerry-20130227,0,1378667.story>.

military support that Assad has received from Iran and Russia, which has allowed him to survive two years of uprisings.<sup>174</sup>

Before the United States would consider arming the rebels, it must ensure the opposition is not dominated by extremist groups, but is comprised of groups “that are at least not hostile to us and preferably support our principles.”<sup>175</sup> In addition, foreign diplomats want to ensure the rebel fighters respect the laws of war and human rights.<sup>176</sup>

The de-stabilization of Syria has also led to wide-ranging political consequences in the region. The jihadist rebels increased presence in the northern parts of Syria has caused Israel to adjust its foreign policy and has provided Turkey with a prominent international role.<sup>177</sup> For example, Israeli Prime Minister Benjamin Netanyahu recently apologized to Turkish Prime Minister Erdogan over an incident that occurred three years ago in an effort to restore diplomatic ties with Turkey.<sup>178</sup> In addition, both nations fear that if Assad’s regime fails, Syria’s chemical weapons could fall into the hands of the jihadists.<sup>179</sup> Since Turkey shares a border with Syria, they need Israel’s military intelligence to monitor the transfer of the chemical weapons.

The international community’s political recognition of the National Coalition provided it with a starting point to receive financial, humanitarian and political aid, but the recognition did not provide a sufficient legal basis to provide it with arms. The National Coalition has acquired political recognition and domestic legitimacy at the expense of developing a central governing

---

<sup>174</sup> *Neither Side, Supra*, note 165.

<sup>175</sup> *Kissinger Sees, Supra*, note 157.

<sup>176</sup> *Neither Side, Supra*, note 165.

<sup>177</sup> Gil Ronen, *Netanyahu: Syria Chaos a Factor in Turkey Apology*, ISRAEL NATIONAL NEWS, Mar. 13, 2013, <http://www.israelnationalnews.com/News/News.aspx/166500#.UU9UmBm9aQe>.

<sup>178</sup> *Id.*

<sup>179</sup> See Michael J. Koplow, *Why Israel and Turkey Got Back Together*, FOREIGN AFFAIRS, Mar. 23, 2013, <http://www.foreignaffairs.com/articles/139076/michael-j-koplow/why-israel-and-turkey-got-back-together>.

structure that can work together with the provisional councils to administer the rebel controlled areas.<sup>180</sup> Rather than focusing on the pursuit of any further recognition, it should focus its efforts on building relationships with the local councils and armed militias to demonstrate it can effectively govern any portion of Syrian territory.<sup>181</sup> If the National Coalition can increase its support among the numerous minority groups and expand its governance and control of Syrian territory, it will be able to make a much stronger case for its ability to receive arms.<sup>182</sup>

---

<sup>180</sup> *Leadership Problem, Supra*, note 80, at 5.

<sup>181</sup> *The Syrian Opposition's Very Provisional Government, Supra*, note 114.

<sup>182</sup> *See U.N. Rules, Supra*, note 16.