

2014

The Dangerous Price of Intervention: The Legal, Social & Ethno-political Consequences of a US-Led Regime Change in Syria

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Juzdan, Paul, "The Dangerous Price of Intervention: The Legal, Social & Ethno-political Consequences of a US-Led Regime Change in Syria" (2014). *Law School Student Scholarship*. 129.
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THE DANGEROUS PRICE OF INTERVENTION:
THE LEGAL, SOCIAL & ETHNO-POLITICAL CONSEQUENCES OF A
US-LED REGIME CHANGE IN SYRIA

Paul Juzdan

*Stability is when the U.K. and U.S. invade a country and impose the regime of their choice.
~ Noam Chomsky*

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Former US Secretary of State, Henry Kissinger, wrote in *The Washington Post* that “the doctrine of humanitarian intervention explicitly eschews appeals to national interest or balance of power. It justifies itself not by overcoming a strategic threat but by removing conditions deemed a violation of universal principles of governance. That’s all good and well but what of the

consequences?”¹ This paper will attempt to answer this very question, specifically within the context of the recent “Syrian Spring.”² What would be the international, legal and ethno-political consequences of a US-led regime change in Syria? Because Syria is strategically located in one of the most volatile areas in the world, an investigation into the consequences of a Syrian regime change is a necessary pre-requisite to any debate concerning the future of Syria’s “Spring.” These uprisings have been the topic of conversation for over two years now, usually accompanied by debates focusing on the ultimate question: Should the US intervene?

Part I of this paper offers a brief history of US foreign engagement after World War II, and their ensuing regime change consequences, focusing specifically on Nicaragua, Afghanistan, Iraq and Libya. Part II illustrates the dynamic nature of Syria’s ethno-political landscape and offers a brief analysis of how President Assad has dealt with uprisings in the past. Part III of this paper addresses the underlying reasons for the current “Syrian Spring” and analyzes the actions taken by the Assad regime as a result of these uprisings. Part IV outlines the international legal implications of intervention, and illustrates how US intervention in Syria would violate international law. Part V deals with the ethno-political consequences associated with a regime change in Syria, including an increase in sectarian violence and regional instability. Finally, in Part VI, I will propose several important policy considerations the United States should adopt to promote peace and stability in Syria.

Methodology

It is important to note from the outset that I am of Syrian Christian descent. This background, along with my personal views concerning the situation in Syria, compels me to

¹ Nick Ottens, *Kissinger: Syrian Intervention Will Upset World Order*, ATLANTIC SENTINEL (June 5, 2012), <http://atlanticsentinel.com/2012/06/kissinger-syrian-intervention-will-upset-world-order/>.

² This phrase will be used to reference the uprisings taking place in Syria. The phrase derives its meaning from the commonly used term “Arab Spring;” however, since this paper discusses events taking place in Syria, I will instead use the phrase “Syrian Spring.”

write this paper; with that said, I will make every effort to present the factual information in an unbiased and objective fashion. I seek to offer a clear and concise illustration of the ways in which a regime change in Syria would negatively affect the Syrian people and their society. Because this paper deals with issues and events that are constantly changing I have decided to utilize a variety of news outlets such as CNN,³ the BBC,⁴ and the Syrian Arab News Agency (SANA),⁵ as primary sources. These sources may have a tendency to portray certain events in a biased fashion; however, this paper will provide the facts found in specific articles and allow readers to draw their own conclusions. Furthermore, because the events surrounding the uprisings in Syria are fairly recent, most of the information in this paper will be gathered from a wide range of online news outlets, such as the ones mentioned above. The use of scholarly articles, books and United Nations documents will also be employed to strengthen the arguments presented in this paper.

Finally, although this paper focuses specifically on regime change in Syria, there will be instances where an analysis of other instances of regime change, as an emerging aspect of international relations, will be necessary to prove certain points. For example, the history of US-led foreign regime change wears a number of masks including pretenses describing such actions as pro-democracy/anti-communist,⁶ acts of self-defense,⁷ and protections of human rights.⁸ In response to these classifications, this paper will provide a brief look at these instances of “regime change by another name” and outline the consequences such actions may have on the future of international relations. Instances of these classifications will be noted throughout the paper.

³ CNN, <http://www.cnn.com/> (last visited Apr. 13, 2013).

⁴ BBC, <http://www.bbc.com/> (last visited Apr. 13, 2013).

⁵ SYRIAN ARAB NEWS AGENCY, http://sana.sy/index_eng.html (last visited Apr. 13, 2013).

⁶ See *infra* pp. 3-4.

⁷ See *infra* pp. 6-8.

⁸ See *infra* pp. 8-11.

Part I: A Brief History of US-led Foreign Regime Change

W. Michael Reisman, a Professor of International Law at Yale Law School, defines modern regime change as “the forcible replacement by external actors of the elite and/or governance structure of a state so that the successor regime approximates some purported international standard of governance.”⁹ Although this phenomenon has garnered much attention in the 21st century, with the invasions of Iraq and Afghanistan, the principle of regime change has long been an important part of international relations. US-backed regime change can be traced as far back as the Bolshevik Revolution of 1917;¹⁰ however, it was not until after World War II, specifically during the Cold War, that US-led regime change efforts began to increase significantly. Examples of this can be found in countries such as, Cuba¹¹, South Vietnam¹², Nicaragua, Iraq, Afghanistan, and Libya. For the purpose of this paper, I will present examples of 20th and 21st century regime changes, specifically those occurring in Nicaragua, Afghanistan, Iraq and Libya; cases that are closely related to the issues surrounding the Syrian uprisings.

A. Nicaragua

In the early 1980s the United States supported the military efforts of a Honduran-based counterrevolutionary movement that wished to overthrow the Sandinista government in Nicaragua.¹³ The US pledged support to these *contras* in order to promote regional stability and

⁹ W. Michael Reisman, *Why Regime Change is (Almost Always) a Bad Idea*, 98 AM. J. INT’L L. 516 (2004).

¹⁰ Gibson Bell Smith, *Guarding the Railroad, Taming the Cossacks: The U.S. Army in Russia, 1918 – 1920*, NATIONAL ARCHIVES (Winter 2002), available at <http://www.archives.gov/publications/prologue/2002/winter/us-army-in-russia-1.html>. This was a time when President Wilson, in attempt to promote democracy and self-determination, sent troops into Russia. This intervention was mainly aimed at preserving American interests in Russia; however, preventing the formation of a Communist regime was also an essential aspect of the mission.

¹¹ See Stephanie Hanson & Brianna Lee, *U.S.-Cuba Relations*, COUNCIL ON FOREIGN RELATIONS (last updated Jan. 31, 2013), <http://www.cfr.org/cuba/us-cuba-relations/p11113>.

¹² STEPHAN KINZER, *OVERTHROW: AMERICA’S CENTURY OF REGIME CHANGE FROM HAWAII TO IRAQ* 155 (2006).

¹³ Thomas J. Pax, *Nicaragua v. United States in the International Court of Justice: Compulsory Jurisdiction or Just Compensation?*, 8 B.C. INT’L & COMP. L. REV. 471 (1985).

free democratic elections.¹⁴ In 1983, the United States decided to create a group of “Unilaterally Controlled Latino Assets” (UCLAs); their task would be to sabotage vital government controlled economic installations throughout Nicaragua.¹⁵ The underlying principle behind the formation of these UCLAs was summed up by the words of then CIA Director William Casey, “Let’s make the bastards sweat,”¹⁶ referring, of course, to the Sandinista government. Between September of 1983 and April of 1984 the UCLAs and US Special Forces carried out 19 attacks, most of them targeted at Nicaragua’s three oil storage facilities.¹⁷ On October 10, 1984 the commandos blew up oil storage tanks at Corinto, causing the loss of over 3.2 million gallons of gasoline and diesel fuel.¹⁸ One hundred and twelve people were injured and some 20,000 had to be evacuated from the city.¹⁹ US Special Forces and the UCLAs laid down mines across three ports along Nicaragua’s coast; these mines caused serious damage to merchant ships and oil tankers, especially those traveling from Mexico.²⁰

This US intervention in Nicaragua had a major impact on international law; the controversy gave birth to an influential International Court of Justice (ICJ) case, *Nicaragua v. United States*.²¹ The Court, after asserting jurisdiction,²² proceeded to determine whether or not the US violated international customary law and norms by supporting the *contras*.²³ The Court concluded that the US,

¹⁴ See KINZER, *supra* note 12, at 100. (Author notes that if Nicaragua had been left to develop in its own way, it might have become a prosperous, democratic and a stabilizing force in Central America. Instead it is just the opposite).

¹⁵ William M. Leogrande, *Making the Economy Scream: US Economic Sanctions Against Sandinista Nicaragua*, THIRD WORLD QUARTERLY, June 1996, at 340, available at http://www1.american.edu/faculty/leogrande/Third_World_Quarterly_1996_Nica_Econ.pdf.

¹⁶ *Id.*

¹⁷ *Id.* at 341.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14 (June 27).

²² See Pax, *supra* note 13, at 485.

²³ *Id.*

By training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State.”²⁴

The consequences of the Court’s decision will be expounded further in Part IV²⁵ of this paper.

B. Afghanistan

A more recent example of US-led regime change can be found in Afghanistan. This mission, which began on October 7, 2001, was initiated in response to the attacks of September 11, 2001.²⁶ The ultimate goal of the US-led invasion was to root out terrorism by, “dismantling al-Qaeda’s base in the region, removing the Taliban from power and ensuring that Afghans enjoy inalienable rights and freedom unfettered by oppression and terror.”²⁷ In December of 2001, the United Nations Security Council established the International Security Assistance Force (ISAF), which would help NATO establish a new Afghan government.²⁸ After NATO and ISAF removed much of the Taliban from Kabul and other major cities in Afghanistan,²⁹ the Islamic Republic of Afghanistan was established under the leadership of Hamid Karzai (elected President in 2004).³⁰ Although, the war in Afghanistan began in response to the 9/11 attacks, it

²⁴ *Nicar. v. U.S.*, 1986 I.C.J. at 146.

²⁵ *See infra* p. 24.

²⁶ *See* George W. Bush, Presidential Address to the Nation (Oct. 7, 2001), *available at* <http://georgewbush-whitehouse.archives.gov/news/releases/2001/10/20011007-8.html>.

²⁷ S.C. Res. 1386, U.N. Doc. S/RES/1386 (Dec. 20, 2001).

²⁸ *Id.*

²⁹ *See* Robert Burns & Deb Riechmann, *Al Qaeda In Afghanistan Is Attempting A Comeback*, HUFF POST WORLD (Oct. 21, 2012), http://www.huffingtonpost.com/2012/10/21/al-qaeda-afghanistan-comeback_n_1997994.html. (Reports that al Qaeda may be resurfacing in parts of Afghanistan; however, there is clear evidence that their presence in the region has greatly diminished.); Alex Spillius, *Al-Qaeda So Weak That US Afghanistan Withdrawal Would be Justified*, THE TELEGRAPH (Jun. 19, 2011 9:18AM), <http://www.telegraph.co.uk/news/worldnews/al-qaeda/8584898/Al-Qaeda-so-weak-that-US-Afghanistan-withdrawal-would-be-justified.html>.

³⁰ AFG. CONST., 2004, pmb., *available at* <http://www.afghanembassy.com.pl/cms/uploads/images/Constitution/The%20Constitution.pdf>; Carlotta Gall, *Election of Karzai Is Declared Official*, N.Y. TIMES (Nov. 4, 2004), http://www.nytimes.com/2004/11/04/international/asia/04afghan.html?_r=0.

quickly evolved into a regime-changing mission.³¹ President Bush in his speech to the American people on October 17, 2001 stated,

More than two weeks ago, I gave Taliban leaders a series of clear and specific demands: close terrorist training camps, hand over leaders of the Al Qaeda network, and return all foreign nationals, including American citizens, unjustly detained in your country. None of these demands were met. And now *the Taliban will pay a price*.³²

The institution of a new regime has proven to be a difficult task; since the invasion of Afghanistan, the state building process has been met with significant resistance from al-Qaeda and Taliban forces.³³ The United States continues to maintain operations in Afghanistan; however, recently US Defense Secretary Chuck Hegal reassured President Karzai that “Washington is still on track to wind up its 11-year combat mission in Afghanistan by the end of 2014.”³⁴ Whether the war in Afghanistan was necessary or justified is not at issue here; it is, however, important to note that because the US sought to dismantle the Taliban and institute a democratic government, one could fairly classify this war as a regime change mission.³⁵ The final two regime change efforts, presented below, will offer further helpful context regarding US-led regime change efforts.

C. Iraq

Iraq, as Professor Reisman points out, was “the Mother of All Regime Changes.”³⁶ Justifications for this invasion included: 1) noncompliance with UN Chapter VII resolutions, 2) the existence of weapons of mass destruction, 3) maintaining the “War on Terror” and 4) ending

³¹ S.C. Res. 2096, U.N. Doc. S/RES/2096 (Mar. 19, 2013).

³² KINZER, *supra* note 12, at 277-278 (emphasis added).

³³ Rani D. Mullen, *Afghanistan in 2008: State Building at the Precipice*, 49 ASIAN SURVEY 28 (Winter 2009).

³⁴ See Matt Smith & Josh Levs, *Hegal, Karzai Meet After Strained Afghan Weekend*, CNN.COM (Mar. 11, 2003 5:32AM), <http://www.cnn.com/2013/03/10/world/asia/afghanistan-karzai-taliban/index.html?iref=allsearch>.

³⁵ KINZER, *supra* note 12, at 280.

³⁶ Reisman, *supra* note 9, at 519.

the ongoing human rights violations of the Iraqi government.³⁷ This mission proved to be strikingly different from the invasion of Afghanistan, mainly due to the lack of international support. Furthermore, the invasion of Iraq lacked international legality; an article published by the BBC indicates that Kofi Annan “when pressed on whether the invasion of Iraq as illegal, said: ‘Yes, if you wish. I have indicated it was not in conformity with the UN charter from our point of view, from the charter point of view, it was illegal.’”³⁸

The events in Iraq came about mainly because of the US’s expressed concern, in late 2002, that Saddam Hussein refused to grant UN weapons inspectors, unfettered access to Iraq’s arsenals.³⁹ In February of 2003, Hans Blix, the UN weapons inspector at the time, indicated that he believed Iraq was “making an effort” to cooperate.⁴⁰ The US, however, rejected any indication that Iraq was willing to cooperate. President Bush, in a speech to the UN General Assembly, listed numerous reasons why action must be taken against Saddam Hussein’s government.⁴¹ Bush insisted that “the purposes of the United States should not be doubted. The Security Council resolutions will be enforced, the just demands of peace and security will be met or action will be unavoidable and a regime that has lost its legitimacy will also lose its power.”⁴² Dismantling Saddam Hussein’s regime was the ultimate goal.⁴³ The reason for the invasion, the destruction of Hussein’s nuclear arsenal, proved to be baseless; the United States found no

³⁷ *Id.*; George W. Bush, President Discusses the Future of Iraq (Feb. 26, 2003), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030226-11.html>.

³⁸ See *Iraq War Illegal, Says Annan*, BBC.COM (Sep. 16, 2004), http://news.bbc.co.uk/2/hi/middle_east/3661134.stm; Mahmoud Hmoud, *The Use of Force Against Iraq: Occupation and Security Resolution 1483*, 36 CORNELL INT’L L.J. 436, 436 (2004).

³⁹ See Sean D. Murphy, *Assessing the Legality of Invading Iraq*, 92 GEO. L.J. 173, 248 (2004).

⁴⁰ *Blix says Iraq Appears to be ‘Making an Effort’*, CNN.COM (Feb. 7, 2003), <http://www.cnn.com/2003/WORLD/meast/02/07/sprj.irq.blix/index.html>.

⁴¹ George W. Bush, Speech to the UN General Assembly (Sep. 12, 2002), available at <http://www.guardian.co.uk/world/2002/sep/12/iraq.usa3>.

⁴² *Id.*

⁴³ See Bush, *supra* note 37 (President Bush uses the phrase “remove a threat,” when referring to Saddam Hussein).

nuclear weapons in Iraq.⁴⁴ And although the failure to discover weapons of mass destruction in Iraq is of significance, the purpose of this paper is not to unearth data concerning this blunder. Instead, the relevant point to gather from this war is that because it ended with the overthrow of Saddam Hussein and the institution of a new regime, it indicates a willingness on the part of US to implement “regime change” where necessary.

This brief analysis of the US-led invasion of Iraq is also meant to provide an example of “regime change by another name;” specifically, under the auspices of “defense” and “human rights.” Another example of this can be found in a discussion concerning the overthrow of Qaddafi in Libya; change the regime to protect the population. The consequences associated with these “masked” regime changes, will be analyzed in the discussion concerning the “Responsibility to Protect.”⁴⁵

D. Libya

The final example of regime change, and the most recent, is the UN sponsored invasion of Libya.⁴⁶ The assessment of this conflict is critical because, similar to Syria, it falls within the context of the “Arab Spring.” Also, the policy considerations surrounding the Libyan invasion bear heavily on conversations concerning the Syrian uprisings. The internal nature of the conflict and the foreign support of an internally based opposition group, form an essential basis for many of the “Arab Spring” uprisings including those taking place in Libya and Syria. Since these elements are present in Syria, an analysis of the Libyan conflict is an essential pre-requisite to a debate centered on possible intervention.

⁴⁴ See *Report Fuels Iraq WMD Debate*, CNN.COM (Oct. 7, 2004), <http://edition.cnn.com/2004/WORLD/meast/10/07/wmd.report.reax/index.html>; Robert Bejesky, *Weapons Inspections Lessons Learned: Evidentiary Presumptions and Burdens of Proof*, 38 SYRACUSE J. INT’L L. & COM. 295, 374 (2011); *Iraq WMD 2004: Nuclear*, CENTRAL INTELLIGENCE AGENCY (last updated Apr. 23, 2007), https://www.cia.gov/library/reports/general-reports-1/iraq_wmd_2004/chap4.html#sect1.

⁴⁵ See *infra* p. 30.

⁴⁶ S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

“Arab Spring” protests in Libya began in February 2011 with a “Day of Rage”, a day when “six thousand protestors would take to the streets of Benghazi calling for the overthrow of the regime.”⁴⁷ The uprising spread from the loosely controlled cities of eastern Libya to cities in the West, like Tripoli, where protestors set fire to government buildings and engaged government forces.⁴⁸ Muammar Qaddafi, Libya’s president, known by many as “the mad dog of the Middle East”, responded to the uprisings with an “an appalling level of force.”⁴⁹ The protests eventually morphed into a civil war, and later settled into a protracted stalemate.⁵⁰ In response to the increasing violence and deteriorating humanitarian situation in Libya, the UN Security Council adopted Resolution 1973.⁵¹ The Security Council demanded an immediate ceasefire, an end to attacks on civilians, and authorized member states “to take all necessary measures to enforce compliance.”⁵² On March 19, 2011, a coalition of Western states, along with Qatar,⁵³ the U.A.E. and Jordan,⁵⁴ began a military intervention in Libya by launching missiles against Libyan air defense systems and flying air strikes against military units outside Benghazi.⁵⁵ Tripoli fell to the rebels in August of 2011, and two months later rebels found and killed Qaddafi in his home town of Surt.⁵⁶

In response to the events in Libya, President Obama, in a speech given on March 28, 2011, indicated that,

Nine days ago, after consulting the bipartisan leadership of Congress, I authorized

⁴⁷ JAMES L. GELVIN, *THE ARAB UPRISINGS: WHAT EVERYONE NEEDS TO KNOW* 81 (2012).

⁴⁸ *Id.*

⁴⁹ *Id.* at 81-82.

⁵⁰ *Id.* at 82.

⁵¹ S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

⁵² *Id.*

⁵³ *New Coalition Member Flies First Sortie Enforcing No-Fly Zone Over Libya*, U.S. AIR FORCE (Mar. 25, 2011), <http://www.af.mil/news/story.asp?id=123248695>.

⁵⁴ *The Crisis in Libya*, INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya> (last visited Apr. 13, 2013).

⁵⁵ Mehrdad Payandeh, *The United Nations, Military Intervention, and Regime Change in Libya*, 52 VA. J. INT’L L. 355, 379 (2012).

⁵⁶ GELVIN, *supra* note 47, at 82.

military action to stop the killing and enforce UN Security Council Resolution 1973. We struck regime forces approaching Benghazi to save that city and the people within it. We hit Gaddafi's troops in neighboring Ajdabiya, allowing the opposition to drive them out. We hit his air defenses to pave the way for a No Fly Zone.⁵⁷

The US found itself participating in yet another regime change in the region, this one initiated by UN Security Council Resolution 1973.⁵⁸ US participation in the international campaign in Libya was by no means a strenuous undertaking. First, the US had no major interests in Libya; Libyan oil accounted for only .6 percent of American oil imports overall.⁵⁹ Second, the participation in a “no-fly zone” did not require a large military operation; in fact, no American soldiers died during the operation.⁶⁰ One could not say the same for a military operation in Syria, which would pose numerous tactical and logistical problems.⁶¹

Understanding who the Libyan rebels, or “revolutionaries,” are is also essential to understanding why this regime change garnered significant international support. The Libyan Transitional National Council (NTC), the main opposition movement, held its first meeting on Saturday, March 5, 2011, in the city of Benghazi.⁶² The Council consisted of representatives from different cities, Islamists, secular academics and lawyers, reformists and revolutionaries.⁶³ The NTC established a declaration, indicating its goals, duties and structure;⁶⁴ for example the

⁵⁷ Barack Obama, Remarks by President in Address to the Nation on Libya (Mar. 28, 2011), <http://www.whitehouse.gov/photos-and-video/video/2011/03/28/president-obama-s-speech-libya>.

⁵⁸ See S.C. Res. 1973, *supra* note 51.

⁵⁹ GELVIN, *supra* note 47, at 87.

⁶⁰ *Id.*

⁶¹ See *supra* note 205.

⁶² *Founding Statement of the Interim Transitional National Council (NTC)*, THE LIBYAN INTERIM NATIONAL COUNCIL (Mar. 5, 2011), available at <http://www.ntclibya.org/english/founding-statement-of-the-interim-transitional-national-council/>. This is unlike the Syrian opposition, which holds meetings outside of Syria.

⁶³ GELVIN, *supra* note 47, at 85.

⁶⁴ Dan Murphy, *The Members of Libya's National Transitional Council*, THE CHRISTIAN SCIENCE MONITOR (Sep. 2, 2011), <http://www.csmonitor.com/World/Backchannels/2011/0902/The-members-of-Libya-s-National-Transitional-Council>. This article lists the 40 members of the NTC and states that the council would be expanded to about 80 people after Qaddafi was captured.

statement indicates that “there should be no less than five youth members on the Council.”⁶⁵

The NTC was quickly recognized as the legitimate representative of the Libyan people and on

September 16, 2011, the UN General Assembly decided that the representatives of the

Transitional Council would, for the following year, represent Libya in the General Assembly.⁶⁶

Currently, Libya is governed by the General National Congress, which replaced the NTC on

August 8, 2012; the Congress elected Ali Zeidan to be prime minister.⁶⁷

There have been numerous reports outlining the similarities between the conflicts in Libya and Syria;⁶⁸ however, the following section will illustrate the inherent inaccuracies of this conclusion. It is only after analyzing Syria’s ethno-political landscape, that one can adequately determine whether the similarities between Syria and Libya are based on a logistically sound analysis of the current social structure and conflict or on superficial generalizations.

Part II: Syria’s History and Ethno-Political Landscape

The main reason Syria is more complex than Libya, is because the present population of Syria is characterized by strong religious and ethnic diversity.⁶⁹ Syria’s population is well over 22.5 million⁷⁰ with the four largest cities in Syria, Aleppo (with a population 2.985 million), the capital city of Damascus (2.527 million), Homs (1.276 million) and Hama (854,000), consisting

⁶⁵ *The Council’s Statement*, THE LIBYAN INTERIM NATIONAL COUNCIL, <http://www.ntclibya.org/english/> (last visited Apr. 13, 2013).

⁶⁶ Payandeh, *supra* note 55, at 379.

⁶⁷ *See NTC to Transfer Power to Newly-Elected Libyan Assembly August 8*, THE TRIPOLI POST (Feb. 8, 2012), <http://www.guardian.co.uk/commentisfree/2012/jan/23/syria-libya-opposition-intervention>.

⁶⁸ *See* Joshua Hersh, *Syria U.N. Deliberations Haunted by Ghost of Libya Mission*, HUFF POST WORLD (Feb. 12, 2012 2:31PM), http://www.huffingtonpost.com/2012/02/02/syria-un-libya-mission_n_1250232.html.

⁶⁹ NIKOLAOS VAN DAM, *THE STRUGGLE FOR POWER IN SYRIA: POLITICS AND SOCIETY UNDER ASAD AND THE BA’TH Party 1* (3d ed. 1996).

⁷⁰ *The World Factbook: Syria*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/sy.html> (last updated Apr. 10, 2013); *Median Age by Sex*, UNITED STATES CENSUS BUREAU (2011), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_B01002&prodType=table.

of over a third of the population.⁷¹ Sunni Muslims make up about 74% of the population, while other sects of Islam including, Alawites, Druze and Shi'a account for about 16% of the population.⁷² Other religious minorities include, Christians, who make up about 10% of the population, and Jews, who live in small communities throughout Syria---mainly in Damascus, Al Qamishli, and Aleppo.⁷³ About 90% of the Syrian population is Arab; Kurds, Armenians and other ethnic minorities, including Turcomans and Circassians, account for about 10% of the population.⁷⁴ Compare this to Libya's 97% Sunni Muslim population and two main ethnic groups, Arab and Berber.⁷⁵ Syria has a strikingly more complex demographic structure and as a result, regime change may cause a significant surge in sectarian violence.⁷⁶ Furthermore, the presence of these distinct ethnic groups in Syria has led to tension between government forces and religious/ethnic groups such as the Muslim Brotherhood; this is not necessarily present in Libya.⁷⁷

This ethnic and religious diversity is the result of a complex set of historical events leading up to Bashar al-Assad's presidency in 2000. Prior to gaining its independence in 1946, Syria was ruled by the French for 26 years, and before that, by the Ottomans.⁷⁸ The French had a very interesting method of garnering support; they would enlist members of large and influential families into the *Troupes Speciales* in order to secure the loyalty of the minority communities from which they were mainly drawn.⁷⁹ This led to an over recruitment of Alawites and Druze

⁷¹ *The World Factbook*, *supra* note 70.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*; see also VAN DAM, *supra* note 69, at 1.

⁷⁵ *The World Factbook: Libya*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html#People> (last updated Apr. 10, 2013).

⁷⁶ See *infra* note 209.

⁷⁷ THOMAS L. FRIEDMAN, FROM BEIRUT TO JERUSALEM 85 (rev. ed. 2012) (offering a vivid description of the conflict between the Muslim Brotherhood and the Assad regime).

⁷⁸ See VAN DAM, *supra* note 69, at 26.

⁷⁹ *Id.* at 27.

into the armed forces.⁸⁰ Furthermore, many individuals from poor rural areas saw a military career as a welcome opportunity to climb the social ladder and to lead a life that would be slightly more comfortable than that within the agrarian sector, this again contributed to the strong representation of minorities in the Syrian army.⁸¹ This strong representation of minorities has resulted in government policies that tend to favor Christians and Alawites over Sunni Muslims; this has had an enormous impact on the current conflict.⁸²

The 1946 Independence movement ignited a series of military coups, which lasted from 1949 until 1970 when Hafez al-Assad, the father of Bashar al-Assad, took control of the government.⁸³ This takeover was known as the Corrective Revolution of November 1970.⁸⁴ Hafez al-Assad's regime was violently criticized and opposed following the takeover, especially by the Muslim Brotherhood who, in February of 1982, ambushed government forces in the densely populated city of Hama.⁸⁵ Assad responded to this ambush by moving into the city and crushing the insurgency, leaving as many as 10,000 to 25,000 dead in the streets, including about 1,000 soldiers.⁸⁶ One can see the similarities between Bashar al-Assad's current actions in response to the Arab Spring and those of his father in the 1980s.

These "coup-proofing" methods helped foster a long period of stability in Syria, which came about after a series of ten coup d'états, a record in the Arab world.⁸⁷ Furthermore, military and party discipline during the Assad regime were not undermined by as much sectarian, regional and tribal factionalism as in previous times, forming a more stable socio-political

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Daniel Byman & Renanah Miles, *A Modest Post-Assad Plan*, THE NATIONAL INTEREST (Oct. 24, 2012), <http://nationalinterest.org/article/modest-post-assad-plan-7624?page=4>.

⁸³ VAN DAM, *supra* note 69, at 71.

⁸⁴ *Id.*

⁸⁵ FRIEDMAN, *supra* note 77, at 83.

⁸⁶ *See id.* at 77.

⁸⁷ GELVIN, *supra* note 47, at 109.

atmosphere.⁸⁸ Assad's economic and foreign relations policies, however, were not as effective; in the late 1980's Assad faced numerous challenges, including a declining economy, an isolated foreign policy, and tensions with Israel.⁸⁹ These circumstances would continue throughout much of Hafez al-Assad's presidency, which lasted until his death on June 10, 2000. Upon his death, his son Bashar was elected president for a seven-year term. Bashar was elected for another seven-year term in 2007.⁹⁰

During Bashar al-Assad's presidency, and under the Bush Administration, US-Syria relations gradually disintegrated. Several events leading up to this breakdown in US-Syria relations include, "the Palestinian intifada of 2000, Syria's disapproval of the US-led invasion of Iraq, the US's region wide push for democracy, and US open support for regime change in Syria."⁹¹ It was not until Obama became president that the US sought to form closer ties with Syria. On February 16, 2010 President Obama nominated Robert Ford to be the United States Ambassador to Syria; Ford presented his credentials to President Bashar al-Assad on January 27, 2011.⁹² Unfortunately, less than a year later, on October 24, 2011 the US was forced to pull Ambassador Ford from Syria over security concerns, blaming the lack of safety on President Assad's regime.⁹³ This withdrawal was a result of a series of uprisings that began on March 15, 2011, the date often used to mark the beginning of the "Syrian Spring."

⁸⁸ VAN DAM, *supra* note 69, at 71.

⁸⁹ *Syria: The Assad Era*, LIBRARY OF CONGRESS COUNTRY STUDIES (April 1987), [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+sy0027\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+sy0027)).

⁹⁰ *Syrians Vote for Assad in Uncontested Referendum*, THE WASHINGTON POST (May 28, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/27/AR2007052701117.html>.

⁹¹ Alison N. Kurth, *Rethinking the Syria Accountability Act: Are Sanctions on Syria in the Best Interest of the United States?*, 20 TRANSNAT'L L. & CONTEMP. PROBS. 239, 240 (Spring 2011).

⁹² *Id.* at 242.

⁹³ *U.S. Ambassador Leaves Syria Due To 'Credible Threats'*, NPR (Oct. 24, 2011 7:49AM),

<http://www.npr.org/blogs/thetwo-way/2011/10/24/141647127/u-s-ambassador-leaves-syria-due-to-credible-threats>.

Part III: Syria's "Arab Spring"

A. The "Spring" Begins

In March of 2011 a group of young boys from Dara'a were arrested for writing antigovernment graffiti on a school wall; the children wrote "the people want to topple the regime."⁹⁴ According to CNN, on March 16, 2011, a group of female protestors rallied in Damascus to demand the release of these students. One reporter classified these protestors as "educated, urbanite youth living in Damascus."⁹⁵ Two days after these Damascus protests, the parents and relatives of the students marched to the political security building in Dara'a; the residents discovered that the children were being beaten and tortured in prison.⁹⁶ During the Dara'a protests, security forces shot, injured and killed a number of individuals, triggering days of violent unrest that steadily spread nationwide.⁹⁷ In May of 2011, army tanks entered the cities of Dara'a, Banyas, Homs and the suburbs of Damascus in an attempt to crush the anti-regime protests.⁹⁸ In response to growing domestic and international pressure, President Assad granted amnesty to political prisoners, including all members of the previously banned Muslim Brotherhood.⁹⁹ The decree freed all political prisoners whose crimes were committed before May 31, 2011, and at the time seemed to overturn a law banning the existence of the Muslim Brotherhood.¹⁰⁰ This was a bold step on the part of President Assad, aimed at quickly ending the uprisings and appeasing the masses; however, it did little to prevent future unrest.

⁹⁴ Joe Sterling, *Daraa: The Spark That Ignited the Syrian Flame*, CNN.COM (Mar. 1, 2012 9:32 AM), <http://www.cnn.com/2012/03/01/world/meast/syria-crisis-beginnings/index.html>.

⁹⁵ *Id.*

⁹⁶ *See id*; see also Katherine Zoepf, *Long Repressed in Syria, and Internal Opposition Takes Shape*, NYTIMES.COM (Apr. 27, 2011) http://www.nytimes.com/2011/04/28/world/middleeast/28syria.html?pagewanted=all&_r=0.

⁹⁷ *Syria Profile: A Chronology of Key Events*, BBC.COM, <http://www.bbc.co.uk/news/world-middle-east-14703995> (last updated Mar. 25, 2013, 7:49 AM).

⁹⁸ *Id.*

⁹⁹ Zach Zagger, *Syria President Grants Amnesty for Political Prisoners*, JURIST (Jun. 1, 2011, 9:08AM) <http://jurist.org/paperchase/2011/06/syria-president-grants-amnesty-for-political-prisoners.php>.

¹⁰⁰ *Id.*

Since that fateful March day in Dara'a, the uprisings have intensified; over 70,000 people have lost their lives¹⁰¹ and President Assad has faced mounting pressure from the international community to end the bloodshed.¹⁰² Most significantly in December of 2012 the US, along with Great Britain, France, Turkey and the Gulf states, recognized the National Coalition for Syrian Revolutionary and Opposition Forces, or the Syrian National Coalition, as the “legitimate representative of the Syrian people.”¹⁰³ Furthermore, the beginning of 2013 marked an increase in foreign aid to the rebels¹⁰⁴ and an effort on the part of the regime to combat rebel forces along Syria’s desert border with Iraq.¹⁰⁵ Numerous reports, issued by a wide range of news outlets, have suggested that al-Qaeda may have a role to play in the ongoing strife. For example, SANA issued a report indicating that the terrorist act, which targeted a renowned Syrian scholar and top Sunni preacher, “bears the hallmarks of al-Qaeda and its allies.” CNN echoed a similar concern in an article titled, *How Islamists are Gaining Ground in Syria*.¹⁰⁶ Clearly, there is a fear that the Syrian National Council is far removed from the reality on the ground. A regime change in Syria could potentially result in the formation of a radical Islamist state, which would in turn thwart the overall goals of assisting the rebels in establishing a democratic government.

Protests in Syria are not a new phenomenon; however, none have been as overwhelming as the recent uprisings.¹⁰⁷ Bashar al-Assad has, in the past, responded to statements made by

¹⁰¹ Michelle Nichols, *Syria Death Toll Likely Near 70,000 Says U.N. Rights Chief*, REUTERS (Feb. 12, 2013, 5:59 PM), <http://www.reuters.com/article/2013/02/12/us-syria-crisis-un-idUSBRE91B19C20130212>.

¹⁰² See Syria Profile, *supra* note 97.

¹⁰³ Aamer Madhani, *Obama says U.S. will recognize Syrian opposition*, USA TODAY (Dec. 12, 2012, 7:32 AM), <http://www.usatoday.com/story/news/world/2012/12/11/al-nusra-designated-terrorists/1760755/>.

¹⁰⁴ Jill Dougherty & Michael Pearson, *Western powers set to increase aid for Syrian rebels*, CNN.COM (Mar. 1, 2013, 7:07 AM), http://www.cnn.com/2013/02/28/world/meast/syria-us-funds/index.html?hpt=imi_c1.

¹⁰⁵ Tim Lister, *Syrian Regime Losing Grip on Border with Iraq as Militants Step Up Attacks*, CNN.COM (Mar. 13, 2013, 9:33 AM), http://www.cnn.com/2013/03/12/world/meast/syria-iraq-border/index.html?hpt=wo_c2.

¹⁰⁶ Ivan Watson, Kareem Khadder & Saad Abedine, *How Islamists Are Gaining Ground in Syria*, CNN.COM (Feb. 22, 2013, 8:04 AM), http://www.cnn.com/2013/02/21/world/meast/syria-nusra-front-rise/index.html?hpt=wo_t3.

¹⁰⁷ DAVID W. LESCH, SYRIA: THE FALL OF THE HOUSE OF ASSAD 87 (2012). In 2000, following the death of Hafez al-Assad, a “Damascus Spring” was initiated. The “Damascus Spring” was triggered by the so-called “Statement of 99, a statement signed by ninety-nine Syrian civil society activists” outlining specific goals for the future of the

anti-government forces. In one instance, in 2000, he was quoted saying,

When the consequences of an action affect the stability of the homeland there are two possibilities... either the perpetrator is a foreign agent acting on behalf of an outside power, or else he is a simple person acting unintentionally. But in both cases a service is being done to the country's enemies and consequently both are dealt with in a similar fashion, irrespective of their intentions or motives.¹⁰⁸

Similarly, on January 6, 2013, President Assad stated in a speech delivered to supporters, that “this war targets Syria using a handful of Syrians and many foreigners. Thus, this is a war to defend the nation.”¹⁰⁹ What would trigger Assad, an educated, well-rounded leader, to respond in such a manner? In order to answer this question one must understand the nature of the opposition.

B. The Opposition

According to James J. Gelvin, author of *The Arab Uprisings: What Everyone Needs to Know*, the opposition consists of five main components: 1) spontaneous, mostly peaceful crowds, 2) pro-democracy, pro-human rights, and social media groups (such as Syrian Revolution 2011,¹¹⁰ Sham News Network,¹¹¹ Insan,¹¹² Sawasiah, Syrian Observatory for Human Rights),¹¹³ 3) “Local Coordination Committees,”¹¹⁴ 4) the “traditional opposition”, which includes a number

country. The regime quickly crushed this opposition by implementing decrees restricting or terminating almost all of what the ‘Damascus Spring’ stood for.

¹⁰⁸ *Id.*

¹⁰⁹ Ian Black, *Syria's Bashar al-Assad Calls on Foreign Countries to End Support for Rebels*, THE GUARDIAN (Jan. 6, 2013, 7:48 AM), <http://www.guardian.co.uk/world/2013/jan/06/syria-president-assad-public-speech>.

¹¹⁰ *The Syrian Revolution 2011*, FACEBOOK, <https://www.facebook.com/Syrian.Revolution>, (last visited Apr. 18, 2013) (A Facebook page illustrating how the Syrian government has “brutally beat up” individuals, the page has 776,173 “likes” as of April 18, 2013).

¹¹¹ SHAAM NEWS NETWORK, <http://shaam.org/> (last visited Apr. 18, 2013) (a news outlet highlighting violence in cities around Syria).

¹¹² AL-INSAN, <http://al-insan.ca/2012/04/03/the-syrian-uprising-and-the-counter-revolution/> (last visited Apr. 13, 2013).

¹¹³ SYRIAN OBSERVATORY FOR HUMAN RIGHTS, <http://syriahr.com/en/> (last visited Apr. 18, 2013) (“documenting and criticizing all Human Rights violations, filing reports and spreading it across a broad Human Rights and Media range. We cooperate with Human Rights organizations in Syria, the Arab nation and the world with what goes along with our goals and aspirations: Democracy, Freedom, Justice and Equality”).

¹¹⁴ LOCAL COORDINATION COMMITTEES, <http://www.lccsyria.org/en/> (last visited Apr. 18, 2013) (When the Syrian uprising began in March, local committees emerged in towns and cities across Syria. These committees took responsibility for meeting, planning and organizing events on the ground within their own communities).

of Kurdish and tribal leaders, dissident politicians, and the Muslim Brotherhood and 5) army deserters.¹¹⁵ Furthermore, the uprisings have resulted in the formation of two important entities, the Syrian National Council (hereinafter “the Council”) and the Syrian National Coalition (hereinafter “the Coalition”).¹¹⁶ The Council was formed in August of 2011, insisting that the opposition could flourish without violence.¹¹⁷ This hope did not last long; in October of 2011, members of the Council feared that the Syrian opposition would develop into a Libya-type military operation.¹¹⁸ The Council’s spokeswoman Bassma Kodmani, stated in an interview with a Turkish news outlet, that “in Syria, the majority is concerned that the price of violent opposition is very high; the majority know that there are long-term consequences. Nobody wants a war; nobody in the opposition wants to see a bombed Damascus.”¹¹⁹ The Council’s fears came true rather quickly.

A little over a year after the formation of the Council, the Coalition was established, electing Moaz al-Khatib, a geophysicist from Damascus, as its President. Immediately following the formation of the Coalition, members of the Council joined, and now hold 22 of the 63 seats.¹²⁰ More recently, on March 19, 2013, the Coalition elected Ghassan Hitto, a former Kurdish-US businessman who was born in Damascus, to serve as prime minister of its interim government. Along with the Council, which makes up a majority, the Coalition also includes

¹¹⁵ See GELVIN, *supra* note 47.

¹¹⁶ Bassma Kodmani, *In Fight Against Assad, Syrian Opposition Looks for its Own Model of Revolution*, TODAY’S ZAMAN (Oct. 28, 2011) http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=261271.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Syria crisis: Arab League Welcomes New Opposition Bloc*, BBC.COM (Nov. 13, 2012), <http://www.bbc.co.uk/news/world-middle-east-20307668>; *Composition de la « Coalition nationale des Forces de la Révolution et de l’Opposition Syrienne »*, LEMONDE.FR (Nov. 12, 2012), <http://syrie.blog.lemonde.fr/2012/11/12/composition-de-la-coalition-nationale-des-forces-de-la-revolution-et-de-lopposition-syrienne/>.

representation from groups such as, the Kurdish National Council,¹²¹ Syrian Scholars Association, Local Council Leaders,¹²² Turkmens, national figures, and other lesser organizations. Although there is a wide range of representation in the Coalition, divisions among certain groups remain. For example, the Kurdish Democratic Union Party, “a party that controls much of Syria’s Kurdish region rejected the new opposition coalition, highlighting the deep divisions still remaining between the many Syrian armed groups 20 months into the uprising against President Bashar Al Assad.”¹²³

On the ground in Syria the logistics are not as clear. For example, the Free Syrian Army (FSA) claims to be the “main opposition army group in Syria, composed of defected Syrian Armed Forces.”¹²⁴ The organization further claims that it rose up against Assad because its members found it impossible to stay silent, while the regime continued to kill its own people.¹²⁵ Despite its quest for justice, the FSA has been accused by the United Nations of committing war crimes, which has also accompanied claims that the FSA has expelled Christians from cities such as Homs.¹²⁶ To further complicate the nature of the opposition, other opposition forces have taken hold of cities in Syria. The al-Nusra Front, recently declared a terrorist organization by the

¹²¹ *The Kurdish National Council in Syria*, CARNEGIE MIDDLE EAST CENTER (Feb. 15, 2012), <http://carnegie-mec.org/publications/?fa=48502> (“The Kurdish National Council in Syria (KNC) was formed on October 26, 2011, in Erbil, Iraq, under the sponsorship of Massoud Barzani, the president of the Kurdistan Regional Government of Iraq. The formation of the KNC as an umbrella opposition group to the Assad regime closely followed the establishment of the Syrian National Council (SNC), the main umbrella opposition group in exile, in the same month. Relations between the Syrian National Council and the KNC have been uneasy from the outset. Syrian National Council chairman Burhan Ghalioun rejected the KNC’s key demand for federalism in a post-Assad Syria, calling it a “delusion.” In December 2011, the Syrian National Council offered to recognize the Kurds as a distinct ethnic group in the new constitution and to resolve the Kurdish issue through “the elimination of oppression, compensating victims, and recognizing Kurdish national rights within a Syria of united land and people.” However, talks between Ghalioun, KNC head Abdul Hakim Bashar, and Barzani in Erbil in January 2012 ended in an impasse”).

¹²² See LOCAL COORDINATION COMMITTEES, *supra* note 114.

¹²³ *Syria Kurdish Leader Rejects New Coalition*, GULFNEWS.COM (Nov. 21, 2012), <http://gulfnews.com/news/region/syria/syria-kurdish-leader-rejects-new-coalition-1.1107985>.

¹²⁴ Free Syrian Army, <http://www.free-syrian-army.com/en/about-us/> (last visited Apr. 18, 2013).

¹²⁵ *Id.*

¹²⁶ *Christians Being Targeted by Armed Islamist Gangs*, AGENZIA FIDES (Mar. 30, 2013), <http://www.fides.org/en/news/31308?idnews=31308&lan=eng>.

US State Department,¹²⁷ is also an acting agent within Syria. The relationship between al-Nusra Front and the FSA is murky; however, recently it seems the FSA has attempted to separate itself from the radical Islamist group.¹²⁸ These attempts, however, do not alleviate concerns that the al-Nusra will take control of swaths of Syrian territory. The radical organization issued a YouTube video in March of 2013, stating in part:

The US Government are a bunch of lying lowlifes who only get involved in the Syrian Uprising in order to prolong the Conflict and to maintain a Stalemate and continuation of the Violence in order to ensure that Syria is completely destroyed by the time that Assad is inevitably overthrown. This destruction of Syria serves the needs and desires of the US Imperialists and the Zionist Occupiers of Palestine.¹²⁹

Of course, there are “‘bad’ Syrian rebels and ‘good’ ones;”¹³⁰ however, the issue surrounding al-Nusra Front’s involvement is not whether the group is comprised of “‘good” or “‘bad” Syrians, but rather whether the group is aligned with the interests of the main opposition. In cities such as Aleppo, al-Nusra Front “‘is widely identified as the leading force behind the Hayaa al-Sharia, which loosely translates as the Sharia Authority.”¹³¹ The organization has implemented Sharia law and has begun to punish individuals for violating it; one such incident occurred recently in the city of Aleppo, where Wael Ibrahim, a veteran activist, had tossed aside a banner inscribed with the Muslim declaration of faith.¹³² Ibrahim stated in an interview, with an independent senior editor at a Syrian news agency, that “‘Nusra arrested me on the charge of

¹²⁷ *Terrorist Designations of the al-Nusrah Front as an Alias for al-Qa’ida in Iraq*, U.S. STATE DEPARTMENT (Dec. 11, 2012), <http://www.state.gov/r/pa/prs/ps/2012/12/201759.htm>.

¹²⁸ Martin Chulov, *Syria Crisis: Al-Qaida Fighters Revealing Their True Colours, Rebels Say*, THE GUARDIAN (Jan. 17, 2013, 11:27 AM), <http://www.guardian.co.uk/world/2013/jan/17/syria-crisis-alqaida-fighters-true-colours>.

¹²⁹ *Syrian Rebels Stand United With Jabhat al Nusra Against US Imperialist Threats and Schemes 3-19-13*, YOUTUBE (Mar. 19, 2013), http://www.youtube.com/watch?v=b9_bYOBecBI.

¹³⁰ Arwa Damon and Tim Lister, *U.S. Branding of Al-Nusra as Terrorists May Have Unintended Consequences*, CNN.COM (Dec. 11, 2012), <http://www.cnn.com/2012/12/11/world/meast/syria-terror-group-explainer>.

¹³¹ *Id.*

¹³² رمي أبو مريم لرايات اسلامية بمظاهرة بستان القصر, YOUTUBE (Feb. 13, 2013), http://www.youtube.com/watch?v=j7nL_EVpP1c; see also حلب بستان القصر 2013-2-11, YOUTUBE (Feb. 11, 2013), <http://www.youtube.com/watch?v=Xvi2dKCxS-Q>.

insulting Islam. They beat me up and detained me for hours, then released me when word of my arrest got out. But they warned me to not repeat the offence, and said I was a heretic who should be punished.”¹³³ It is unclear how many “Ibrahims” there are across Syria’s rebel controlled territories or how many more there will be, as long as organizations such as al-Nusra retain control. Stories, such as Ibrahim’s, give credence to the US’s decision not to arm the rebels; not only is it difficult to determine who the rebels are, it is almost impossible to understand the impact they will have on a post-Assad Syria. A *New York Times* article published on October 14, 2012 indicates that most of the arms shipped to the Syrian rebels are falling into the hands of hardline Islamic jihadists.¹³⁴ The article quotes an American official who states, “the opposition groups that are receiving most of the lethal aid are exactly the ones we don’t want to have it.”¹³⁵ It is fair to say that the US does not have a clear understanding of the opposition; the recognition of the Syrian National Coalition as the legitimate representative of the Syrian people does not conform to the realities on the ground. This murky relationship between the opposition forces in and outside of Syria has prompted the US to refrain from sending lethal aid to the rebels. However, the US has remained firm in its non-lethal aid commitment; a commitment that nevertheless, poses significant problems.

C. US Support of the Opposition

The US has supported the opposition in several ways, the most prominent being the formal recognition of the Syrian National Coalition. Beginning as early as March 25, 2011, the Obama administration issued a strongly-worded statement condemning Syria’s brutal repression

¹³³ Mohammed Sergie, *The Interview: An Unarmed Activist Who’s Challenging Aleppo’s Rebels*, SYRIA DEEPLY (Mar. 18, 2013), <http://beta.syriadeeply.org/2013/03/interview-unarmed-activist-challenging-aleppos-rebels/>.

¹³⁴ David E. Sanger, *Rebel Arms Flow Is Said to Benefit Jihadists in Syria*, NYTIMES.COM (Oct. 14, 2012), <http://www.nytimes.com/2012/10/15/world/middleeast/jihadists-receiving-most-arms-sent-to-syrian-rebels.html?pagewanted=all>.

¹³⁵ *Id.*

of the demonstrations; however, it was clear that there would be no US involvement as there was in Libya.¹³⁶ On April 29, Obama issued Executive Order 13572 which imposed sanctions on certain Syrian government officials and government related entities responsible for human rights violations in Syria.¹³⁷ On May 18, the US issued sanctions freezing the assets of President Assad, the Syrian vice-president, and other high-ranking officials; the EU followed suit.¹³⁸ In July of 2011, Obama issued a statement concerning Assad's loss of legitimacy and his inability to implement much needed reform.¹³⁹ The president eventually issued a forceful statement urging Assad to "step aside."¹⁴⁰

It was this series of events that led to the withdrawal of US Ambassador Robert Ford in October of 2011.¹⁴¹ Ford indicated in a hearing before the House Foreign Affairs Committee that "the US continues to give the Syrian opposition non-lethal aid."¹⁴² Ford outlines three ways in which this non-lethal aid has been administered: 1) providing support to prevent al-Qaeda influence, 2) helping national and local opposition leaders provide vital services, and 3) supporting a unified, inclusive, and effective civilian leadership.¹⁴³ The ambassador concluded by stating: "we look forward to working with Congress as we seek to support the needs of the Syrian people in their struggle to create a free, stable, and democratic Syria."¹⁴⁴ Unfortunately for the US, the inconsistent nature of the opposition, as noted above, has proven to be an obstacle on the road to a "democratic" Syria.

¹³⁶ See LESCH, *supra* note 107, at 151.

¹³⁷ Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria, 60 Fed. Reg. 24,787 (May 3, 2011), available at <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/13572.pdf>

¹³⁸ See LESCH, *supra* note 107.

¹³⁹ *Id.* at 156.

¹⁴⁰ *Id.* at 160.

¹⁴¹ Anthony Shadid, *U.S. Ambassador to Syria Leaves Damascus Amid Threats to Safety*, NYTIMES.COM (Oct. 24, 2011), <http://www.nytimes.com/2011/10/25/world/middleeast/us-ambassador-to-syria-leaves-damascus-amid-threats-to-safety.html>.

¹⁴² *Crisis in Syria: The U.S. Response*, U.S. DEP'T OF STATE (Mar. 20, 2013), <http://www.state.gov/p/nea/rls/rm/2013/206455.htm>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

Numerous individuals within the US government have called on President Obama to take steps to arm the Syrian rebels. For example, Congressman Eliot Engel introduced legislation on March 18, 2013, giving President Barack Obama the authority to provide rebels in Syria with lethal equipment.¹⁴⁵ Engel told NBC, “I think the Free Syrian Army needs help. We know who they are. And I think it's time that we make that move.”¹⁴⁶ The question remains: Does the Obama administration truly understand the intricate nature of the opposition forces? One could argue that if the US had a good sense of the current Syrian ground war, action would have been taken already; it has been two years since the uprisings began and there has been no action. The US knows that arming the rebels or taking any military action against the Syrian government would cause an escalation in violence and instability in the region. Furthermore, the lack of unification amongst the rebels gives rise to serious uncertainty concerning a post-Assad Syria. Not only would the US’s actions in Syria cause serious instability in the region, it would also violate international law. The following sections will outline regime change within the context of international law, which will be used to determine whether a US-led regime change in Syria would constitute illegal intervention.

Part IV: International Law and Regime Change

A. The United Nations

Article 2 of the United Nations Charter includes the following language: “the organization [the UN] is based on the principle of the sovereign equality of all its Members.”¹⁴⁷ Furthermore, Article 2 indicates that “all Members shall refrain in their international relations from the threat or use of *force* against the territorial integrity or political independence of any

¹⁴⁵ Kevin Liptak, *Congressman Introduces Bill Supporting Arming Syrian Rebels*, CNN.COM (Mar. 18, 2013, 1:15 PM), <http://politicalticker.blogs.cnn.com/2013/03/18/congressman-introduces-bill-supporting-arming-syrian-rebels/>.

¹⁴⁶ *Id.*

¹⁴⁷ U.N. Charter art. 2.

state.”¹⁴⁸ The General Assembly’s *Declaration on the Principles of International Law*, the key interpretation of the main principles of the UN Charter, indicates that the term “force” should be limited to instances of armed force.¹⁴⁹ The term “threat of force” as used in Article 2 suggests that an open and direct threat of force to compel another state to give up territory or yield considerable political concessions is also to be considered unlawful under Article 2(4).¹⁵⁰ Furthermore, in accordance with this principle of sovereign equality, *The Declaration* states in part, 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.¹⁵¹

The Deceleration also indicates, that:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.¹⁵²

The UN Charter provides a single exception to the law of non-intervention. Article 42 of the UN Charter allows intervention in circumstances where “such action by air, sea, or land forces may be necessary to maintain or restore international peace and security.”¹⁵³ Furthermore, Article 39 grants the UN Security Council the power to determine, “the existence of any threat to

¹⁴⁸ U.N. Charter art. 2, para. 4 (emphasis added).

¹⁴⁹ Müge Kinacıoğlu, *The Principle of Non-Intervention at the United Nations: The Charter Framework and the Legal Debate*, 10 PERCEPTIONS 15, 17-18 (Summer 2005), available at <http://sam.gov.tr/wp-content/uploads/2012/01/Muge-Kinacioglu.pdf>.

¹⁵⁰ *Id.* at 18.

¹⁵¹ G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028 (Oct. 24, 1970).

¹⁵² *Id.*

¹⁵³ U.N. Charter art. 42.

the peace, breach of the peace, or act of aggression and shall make recommendation.”¹⁵⁴ The Security Council has full discretion in determining what constitutes a breach of the peace, act of aggression, or threat to the peace. In the past these elements have extended to domestic affairs, such as civil wars, violation of human rights, or the existence of repressive governments.¹⁵⁵ Security Council military interventions can often lead to regime change; however, regime change should never be the explicit aim or motive of Security Council mandates for intervention.¹⁵⁶ The most recent example of UN mandated intervention is the military actions taken in Libya in 2011. It is important to note that the Article 42 exception to non-intervention is confined to actions taken by the Security Council, not by individual nations.¹⁵⁷ The principle concerning intervention as a means of curtailing human rights violations, commonly known as the Responsibility to Protect (R2P), will be discussed in greater detail below. First, let’s take a look at the law governing intervention, specifically the law as interpreted by the International Court of Justice.

B. The International Court of Justice

The International Court of Justice has issued several rulings concerning the issue of non-intervention. Cases involving the law of non-intervention include, *The Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v. People’s Republic of Albania)*, *Nicaragua v. United States*, and *Democratic Republic of the Congo v. Uganda*.

In the *Corfu Channel Case*, the first case ever brought before the ICJ, the United Kingdom sued Albania, demanding compensation for the destruction of two British destroyers

¹⁵⁴ U.N. Charter art. 39.

¹⁵⁵ See Kinacıoğlu, *supra* note 149.

¹⁵⁶ Payandeh, *supra* note 55, at 369.

¹⁵⁷ See U.N. Charter art. 42; U.N. Charter art. 39.

along the Corfu Channel.¹⁵⁸ The Court certified two questions: 1) was Albania responsible for the explosion that destroyed the British ships and 2) did the United Kingdom violate the sovereignty of the Albanian People's Republic by conducting mine sweeping operations in the Corfu Channel.¹⁵⁹ Focusing on the second question, Great Britain argued that its intervention in Albania was meant to secure possession of evidence, in order to submit it to an international tribunal and thus facilitate its task.¹⁶⁰ The Court rejected this defense and stated that it "can only regard the alleged right of intervention as the manifestation of a policy of force, such as has in the past, given rise to most serious abuses and such as cannot... find a place in international law."¹⁶¹ Furthermore, the Court reasoned that "between independent States, respect for territorial sovereignty is an *essential foundation* of international relations."¹⁶² The *Corfu Channel Case* stands for principles of non-intervention and the importance of maintaining and preserving nations' sovereignty.

In *Nicaragua v. United States*, the ICJ ruled in favor of Nicaragua on the issue of whether or not the United States violated international law by aiding the *contras*.¹⁶³ The Court ruled in part that:

The United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State.¹⁶⁴

The Court further noted:

¹⁵⁸ See EUROPE SINCE 1945: AN ENCYCLOPEDIA. A-J 224 (Bernard A. Cook ed., 2001) ("The Corfu Channel, the stretch of water that divides the Greek island of Corfu from the southern coastline of Albania, is between one and six miles wide. These waters were extensively mined by the Axis Powers in World War II").

¹⁵⁹ The Corfu Channel Case, 1949 I.C.J. 4, 6 (Apr. 9), available at <http://www.icj-cij.org/docket/files/1/1645.pdf>.

¹⁶⁰ *Id.* at 34.

¹⁶¹ *Id.* at 35.

¹⁶² *Id.* (emphasis added).

¹⁶³ See *supra* p. 4.

¹⁶⁴ *Nicar. v. U.S.*, 1986 I.C.J. at 123.

By laying mines in the internal or territorial waters of the Republic of Nicaragua during the first months of 1984, the United States of America has acted... in breach of its obligations under customary international law not to use force against another State, not to intervene in its affairs, not to violate its sovereignty and not to interrupt peaceful maritime commerce.¹⁶⁵

The ICJ awarded compensation to Nicaragua; however, the US refused to comply.

Nicaragua brought the matter before the UN Security Council demanding that all states adhere to international law; the US rejected this notion and vetoed the draft resolution.¹⁶⁶ In a final attempt to require compliance, Nicaragua submitted their case before the General Assembly, which on November 3, 1986 passed a resolution “urgently calling for full and immediate compliance with the Judgment of the International Court of Justice of 27 June 1986 in the case of ‘Military and Paramilitary Activities in and against Nicaragua’ in conformity with the relevant provisions of the Charter of the United Nations.”¹⁶⁷ The US refused to comply, indicating an unwillingness to conform to international customary law concerning non-intervention.

In a speech to the American people President Reagan called funneling aide to the *contras* “a cause of freedom in Central America and the national security of the United States.”¹⁶⁸ Reagan concluded this speech by asking the American people to “give them, give me, your support; and together, let us send this message to the world: that America is still a beacon of hope, still a light unto the nations.”¹⁶⁹ The reasons behind intervention in Nicaragua relied heavily on the importance of preserving democracy in foreign nations, protecting the Nicaraguan people from “tyranny” and preventing the spread of a hostile ideology, specifically Communism. It is not difficult to see the similarities between motives for intervention in Nicaragua and those

¹⁶⁵ *Id.* at 124.

¹⁶⁶ U.N. SCOR, 2718 mtg. at 51, U.N. Doc. S/PV.2718 (Oct. 28, 1986).

¹⁶⁷ *Id.*

¹⁶⁸ Ronald Reagan, Address to the Nation on United States Assistance for the Nicaraguan Democratic Resistance (June 24, 1986), *available at* <http://www.reagan.utexas.edu/archives/speeches/1986/62486b.htm>.

¹⁶⁹ *Id.*

in Libya (and potentially Syria); the overthrow of “tyrannical” leaders like Qaddafi and Assad, the establishment of democracy and the destruction of hostile ideologies, in these cases dictatorships.

Finally, in the *Democratic Republic of the Congo v. Uganda* the ICJ ruled that “Uganda by engaging in military activities against the DRC on the latter’s territory, [specifically] by occupying Ituri¹⁷⁰ and by actively extending military, logistic, economic and financial support to irregular forces... violated the principle of... non-intervention.”¹⁷¹ The Court reasoned that even though Uganda’s objectives did not include the overthrow of the government, they nevertheless violated international law by “securing towns and airports for reason of its perceived security needs, and in support of the parallel activity of those engaged in civil war.”¹⁷² The Court recalling the decision it made in *Nicaragua v. United States*, stated that “the principle of non-intervention prohibits a State to intervene, directly or indirectly, with or without armed forces, in support of an internal opposition in another State.”¹⁷³

A US-led regime change, without the support of the UN Security Council, would clearly violate international law. According to the cases cited above, intervening in the internal affairs of a country is a clear violation of customary international law and the UN Charter. The civil war in Syria is most certainly an internal struggle between the Assad regime and rebel forces; although some foreign nations have a stake in the matter, the struggle is currently confined to Syria’s borders. Similar to the situation in Nicaragua, the United State would be violating Syria’s sovereignty by intervening in “the affairs of another State.”

It is important to note that, with the Security Council’s approval, intervention for the sake

¹⁷⁰ This is a disputed province in the northeastern part of the Democratic Republic of the Congo.

¹⁷¹ Case Concerning Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 I.C.J. 168, 280 (Dec. 19), available at <http://www.icj-cij.org/docket/files/116/10455.pdf>.

¹⁷² *Id.* at 227.

¹⁷³ *Id.* at 227.

of preventing, or ending, “crimes against humanity, war crimes, ethnic cleansing and genocide” would be legal under international law. This principle, known as the “Responsibility to Protect” (R2P), was utilized by the Security Council to invade Libya; the principle allows the Security Council to use its power to “maintain or restore international peace and security” to change a regime, all in the name of human rights.¹⁷⁴ The next section will illustrate the shortcomings of the principle of R2P, because regardless of its international legality it poses numerous socio-political consequences, specifically within the context of the “Arab Spring.”

C. R2P

R2P, emerged in 2005 as a set of principles based on the idea that sovereignty is not merely a right, but a responsibility.¹⁷⁵ The 2005 World Summit outlines 178 points concerning the role of the United Nations and sovereign States in the international community. Paragraph 138 states in part that “each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”¹⁷⁶ The most crucial aspect of this declaration can be found in the following paragraph,

We are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.¹⁷⁷

Effectively, the General Assembly has set forth an ultimatum; either States take steps to protect all of their citizens or the Security Council will take action. The UN Secretary General’s High-Level Panel on Threats, Challenges and Change put forth list of criteria for intervention in R2P cases: 1) Seriousness of threat, 2) Proper Purpose, 3) Last Resort, 4) Proportional Means, and 5)

¹⁷⁴ See *supra* note 153.

¹⁷⁵ See U.N. GAOR, 59th Sess., U.N. Doc. A/60/L.1 (Sept. 15, 2005).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

Balance of Consequences.¹⁷⁸ R2P has been faced with considerable criticism since its inception. For example, when, in 2007, Secretary-General Ban Ki-moon decided to appoint a “Special Adviser on the Responsibility to Protect”, nations such as Cuba, Nicaragua, Egypt, Iran and Venezuela expressed deep concerns.¹⁷⁹ “The criticism was clearly aimed at the attempt to embed the ‘responsibility to protect’ in the institutional framework of the United Nations without prior consultation of the General Assembly.”¹⁸⁰

One prominent example of the use of R2P occurred on June 10, 1999 when the UN Security Council issued Resolution 1244, “deciding on the deployment in Kosovo, under UN auspices, of international civil and security presences, with appropriate equipment and personnel as required.”¹⁸¹ The Security Council also “authorized member States and relevant international organizations to establish the international security presence... with all necessary means to fulfill its responsibility...”¹⁸² The central issue in Kosovo was iterated in Security Council Resolution 1199, which expressed concern over the “flow of refugees into [neighboring] European countries as a result of the use of force in Kosovo as well as by the increasing numbers of displaced persons within Kosovo, and other parts of the Federal Republic of Yugoslavia, up to 50,000.”¹⁸³ Although the UN Security Council expressed numerous concerns over the situation in Kosovo, military actions against Yugoslavia were never taken. Instead, on March 24, 1999, NATO began a bombing campaign against Yugoslavia in an effort “to prevent more human suffering, more repression, more violence against the civilian population of Kosovo . . . [and] to prevent

¹⁷⁸ William Magnuson, *The Responsibility to Protect and the Decline of Sovereignty: Free Speech Protection Under International Law*, 43 VAND. J. TRANSNAT'L L. 255, 274 (Mar. 2010).

¹⁷⁹ Mehrdad Payandeh, *With Great Power Comes Great Responsibility? The Concept of the Responsibility To Protect Within the Process of International Lawmaking*, 35 YALE J. INT'L L. 469, 477 (Summer 2010).

¹⁸⁰ *Id.*

¹⁸¹ S.C. Res. 1244, U.N. Doc. S/RES/1244 (June 10, 1999).

¹⁸² *Id.*

¹⁸³ S.C. Res. 1199, U.N. Doc. S/RES/1199 (Sept. 23, 1998).

instability spreading in the region.”¹⁸⁴ The Security Council was bypassed; the US and NATO realized early on that Russia and China would utilize their veto powers to prevent any intervention.¹⁸⁵ Noam Chomsky, in a book entitled *The New Military Humanism: Lessons from Kosovo*, indicates the ambiguity surrounding the principle of R2P, within the context of Kosovo. He states,

The distinction between worthy and unworthy victims is traditional, as is its basis, remote from any moral principle apart from the rights demanded by power and privilege. Washington simultaneously rejects the principles of the Universal Declaration of Human Rights (for unworthy victims, Palestinians and many others) and passionately upholds them (for worthy victims, now Kosovar Albanians). Though readily understood in terms of power interests, the distinctions, when noticed at all, are portrayed as "double standards" or "mistakes" in respectable commentary.¹⁸⁶

The Kosovo War indicates to the international community that there is some sort of “responsibility to protect,” however, it raised an important question: “With whom does that responsibility lie?”

The Civil War in Libya is probably the most striking example of the UN’s implementation of the principle of R2P. In response to growing concerns of human rights violations, the UN Security Council issued Resolution 1973, imposing a no-fly zone over Libya and authorizing all necessary means to protect civilians and civilian-populated areas, except for a "foreign occupation force.”¹⁸⁷ The Security Council strategically included verbiage that would prevent any type of occupation force; making it rather difficult to determine the extent to which ground forces could be used.¹⁸⁸ The Security Council utilized the principle of R2P to protect civilians and end the conflict; the outcomes of this intervention ultimately included regime

¹⁸⁴ Ved P. Nanda, *NATO's Armed Intervention in Kosovo and International Law*, 10 USAFA J. LEG. STUD. 1, 8 (1999/2000).

¹⁸⁵ *Id.* at 10.

¹⁸⁶ NOAM CHOMSKY, *THE NEW MILITARY HUMANISM: LESSONS FROM KOSOVO* 19 (2002).

¹⁸⁷ S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011). The use of force may not be excessive and it must bear a relation to the objectives of the resolution. *See* Payandeh, *supra* note 55, at 385.

¹⁸⁸ *Id.*

change. This presents legitimate concerns, specifically “What distinguishes R2P from regime change?”

UN Security Council Resolution 1970 called for steps “to fulfill the legitimate demands of the population [of Libya].”¹⁸⁹ This same resolution put in place a travel ban and asset freeze specifically aimed at Qaddafi, his family, and other high-ranking officials of the regime.¹⁹⁰

Furthermore, Resolution 1973, mentioned above, fails to elaborate on the admissible means that may be employed in order to implement and achieve the goals surrounding R2P intervention.¹⁹¹

Whether or not the goals put forth under Resolution 1973, were in fact to overthrow Qaddafi or merely to protect the citizens of Libya, is of no consequence. Ultimately, protecting the population necessitated a regime change; this was, after all, one of the “legitimate demands of the population.” Some would suggest that the purpose of R2P is to “offer a middle ground between impunity for oppression and violent overthrow by strongly supporting the state to find its own way to end the oppression, backed up by outside pressure short of regime change.”¹⁹²

This may in fact be the primary motive for using the principle of R2P, specifically, protecting civilians without overthrowing their government. However, it seems clear that once R2P is implicated the resulting regime change is inevitable. A request on the part of the international community to promote R2P and reject regime change constitutes an unreasonable request on the part of intervening forces and the regimes they target.

R2P in its very nature, encompasses more than a mere in-and-out operation, but rather also fosters a responsibility to prevent, react and rebuild;¹⁹³ the principle itself, inadvertently

¹⁸⁹ *Id.* at 387.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*; S.C. Res. 1973, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

¹⁹² Stephen P. Marks & Nicholas Cooper, *Part II Human Rights: Law, Policy, and Implementation: The Responsibility to Protect: Watershed or Old Wine in a New Bottle?*, 2 JINDAL GLOBAL L. REV. 86, 94 (Sept. 2010).

¹⁹³ *Id.* at 95.

calls for regime change. The means taken to respond to war crimes in Libya leave the international community questioning whether the rules of sovereignty remain a central component of international relations. There remains a broad consensus that “views forcible regime change of tyrannies into regimes of democratic rule as a per se illegitimate interference into the affairs of other nations, a position likewise conceptualized as foundational in the United Nations Charter.”¹⁹⁴

If the US decides to invoke the principle of R2P and invade Syria, the same question would arise: Is the goal of intervention in fact aimed at protecting the population or changing the regime? An article written by Gareth Evans, former president of the International Crisis Group, outlines the importance of properly implementing the principle of R2P.¹⁹⁵ Evans points out that the poor and inconsistent argument that the invasion of Iraq was based on Saddam Hussein’s record of tyranny over his own people, “almost choked at birth” the principle of R2P.¹⁹⁶ Evans offers sound advice concerning the use of force, he states that,

What is necessary, and I believe rather more realistically achievable, is for there to be much more attention paid – not only in academic discourse but in actual operational decision-making – to the group of principles which have to be satisfied if any decision to use military force is to be not just legal, but *legitimate*.¹⁹⁷

A legitimate use of force on the part of the Security Council would include an application of threshold criteria, an analysis of the weight of the evidence and understanding of the full range of threats.¹⁹⁸

In Libya, “measures that were employed in order to keep the Qaddafi regime from

¹⁹⁴ Haider Ala Hamoudi, *Arab Spring, Libyan Liberation and the Externally Imposed Democratic Revolution*, 89 Denv. U.L. Rev. 699, 700 (2012).

¹⁹⁵ Gareth Evans, *When is it Right to Fight?*, 46 SURVIVAL 59 (Autumn 2004).

¹⁹⁶ *Id.* at 63.

¹⁹⁷ *Id.* at 74 (emphasis added).

¹⁹⁸ *Id.*

attacking the civilian population at the same time contributed to the actions of the opposition against the regime.”¹⁹⁹ Some scholars argue, however, that R2P was properly applied in Libya, “as no great power had special interests or close relationships with the Qaddafi regime.”²⁰⁰ Furthermore, the operation was feasible on the part of the intervening coalition and supported by the United Nations Security Council.²⁰¹ Syria, on the other hand, poses numerous logistical problems that Libya did not, including “daunting operational challenges and a more complex ethnic, tribal, and geostrategic environment.”²⁰² Clearly, logistics should not prevent the promotion of human rights; however, they should be considered, specifically in an environment where intervention may do more harm than good. A regime change in Syria that results in the institution of an Islamist government will pose a threat to minority groups, including Christians and Alawites.²⁰³ An internationally recognized, legal regime change does not ensure the institution of a “democratic” regime.²⁰⁴ Furthermore, Syria’s foreign policy initiatives, under a new regime, may work against the interests of peace in the region; it would be hard pressed to assume that a new Islamist regime in Syria would retain stable, albeit unfriendly, relations with Israel.

Currently, R2P is not being utilized by the Security Council to determine what actions to take in Syria, and it is clear that unilateral intervention in Syria would violate the international law of nonintervention. If, however, an interventionist coalition was formed under the auspices

¹⁹⁹ Payandeh, *supra* note 55, at 389.

²⁰⁰ Silva D. Kantareva, *The Responsibility to Protect: Issues of Legal Formulation and Practical Application*, 6 INTERDISC. J. HUM. RTS. L. 1 (2011-2012).

²⁰¹ *Id.*

²⁰² *Id.* at 18.

²⁰³ See Dominic Evans, *Syria Says Two Bishops Kidnapped by Rebels*, REUTERS (Apr. 22, 2013), <http://www.reuters.com/article/2013/04/22/us-syria-crisis-bishops-idUSBRE93L13120130422> (“SANA news agency said the Syriac Orthodox and Greek Orthodox Archbishops of Aleppo, Yohanna Ibrahim and Paul Yazigi, were seized by ‘a terrorist group’ in the village of Kfar Dael as they were ‘carrying out humanitarian work’”).

²⁰⁴ See Ala Hamoudi, *supra* note 194, at 729.

of the Security Council utilizing the principle of R2P, serious issues concerning the means and ends of R2P would come to the forefront of international relations law. Furthermore, intervention in Syria as a result of R2P would result in serious ethno-political consequences, including a rise in sectarian violence and regional instability.

Part V: The Ethno-Political Consequences Associated with a Forceful Regime Change in Syria

The Christian Science Monitor published an article in May of 2012, illustrating the differences between Syria and Libya. First, Syria is much larger than Libya in terms of population and size (compare Libya's population of 6.4 million to Syria's 20.8 million). Second, Qaddafi lost the eastern half of his country within days of the start of the uprisings; unlike Assad who retains control of the capital and other strategic locations across the country.²⁰⁵ Third, Syria has a much larger, more sophisticated and loyal military, not to mention that most of the fighting occurs within densely populated cities.²⁰⁶ Furthermore, Syria stands as a strategic player in the Middle East peace process; Syria has taken steps towards mending the rivalry between Fatah and Hamas, the rival political parties within the Palestinian territories.²⁰⁷ Most importantly, the government of Syria has no ties with al-Qaeda and has repressed other Muslim fundamentalist groups (such as the Muslim Brotherhood).²⁰⁸ President Assad is not another "mad dog" of the Middle East and the international community retains an interest in preserving stability within Syria.

Another stark difference is the nature of the opposition. The rebels in Syria have no clear

²⁰⁵ Dan Murphy, *You Can't Say it Enough: Syria is Really Different From Libya*, THE CHRISTIAN SCIENCE MONITOR (May 31, 2012) <http://www.csmonitor.com/World/Backchannels/2012/0531/You-can-t-say-it-enough-Syria-is-really-different-from-Libya>.

²⁰⁶ See *id.*; *Syria- Army Equipment*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/syria/army-equipment.htm> (last modified Mar. 20, 2012).

²⁰⁷ See Kurth, *supra* note 91, at 274.

²⁰⁸ *Id.* at 275.

mission or character; there is a legitimate fear that the overthrow of Bashar al-Assad's regime will either, 1) expands sectarian violence, ethnic violence, or both, or 2) result in a takeover by the Syrian Muslim Brotherhood.²⁰⁹ Syria's location also poses several problems for neighboring countries, Lebanon to the west, Iraq to the east and Turkey to the north. The spillover of sectarian violence could lead to an unsettling situation in the Middle East. Furthermore, the future of Syrian-Israeli relations under a post-Assad regime would most likely disintegrate; a regime founded on radical Islamic principles may not maintain a peaceful relationship with this neighbor to the south.²¹⁰

The Washington Institute, an organization aimed at improving Middle East policy, published a report entitled, *Syria After Assad: Heading Toward a Hard Fall?*, which expresses the concerns associated with a post-Assad Syria. The article states,

Because most rebel groups are locally based and highly fragmented and have little if any contact with the opposition in exile, a unitary state with a strong central government is unlikely to emerge from the civil war. The new government will likely face great challenges exerting control over local leaders who fought the regime and delivered rudimentary services to areas they liberated. Rather than surrendering their hard-won gains to some faraway central authority, they might prefer to forge alliances with other local leaders (including members of different ethnosectarian communities) and/or external powers, as occurred during and after Lebanon's civil war.²¹¹

The disunity between the opposition abroad and the rebels at home will surely complicate the formation of a unified government, if Assad were to relinquish power. Furthermore, the status of minority groups, specifically Christians and Alawites, in a post-Assad world would be uncertain and potentially ignite a mass exodus. *The Washington Institute* also points out that the rise of

²⁰⁹ GELVIN, *supra* note 47, at 115.

²¹⁰ *Id.* at 116. Take for example the situation in Egypt after the fall of President Mubarak. In April of 2013, "a number of cross-border attacks have added layers of complexity to an already fraught relationship between Israel and Egypt." See Isabel Kershner, *Militants in Egyptian Sinai Fire Rockets Into Israel but Do No Damage*, NYTIMES.COM (Apr. 17, 2013), http://www.nytimes.com/2013/04/18/world/middleeast/rockets-fired-from-egyptian-sinai-land-in-israel.html?_r=0.

²¹¹ Michael Eisenstadt, *Syria After Assad: Heading Toward a Hard Fall?*, THE WASHINGTON INSTITUTE (Dec. 5, 2012) <http://www.washingtoninstitute.org/policy-analysis/view/syria-after-assad-heading-toward-a-hard-fall>.

Sunni's in Syria may also spark political movements in countries such as Jordan, Iraq, and the West Bank, rocking the "political balance of power in these societies."²¹²

Finally, Professor Reisman, outlines ten guidelines for a successful regime change, Syria falls well outside these guidelines.²¹³ The suggestions include, ensuring a significant amount of domestic and internal support for the regime change, ensuring the individual or elite group that is the target of regime change does not have an effective internal base, and making certain that the costs of a regime change remain low.²¹⁴ The list goes on to recommend that "an acceptable alternative government be readily available and that the UN be responsible or prominently involved;"²¹⁵ two impractical expectations surrounding any military intervention measures in Syria. The time to consider alternative measures is at hand.

Part VI: Proposed Solutions

These alternative measures should be implemented by the United States in lieu of military intervention. First, the US should establish a relationship with the current regime in order to understand the complex nature of the Syrian ethno-political landscape and the importance of maintaining stability in the region. Second, the US should accurately assess and understand the nature of the opposition before declaring its legitimacy. Finally, the US should end its aid to the rebels and urge other nations to follow suit; this aid only has the effect of prolonging the war and causing more death and destruction.

President Obama began his presidency on the right track; rejecting the anti-Syria rhetoric of the Bush administration. In attempting to reignite relations with the Syrian government he appointed the first US Ambassador to Syria in five years. In February of 2010, the United States

²¹² *Id.*

²¹³ Reisman, *supra* note 9, at 524.

²¹⁴ *Id.* at 524.

²¹⁵ *Id.* (The list includes several other guidelines including, having an exit strategy, ensuring short occupation by outside forces, and ensuring United Nations involvement. For an exhaustive comprehensive list, see article).

sent Under-Secretary of State William Burns on visit to Syria to meet with President Assad and improve US-Syrian relations.²¹⁶ In July of 2010 Arlen Specter, a US Senator from Pennsylvania, “had a constructive and in-depth conversation about the formidable challenges facing the region and ways in which the US and Syria can overcome those challenges.”²¹⁷ These examples illustrate that the Obama administration did, at one point, see a need for strong US-Syrian relations; Hillary Clinton at one point was quoted saying, “President Assad is a reformer.”²¹⁸ The Assad regime is facing troubling times; the US should assist the Syrian government in peacefully implementing reform. Of course Assad’s barbaric attacks on civilian populations are inexcusable; however, as presented in this paper, a regime change would have consequences that far outweigh the present turmoil.

Furthermore, concerning the opposition, the US has been quick to recognize the Syrian Coalition as the “legitimate representative of the Syrian people;” however, is this truly the case? With al-Nusra Front and the Muslim Brotherhood on the ground in Syria, it is difficult to believe that the Coalition has control over all the opposition forces. Finally, the US in effect has prolonged the Syrian conflict by providing aid to the rebels. If the US wishes to end the conflict in Syria it should take steps to do so, this would include either taking out Assad (an action that would have long-lasting negative consequences) or relinquishing aid to the rebels and assisting in the speedy restoration of order.

Conclusion

The actions taken by the Assad regime have triggered concern across in the international

²¹⁶ *US Envoy William Burns Says Syria Talks Were Candid*, BBC.COM, http://news.bbc.co.uk/2/hi/middle_east/8519506.stm (last updated Feb. 17, 2010, 15:54 GMT).

²¹⁷ Press Release, Embassy of the United States of America in Damascus, Senator Arlen Specter Met with President Bashar al-Assad (July 8, 2010), available at <http://damascus.usembassy.gov/media/pdf/press-releases-pdf/spector-pr.pdf>.

²¹⁸ Patrick Goodenough, *Syrian President Assad Regarded As a ‘Reformer,’ Clinton Says*, CNSNEWS.COM (Mar. 28, 2011), <http://cnsnews.com/news/article/syrian-president-assad-regarded-reformer-clinton-says>.

community, and rightfully so. The death of tens of thousands of Syrians and the destruction of cities across the country is heart wrenching, especially for those who have lost friends and family members. Regime change, however, is not the answer. Preserving stability in Syria is in the best interests of the US and the region; it is far-fetched to assume that in a post-Assad Syria, American democracy will take hold and flourish. We have seen the consequences of past regime changes and the unwillingness on the part of the US to conform to international law preserving sovereignty. A military intervention in Syria would mean the death of thousands of individuals, the rise of sectarian violence and an unstable Middle East. The negative effects would far outweigh the benefits of deposing a dictator. Lastly, military intervention on the part of the US alone, the Security Council, or NATO would have serious international legal consequences. If intervention for the sake of regime change becomes an international norm, we can bid farewell to the sovereign state and welcome an age of democratic tyranny under the guise of R2P.