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WHEN EXTRALEGAL IS ACCEPTABLE: EMERGING TRENDS IN 21ST CENTURY RECOGNITION OF GOVERNMENTS

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WHEN EXTRALEGAL IS ACCEPTABLE: EMERGING TRENDS IN 21ST CENTURY RECOGNITION OF GOVERNMENTS

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In this paper I ask: whither recognition of governments in 21st century diplomatic practice? To answer, I investigate international responses to eight very recent (2005-present) unconstitutional transfers of power. I examine military coups in Thailand, Mauritania, Honduras and Niger; popular uprisings in Kyrgyzstan and Libya, and secessionist movements in South Ossetia, Abkhazia, and Kosovo. For each case, I trace the cause(s) and execution of the revolt and the international response, focusing particularly on recognition practice.

I suggest that a coup-backed or revolutionary regime will be recognized by the international community only if it was primarily effectuated by civilian (non-military) actors. I note that even “unacceptable” transfers of power will find subsequent validation if at least semi-competitive elections are held. I further suggest that the practice of recognition of governments is neither effective nor problematic as a response to a military coup, is redundant in response to a secessionist movement, and has clear utility as a response to popular uprisings. I ultimately predict that the inexpensive and non-risky nature of recognition will lead to its continued usage among international actors.

I. INTRODUCTION

“We do not covet anything from any nation except their respect.” - Winston Churchill

In a celebrated radio broadcast to occupied France, Winston Churchill sought to reassure French citizens under German occupation that England came to their aid with only the noblest of intentions. Churchill's address evokes a time when nations professed an allegiance to non-intervention and to respect the sovereignty of other states. Under this principle, the character of a sovereign state's government and the nature of that government's rise to power were considered an expression of a sovereign people's will, and not a matter appropriate for international concern. Viewed thus, a democratically elected government and a dictatorship established and maintained by force would be equally valid so long as they exercised effective control over their respective territories. Today, this laissez-faire approach to changes in government has been abandoned by

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1 J.D., Loyola University New Orleans College of Law (2012 Candidate). B.A., Tulane University (2004). The author wishes to express his deep gratitude to Prof. Markus Puder for his valuable insight and guidance, J. Louis Luft III for his diligent assistance, and Vanessa Smith-Torres for her very timely encouragement.

2 Winston Churchill, Prime Minister of the United Kingdom, Radio Broadcast to the French People, October 21, 1940.
many portions of the international community. Many nations and international organizations
demand much more than “respect”, and regarding extralegal regime change, demand adherence
to broad and sometimes vague norms. Central to the enforcing of these norms is the granting or
withholding of recognition.

This paper is concerned principally with the recognition of governments established by
extra-constitutional means. The term “recognition” has been used at International Law to cover a
number of related but not always clearly delineated practices. Stephen Talmon has observed that
the term “recognition of governments” refers to two related processes which typically coincide.
According to Talmon, recognition can mean an “indication of willingness (or unwillingness) on
the part of the recognizing governments to establish or maintain...relations with the government
in question. Alternately, recognition can refer to a subjective statement affirming the legal status
of the government in question. In many circumstances, both meanings of the term will be
appropriate when one government expresses its recognition of another. Recent practice
demonstrates that Talmon's two-fold definition remains largely accurate. Finally, we should note
that recognition is often implicit, that is to say, accomplished through actions such as an
exchange of diplomats, or statements such as a rejection of the legality of the new regime.
Therefore we will look to a variety of statements and actions beyond an express statement with

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3 Although numerous scholars have proposed various classifications, the most commonly accepted division is
between the recognition of states and the recognition of governments.
4 For an extended discussion of the dual nature of recognition of governments see Stephen Talmon, Recognition of
Governments in International Law: With Particular Reference to Governments in Exile, Chapter 1, 21-43
5 Id. at 23.
6 Id. at 29.
7 For a notable counter-example, consider Great Britain's non-recognition of Costa Rica's Tinoco Administration.
Britain refused to recognize the government and refused to enter into relations with them. Nonetheless, Britain
ultimately argued that the Tinoco regime was the legal government of Costa Rica during its administration. Tinoco
Arbitration (United Kingdom v. Costa Rica), 18 AJIL (1924), 147.
8 With the noted caveat that a willingness to establish relations might be better described as a public willingness to
establish relations. See for example the American response to the 2005 coup against Thai prime minister Thaksin
Shinawatra discussed later in this article.
the word “recognition.”

As the “primary units of global order,” states are treated at international law as bearers of sovereignty, and with that, certain rights, obligations, powers, and immunities including: access to State funds abroad, diplomatic and consular status, access to loans, foreign courts, normalized trade relations, the capacity to request assistance, benefits of existing treaty arrangements, and respect in other states of its laws and decrees. Under international law, the government of each state is the institution that can assert these rights and exercise these powers. Recognition from the international community, at the very least, demonstrates that a government attempting to assert such rights and powers will not find its assertions ignored. Because recognition of a government is widely acknowledged to be a discretionary, sovereign, decision of the state doing the recognizing (barring a particularly relevant treaty or international law), the granting (or withholding of) recognition can be used to accomplish political and policy objectives.

This paper proposes to examine international responses to a number of recent unconstitutional transfers of power with a particular focus on recognition. This paper will begin by discussing previous recognition practice with regard to such transfers. Eight such events will be examined, all of which have occurred in the last seven years, in the hopes that when studied in toto, a picture of contemporary international recognition practice will emerge. These events will be divided into three broad categories: military coups, popular uprisings, and secessionist movements. Military coups involve a displacement of the current regime and the installation of a new regime either by or with substantial and conspicuous involvement from the military or

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security forces of the state. Popular uprisings refer to the displacement of a government that is led and prosecuted primarily by civilian forces. By secessionist movement, I mean any movements by the population of a particular territory that is part of a larger state to declare independence and fully secede from that state.

For each event, this article will trace the historical origin of the conflict and discuss the historical facts of the transfer itself. Next, this article will examine the international response, focusing most prominently on the decision of international actors (both other states and prominent international organizations) to withhold or grant recognition, with other significant responses being discussed as well. Then, this article will attempt to synthesize these cases and determine if there are coherent trends or patterns in contemporary recognition practice. Finally, this article suggests whether contemporary practice should be continued or modified in some way.

II. RECOGNITION PRACTICE HISTORICALLY

In one sense, recognition can be seen as one state's judgment of the legitimacy of another government. Traditionally, in choosing to recognize new governments, the international community has paid scant attention to the manner in which regimes are chosen.\textsuperscript{13} The traditional viewpoint was derived from the hypothesis that whenever effective control of a territory is attained by an organization, it necessarily reflects the self-determination of the population of that territory. Since a sovereign population's will could manifest itself in a number of ways, the means with which the controlling regime established control would be irrelevant, so long as control had been established.\textsuperscript{14} This view is known as the “effective control doctrine.” As the

\textsuperscript{13} Sean D. Murphy, Democratic Legitimacy and the Recognition of States and Governments, in Democratic Governance and International Law, 123-154 (Gregory H. Fox and Brad R. Roth, eds., Cambridge University Press 2000).

\textsuperscript{14} Brad R. Roth, The Enduring Significance of State Sovereignty, 56 Fla. L. Rev. 1017, 1023-1024 (2004).
United Nations General Assembly (UNGA) once put it, “effective control” or, authority over all or nearly all of the national territory, “has constituted...the internationally authoritative criterion for an apparatus's standing as the state's government.”\(^{15}\) Besides providing a reasonably clear test for determining statehood, the effective control doctrine enjoyed popularity among many regimes, since most governments object to interference from outsiders.

Applying the effective control doctrine to a coup or secession movement, perpetrators in either case could expect recognition (and thus legitimacy) upon succeeding the trial by ordeal of establishing control, since there was “neither a political nor legal basis” for challenging the legitimacy of an ascendant authoritarian regime on the basis of their means of establishing control.\(^{16}\) However, bolstered by an international reordering of priorities in the wake of the cold war, some scholars, notably Thomas Franck, began arguing that democracy must be a criterion of governmental legitimacy.\(^{17}\) This strand of thinking became known as the “democratic entitlement school” or the “democratic entitlement theory.” Whereas the effective control doctrine posited an essentially domestic basis for legitimacy, democratic entitlement theory argued that governments must meet international standards.\(^{18}\) In the last two decades, this theory has been ascendant, as democratic norms “have begun to affect...the criteria for recognition of both states and governments.”\(^{19}\) For example, in 1992 the European Political Cooperation (the foreign policy ancestor of the European Union) released an official statement on guidelines for recognition that required withholding recognition unless compliance with democratic norms and rule of law were...

\(^{15}\) 5 GAOR, Annexes, Agenda Item 61, at 8; U.N. Doc. A/AC.38/L.21/Rev. 1 (1950), see also Roth, Sovereign Equality supra, 200-201.

\(^{16}\) Roth, Sovereign Equality, supra, at 204.


\(^{18}\) Id.

\(^{19}\) Gregory H. Fox & Brad R. Roth, The spread of liberal democracy and its implications for international law, in Democratic Governance and International Law, 1, 17 (Gregory H. Fox & Brad R. Roth, eds., 2000).
When used in the context of international legitimacy, “democratic entitlement” has come to signify a government based not just on popular participation, but the rule of law as well. Thus, although an unconstitutional, or illegal transfer of power need not be inimical to democratic (or even constitutional) rule, unconstitutional transfers of power, and in particular, the coup d'état, have come to be viewed with substantial hostility by the portions of the international community aligned with democratic entitlement thinking. Even the African Union (and its predecessor the OAU), despite being composed of a number of undemocratic regimes (many of which assumed power through coups), frequently refuses to recognize governments that come to power through coups.\textsuperscript{21} Twelve years ago, international law scholar Brad Roth declared that the effective control doctrine was no longer the standard for determining legitimacy, but that it had not yet been replaced by any other particular doctrine.\textsuperscript{22} One goal of this paper will be to determine what, (if anything) has changed in the intervening years.

Before proceeding, a final note. Since at least 1896, some scholars and nations have argued for the abolition of recognition of governments (retaining, however, recognition of states and the political decision of establishing diplomatic relations).\textsuperscript{23} Numerous arguments have been advanced in favor of this position, including criticism of the intrusion upon the sovereignty of other states and the confusion resulting from the apparent entanglement between effective control, political approval and diplomatic relations.\textsuperscript{24} Likewise, it has been argued that because a wide variety of actions taken by states and other actors under these circumstances could clearly

\textsuperscript{22} Brad R. Roth, \textit{Governmental Illegitimacy in International Law}, 405, 413-19 (Clarendon Press 1999).
express approval and willingness to (publicly) “do business” with the new regime, the granting or withholding of recognition is unnecessary or redundant. In examining recognition of governments, this paper will analyze what situations call for recognition, or whether recognition is even appropriate at all.

III. MILITARY COUPS

The military coup, as a tactic for effectuating an extra-constitutional transfer of power, is not without controversy. As democratic rule and human rights emerge as a critical values among the international community, the military coup is viewed with increasing hostility. This hostility has not, however, eliminated the Military Coup as a viable option, as the following cases demonstrate.

1. THAILAND, 2006

In 2006, after nine years of relatively democratic rule, the Royal Thai Army, led by general Sonthi Boonyaratglin, staged a coup d'état overthrowing the democratically elected (and still relatively popular) prime minister Thaksin Shinawatra. Shinawatra came to power in 2001 as part of a sweeping victory by the party he founded, Thai Rak Thai (Thais love Thais). After a term in office heavily (or at least appearing to be) focused on reducing rural poverty, his party enjoyed a decisive victory during the 2005 elections.26

Though Shinawatra met with opposition from the urban, middle, and upper classes during his first term, the number of controversies related or attributed to his rule increased rapidly after the 2005 election.27 Still, none of these early controversies appeared to pose a substantial threat

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25 Even if only rhetorically.
to his or his party's fortunes. On January 23, 2006, directly following an amendment which legalized the action, the Shinawatra family sold their 49.6% stake in Thai telecommunications giant Shin Corporation to a holding company backed by the government of Singapore. The family made approximately 73 billion baht tax-free (about US$1.9 billion) from the sale, but immediately drew strong condemnation for selling a vast local corporation to a foreign government.  

Tensions rapidly mounted, with numerous anti-Shinawatra protests taking place. On April 6th, 2006, following a failed attempt to defuse the crisis by calling legislative elections and two independent but unsuccessful attempts to impeach him on conflict of interest charges, Shinawatra resigned from government.  

Shinawatra's resignation from government was later revealed to be only a seven week “break,” and when he returned in late spring, the Phuchatkan Rai Wan newspaper, controlled by staunch Shinawatra foe Sondhi Limthongkul, launched a series of articles detailing the “Finland Plan,” an alleged conspiracy designed by Shinawatra and other Thai Rak Thai members aimed at overthrowing the King.  

On September 19, 2006, while Shinawatra was in New York City for a meeting of the United Nations General Assembly, the Royal Thai Army, led by Generals Prem Tinsulanonda and Sonthi Boonyaratglin, overthrew the elected government and installed General Surayuth

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30 Under §331 of the 1997 Thai Constitution, acts representing a conflict of interest for public office holders are forbidden.  


Chulanont in the first unconstitutional transfer of power in Thailand in fifteen years.\textsuperscript{33} The military junta, styling itself the Council for Democratic Reform, and later, the Council for National Security, quickly promulgated an interim, and eventually, a permanent constitution.\textsuperscript{34} Elections were ultimately held on December 23, 2007. The \textit{Phak Palang Prachachon} (People's Power Party), a \textit{de facto} reincarnation of \textit{Thai Rak Thai}, emerged victorious and installed a prime minister loyal to Thaksin.\textsuperscript{35}

International reaction to the coup was negative, but largely symbolic. The reaction of United Nations secretary general, Kofi Annan, (“I don't have the details, but this is not a practice to be encouraged,”) was typical of the sort of moderate disapproval voiced by much of the West.\textsuperscript{36} Most Western countries echoed the European Union in demanding “an immediate return to democratic order.”\textsuperscript{37} However by demanding a return to “democratic order,” it was unclear whether the international community was referring to a return to the democratically elected Shinawatra regime, or for rapid democratic elections of a new president. Even Denmark's rather bellicose response, characterizing the coup as “totally unacceptable” and referring to Thailand as “Banana-like” was essentially non-committal.\textsuperscript{38} The United Kingdom and New Zealand did not even bother to discuss the specifics of the situation and simply made vague statements.


\textsuperscript{34} \textit{Main Points of Thailand's military-backed interim constitution}, Forbes, October 1, 2006,\textit{ available at} \url{http://www.forbes.com/feeds/afx/2006/10/01/afx3057639.html}

\textsuperscript{35} \textit{See Thaksin-linked party claims ‘victory for democracy’ in Thai polls}, Forbes, December 23, 2007,\textit{ available at} \url{http://www.forbes.com/feeds/afx/2007/12/23/afx4470687.html}. To this day, the Shinawatra family continues to dominate Thai Politics. Yingluck Shinawatra, Thaksin's sister, has recently been elected the first female Prime Minister in Thailand's history. \textit{See Yingluck, Pheu Thai win in a landslide}, Bangkok Post, March 7, 2011.\textit{ Available at}, \url{http://www.bangkokpost.com/news/politics/245126/poll-result-to-be-known-around-10pm}.

\textsuperscript{36} \textit{Annan, World Leaders Urge Return to Democracy in Thailand}, Saigon (Ho Chi Minh City), September 20, 2006,\textit{ available at} \url{http://www.saigon-gpdaily.com.vn/International/2006/9/51352/}

\textsuperscript{37} \textit{Id.}

\textsuperscript{38} \textit{Per Stig: Kup er bananstats-agtigt} [Per-Stig “Banana-Like State”], Politiken (Copenhagen, Denmark), September 19, 2006,\textit{ available at} \url{http://politiken.dk/udland/article175500.ece}
condemning “unconstitutional and undemocratic means.”39 Perhaps the difficulty for the West lay in the quickness and relative civility of the coup. Begun in the early evening, the coup was entirely bloodless, and complete only a few hours later. Shinawatra's party, Thai Rak Thai, seemed entirely unprepared to resist and was dismantled quickly. Without an alternate regime to back, the West may have had no choice but to offer “limp-wristed” denunciations.40

If unadorned condemnation does not automatically equate to a refusal to recognize, than refusal to criticize might amount to tacit recognition. If that is the case, a number of Asian countries had no trouble recognizing the Council for National Security. This type of response is well represented by China, who vowed to adhere to “their” doctrine of “non-interference in other Country's internal affairs.”41 China instead offered Thailand vague wishes of prosperity and future good relations between the two countries. While Malaysia's prime minister treated the event as unfortunate, Malaysia's government wasted no time in pushing the new Thai regime to reenter trade negotiations.42 Meanwhile, neither Japan nor the Phillipines offered strong condemnations of the coup.43

In comparison, the reaction of the United States was cryptic. Initially the US seemed to express sentiments akin to those of other western nations.44 However, America quickly began making demands of the junta that did not involve the return of Thaksin, which was seen by some as possibly an endorsement of the coup.45 While America acknowledged the de facto success of

39 Id.
43 Id.
45 Id.
the coup, the US seemed to want to avoid even the appearance of approval and quickly moved to suspend twenty-four million dollars of assistance to the Thai government.\textsuperscript{46} Years later, diplomatic cables surfaced on the website Wikileaks that if authentic, document substantial cooperation before and after the coup between the US and the Council for National Security.\textsuperscript{47} Some have argued that the muted US response was “guided purely by US economic and strategic interests.”\textsuperscript{48} It is likely then, that the Thai military proceeded with the coup in part because they knew in advance that they could count on, if not diplomatic recognition, at least non-interference from the International Community.

\textbf{2. MAURITANIA, 2008}

On August 6, 2008, the presidential guards, spearheaded by General Mohamed Ould Abdel Aziz, and aided by the Mauritanian army, staged a coup d'état, arresting President Sidi Mohamed Ould Cheik Abdallahi and his chief officers.\textsuperscript{49} For twenty one years, Mauritania was ruled by Maaouya Sid’Ahmed Ould Taya. Ould Taya’s rule ended in an August 2005 coup, of which Abdel Aziz was also one of the main figures.\textsuperscript{50} The Military Council for Justice & Democracy (the junta established by that coup), promised to hold elections quickly. In March, 2007, elections were held, and Abdallahi, backed by Abdel Aziz, succeeded in the election.\textsuperscript{51}

Abdallahi faced substantial criticism early in his presidency after engaging in a series of


\textsuperscript{48}Id.


\textsuperscript{51}Id.
actions that appeared calculated to appease Islamic extremists.\textsuperscript{52} Abdallahi drew greater ire by appointing twelve government ministers, some who had been tainted by corruption charges, and all of whom had served under ousted former president Ould Taya.\textsuperscript{53} Within a month, lawmakers from the ruling party propounded a vote of no confidence against Abdallahi and called for his resignation.\textsuperscript{54} Mistrust of Abdallahi grew steadily, culminating in a large portion of the ruling party withdrawing from Parliament in protest on August 4th.\textsuperscript{55}

Two days later, Abdallahi made an early announcement that he was firing several senior army officials. This proved to be improvident, as he was seized hours later by members of the Presidential security battalion as part of a coup planned by the recently fired officials.\textsuperscript{56,57} The new junta formed a transitional government based on an eleven member council comprised entirely of high-ranking military officers, with Abdel Aziz as president.

The junta promised quick presidential elections\textsuperscript{58} and appeared to be strongly supported by the national assembly, who quickly released a statement of support.\textsuperscript{59} However, the coup ultimately encountered public opposition and by September 30, 2008 the junta had banned protests. Abdellahi's subsequent and disputed formal resignation allowed for elections on July 18, 2009, which were won by coup leader Abdel Aziz under fairly murky circumstances.\textsuperscript{60} Abdel

\textsuperscript{52} Id.
\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{57} The sources that I consulted did not specifically state why Abdallahi fired the officials, but the timing suggests he must have suspected that they were plotting a coup (or at least could not be relied upon).
\textsuperscript{58} Agence France-Presse, Mauritanian junta issues decree specifying powers, Google News, August 12, 2008, available at http://afp.google.com/article/ALeqM5j9Qr3Mx3Y8S4cLG2IntVNaZIR7g
\textsuperscript{59} Agence France-Presse, Mauritanian junta names new PM, Google News, August 14, 2008, available at http://afp.google.com/article/ALeqM5iTmgALcRkQDycj_NGI7dbpKpXj3g
\textsuperscript{60} Agence France-Presse, Mauritanian coup leaders, opposition, agree end to crisis, Google News, June 4, 2009,
Aziz has been the head of state of Mauritania ever since.

Outside of Africa, international reaction to the coup was similar to that of the 2006 Coup in Thailand, featuring a number of countries offering largely symbolic criticism. Unsurprisingly, news of the coup in Mauritania drew verbal condemnation from the United States, France, and the United Kingdom, as well as Spain, South Africa, Chile and possibly Morocco. Condemnations came from Russia as well. The coup also drew a strong condemnation from Nigeria, whose president vowed to withhold recognition of any government that came to power through non-constitutional means. Mauritania received similar condemnations from the United Nations and the European Union. The World Bank moved to suspend $175 million in aid, noting "each time there's political instability, there's a price to be paid by the country."

The junta faced immediate and substantial opposition from the Peace and Security Council (PSC) of the African Union (AU). The PSC, drawing on numerous AU legal sources, demanded immediate reinstatement of Sidi and urged the international community to reject the
junta as illegitimate and illegal. On February 6, 2009, the PSC imposed substantial sanctions on Mauritania including travel restrictions and freezing of assets. The AU then formed an international contact group to address the crisis. The contact group brokered negotiations between the Aziz faction, the coalition of anti-coup parties, and the opposition party. Once elections based on the negotiated agreements took place (with Aziz winning), the African Union readmitted Mauritania and lifted the sanctions.

Outside of intergovernmental organizations, the removal of Abdallahi garnered very little international response. Among nations that bothered to respond to the coup, a wait-and-see approach was adopted. This may reflect, a perception of lesser significance (as compared to other events) attached to the Mauritanian coup. However, the sanctions placed on Mauritania by the World Bank and the AU suggest that coups, even if instigated for democratic purposes, will still be viewed as illegitimate. If that is the case, the rehabilitation of Mauritania after the elections further suggests, that an election can be used to validate the results of the coup (since Aziz retained power before and after the elections). If Mauritania is typical of an intergovernmental response, we can assume that intergovernmental organizations will reject coups, even if they are intended to safeguard democracy, and further, that they will accept elections, even if they install the leader of the recent coup.

3. HONDURAS 2009

Promulgated in 1982, and coming as a response to decades of rule largely by military autocracy, the Constitution of Honduras mandates not only a strict one term limit for presidents,
but in hopes of preventing future dictatorships, proscribes even promoting the possible extension of term limits.\textsuperscript{71}

After being elected in 2005, Manuel Zelaya ascended to the presidency on January 27, 2006.\textsuperscript{72} In July 2008, Zelaya announced that he intended to incorporate Honduras into \textit{Alianza Bolivariana para los Pueblos de Nuestra América} (ALBA), a South American counterpart to NAFTA that is ideologically led by Venezuela's Hugo Chavez. The move aroused concern because most of the leaders of ALBA countries were either outright dictators or had taken strong steps to move their country in an autocratic direction, typically by removing term limits from their nation's constitutions.\textsuperscript{73} Perhaps unsurprisingly, it was around this time that Zelaya began advocating a modification of Honduras' constitution that would eliminate term limits. Zelaya proposed a \textit{cuarte urna}, or additional (fourth) ballot box during the 2009 general elections that would contain a proposal on the drafting of a new constitution.\textsuperscript{74}

In September of 2008 Zelaya issued two separate executive decrees which seemed to transfer a total of 30-60 million lempiras ($1.6-3.2 million USD) of public money for the purpose of advertising the \textit{cuarte urna} measure. Audits of the executive decrees found significant

\textsuperscript{71} Constitucion Politica De La Republica De Honduras De 1982. Article 237 sets the term limit. Article 42 forbids inciting, encouraging or supporting the re-election of a president. Article 239 also prevents anyone who has already served as head of the executive branch from being a president and demands the removal of anyone who violates this article.


\textsuperscript{73} Cuba's Raul Castro was a dictator. Bolivia's Evo Morales, Ecuador's Rafael Correa, and Venezuela's Hugo Chavez had all recently modified term limits and Nicaragua's Daniel Ortega was planning on doing so. See Associated Press, A look at efforts to extend term limits worldwide, The Seattle Times (Seattle), August 3, 2009, available at http://seattletimes.nwsource.com/html/nationworld/2009591886_apafpresidentialtermlimitsglance.html

irregularities and were never able to determine precisely where the money went. On March 24, 2009, as his proposal continued to encounter significant opposition, Zelaya called for a preliminary poll to be held on June 28, to gauge popular support for including the fourth ballot box during the next election. In response, the Attorney General's office formally warned Zelaya that he would face criminal charges if he proceeded with the referendum. Throughout May and June, numerous Honduran political bodies ruled such a poll illegal and/or warned Zelaya to cease such activity. Notably an appellate court upheld an injunction against holding the referendum. Honduras' Congress passed a law forbidding polls, referenda and plebiscites less than 180 days before the next general election.

On June 24, days before the poll was to beheld, Zelaya ordered the military to begin passing out poll materials. When General Romero Velásquez refused, he was fired. Later that day, heads of the army, navy and air force resigned. The Supreme Court ruled unanimously that Velásquez be reinstated. Zelaya responded by leading several hundred people to an air force base to take possession of the referendum ballots for “safekeeping.” The Supreme Court issued

77 Honduras' non-coup, Los Angeles Times, July 10, 2009, available at http://articles.latimes.com/2009/jul/10/opinion/oe-estrada10. Honduras' constitution specifies that certain articles (including presidential term limits) are entrenched and further that any president who so much as proposes the permissibility of reelection “shall cease forthwith” in his duties. The constitution also labels any “infraction” of the succession rules as treasonous. See Constitucion Politica De La Republica De Honduras De 1982, Art. 4, Art. 239.
secret arrest and search warrants against Zelaya for violating the June 16 injunction. The Supreme Court charged Zelaya with treason, abuse of office, and usurpation of functions that damaged the administration.

On June 28, soldiers set upon Zelaya's Residence. They disarmed the presidential guard, woke Zelaya, and put him on a plane to Costa Rica. Honduras' Congress assembled that morning, accepted a resignation letter that Zelaya denied signing. Congress (a majority of which was composed by members of Zelaya's own party) voted to replace Zelaya with Roberto Micheletti. Despite substantial remaining turmoil, the November election went as planned, with Porfirio Sosa winning and ascending to the presidency in 2010. After the coup, Zelaya lived in exile until an agreement with the Sosa administration allowed him to return to Honduras with complete amnesty in May of 2011.

The response of the International Community was swift and united in serious condemnation of the coup. All other Latin American nations, as well as the United States, most of Europe, and a number of major international organizations condemned the ouster of Zelaya and labeled it as a coup. With the exception of Taiwan and Israel, no nation or international organization recognized the Micheletti government, and every country in the region (except for

84 Id. The actual detention order can be viewed at: http://www.libertaddigital.com/documentos/orden-de-captura-de-la-fiscalia-17057381.html.
85 See supra.
the US) and the European Union withdrew their ambassadors.\textsuperscript{91} Additionally, the World Bank and the United States both suspended aid to Honduras.\textsuperscript{92}

The situation remained essentially static until the previously scheduled general elections occurred in 2009. The elections made any support for Zelaya largely moot, since he was constitutionally prevented from running for re-election. Although some countries\textsuperscript{93} refused to recognize the elected Sosa regime, the perception of the elections as freely contested and the active campaigning by the United States on Sosa's behalf led to numerous countries recognizing the newly-elected regime.\textsuperscript{94} After Zelaya was allowed to return and publicly reconciled with the Lobo regime, the Organization of American States, in a move considered by many to put an end to the crisis, readmitted Honduras.\textsuperscript{95}

The international reaction to the 2009 Honduras coup was surprising in its universality and its severity, especially considering the extent to which Zelaya's actions ought to have engendered International hostility. At least initially, the International Community was utterly dismissive both to the claims made by Honduras that the ouster was legitimate and that Zelaya was a threat to democracy. The International response to the Honduras crisis possibly represents a knee-jerk reaction to the military removal of elected officials, with the military's role in the


\textsuperscript{93} Essentially the membership of ALBA.


As Brad Roth noted, it is at least “incongruous” for the international community to dismiss a unanimous constitutional interprétation by a foreign high court on a question seemingly “quintessentially” a matter of domestic law.\(^96\) An alternate explanation (suggested by Roth) is that the international community was aware that their “rhetorical posturing” was unlikely to help to restore Zelaya, especially since upcoming elections would clearly render the issue moot, and thus lost little by paying lip service to democracy and expressing a general opposition to coups.\(^97\)

4. NIGER 2010

On February 18, 2010, President Mamadou Tandja was seized, detained, and removed from power by members of the Nigerien military. The coup was motivated, principally, by a constitutional crisis arising out of Tandja's desire to indefinitely extend his presidency.

Tandja had a long history in Nigerien politics. He participated in a 1974 coup overthrowing Hamani Diori.\(^98\) In 1993 he placed second to Mahamane Ousmane in a national presidential election.\(^99\) In the 1996 election he placed third.\(^100\) In 1999, President Mainassara (the winner in 1996) was assassinated by a military junta which then held new elections.\(^101\) Tandja


\(^97\) Roth, supra, at 216.


was victorious in these elections and assumed the presidency on December 22, 1999.  

The 1999 Constitution of Niger expressly prohibits both the serving of more than two terms, and the revision of the article prohibiting more than two terms. Under the constitution, after Tandja won reelection in 2004 he would be forced to step down in 2009. As early as December of 2008, supporters of Tandja began suggesting that he extend his mandate. Initially, Tandja publicly ignored calls for extension. However, the very mention by Tandja supporters of extension led to swift opposition, with both sides marching in response.

In May of 2009, Tandja began promoting a referendum on amending or replacing the Nigerien constitution. Tandja, claiming that there was a mandate from the people of Niger for him to remain in power, began campaigning for a referendum proposing a new constitution that would do away with term limits. Protests began immediately and included not only opposition party members, but a number of parties that had previously supported the government. The defection of the powerful CDS (Convention Démocratique et Sociale) party gave the opposition in the National Assembly enough votes to sanction the Tandja regime. On May 25, the Constitutional Court released an advisory ruling classifying any referendum to create a new

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102 Id.
103 Constitution de la République du Niger [Constitution of the Republic of Niger], art. 36, 136. (Niger)
constitution as both illegal and a violation of Tandja's presidential oath. Multiple members of the National Assembly presented vocal opposition to the referendum. In response, President Tandja dissolved the National Assembly. Tandja then set up a commission to draft a new constitution. Government spokesmen explained that Tandja would be given a transitional mandate of three years during which a constitution would be written and approved. The new constitution would utilize a presidential, as opposed to semi-presidential system. Unsurprisingly, there would be no limit to presidential terms. On June 5, Tandja met with his Council of Ministers and promulgated official plans for the referendum.

Throughout May and June, the situation intensified with increasing rallies in opposition to the referendum. Unprecedented in Niger, all seven trade unions issued a joint strike. On June 12, 2009, the Constitutional court passed a binding ruling adverse to Tandja's referendum proposal. Following this ruling, the Independent National Electoral Commission announced that elections would take place on August 20, and that there would be no referendums voted upon. On June 19, Tandja took the unusual move of calling together the Council of the Republic. A consultative body of various government leaders, the Council is supposed to be convoked only

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107 Abdoulaye Massalatchi, *Niger court says third-term referendum unlawful*, Reuters (London), May 26, 2009. available at http://af.reuters.com/article/nigerNews/idAFLQ4311320090526?feedType=RSS&feedName=nigerNews. The violation of the Presidential oath is a particularly serious matter in Niger, where the oath is taken on the Koran and the country is overwhelmingly Muslim.

108 Abdoulaye Massalatchi, *Niger's Tandja dissolves parliament*, Reuters (London), May 26, 2009, available at http://af.reuters.com/article/topNews/idAFJ0E54P0EL20090526?feedType=RSS&feedName=topNews. Although such dissolution is legal, the constitution requires a President who dissolves the National Assembly to call parliamentary elections within three months.


in times of crisis or serious political disputes. Tandja, without mentioning the idea of extending his term, simply asked that they “empower” him to pass certain laws for extending the terms of local council members. The Council noted that such a task was appropriate only for the national assembly.\footnote{Agence France-Presse, \textit{Niger elections set for August 20: poll commission}, Google News, June 19, 2009, available at http://www.google.com/hostednews/afp/article/ALeqM5ig6odh_A7miho7IecShawl8DWtg} In a surprise move on June 21, Tandja announced that he would honor the ruling of the Court and would suspend any effort to change the constitution until after the August 20 National Assembly elections.\footnote{Le président Tandja renonce à son projet de référendum, \textit{Le Niger dans le Web: la Renaissance}, June 21, 2009, available at http://www.tamtaminfo.com/index.php?option=com_content&view=article&id=1625:le-president-tandja-renonce-a-son-projet-de-referendum&catid=44:politique&Itemid=61.}


Unsurprisingly, Tandja remained in office when his second term expired in December, 2009. He did agree to negotiations with opposition parties mediated by the Economic
Community of West African States (ECOWAS).\textsuperscript{120} By early February, talks had broken down. On February 14, 2010, a large protest was held in Niamey.\textsuperscript{121} On February 18, while Tandja was holding a government meeting, a group of soldiers surrounded the presidential palace and opened fire.\textsuperscript{122} Tandja was captured by the rebel soldiers. The coup was not bloodless, as four soldiers and six civilians were killed in the battle. Later that day, the success of the coup and the detention of Tandja were reported.\textsuperscript{123}

On February 18, the rebels announced the formation of a ruling junta, the Supreme Council for the Restoration of Democracy led by Salou Djibo.\textsuperscript{124} Again, ECOWAS intervened and worked with the junta to insure that elections were held. The junta ultimately held presidential elections in January of 2011, with Mahamadou Issoufou emerging victorious in what the US Government called “a relatively smooth, year-long transition back to civilian rule.”\textsuperscript{125}

International response to the coup was muted among nations, but more substantial at the intergovernmental level. Among countries that had been monitoring the situation, there was an awareness that Tandja bore substantial responsibility for the crisis.\textsuperscript{126} The international community may have had some sympathy for the Supreme Council’s aims, however it did not

\begin{footnotes}
\textsuperscript{121} Id.
\textsuperscript{126} US official says Tandja can blame himself for Niger coup, Breitbart.com, February 18, 2010, available at http://www.breitbart.com/article.php?id=CNGa3b7f0cf702ad48908cd5bcafa1100.a31&show_article=1
\end{footnotes}
trust a military regime to restore democracy in Niger. A number of organizations suspended aid to Niger. The United States suspended $23 million in aid.\textsuperscript{127} The World Bank suspended aid as well, though it also restored it quickly.\textsuperscript{128} Niger's biggest donor, the European Union, had actually halted aid when it became clear that Tandja would not step down.\textsuperscript{129} Additionally, the PSC condemned the coup and suspended Niger from all AU activities.\textsuperscript{130}

The 2011 elections seemed to pacify the International community. By mid-2011, the US and the EU both lifted their suspension of aid and the AU had lifted Niger's suspension as well.\textsuperscript{131} The international response to the coup parallels the response to the Mauritanian coup. Despite international acknowledgment that Tandja bore substantial responsibility for the crisis, the response of international organizations suggests that a military coup will not be accepted even under these circumstances. Alternately, the suspensions of aid and membership could be seen as punishments intended to pressure the junta into holding elections as soon as possible.

5. OBSERVATIONS

While it is clear that the effective control doctrine is no longer the predominant practice internationally, it is unclear whether and to what extent another doctrine has replaced it.\textsuperscript{132} Although some scholars have pushed for a democratic entitlement theory that would essentially delegitimize any regime not sufficiently democratic, the international community has followed a

\begin{itemize}
\item \textsuperscript{127}Niger sees $23 mln from US as aid program restarts, Reuters, June 29, 2011, available at http://af.reuters.com/article/topNews/idAFJOE75S0N620110629.
\item \textsuperscript{129}EU agrees to restore development aid to Niger, Reuters, June 20, 2011, available at http://af.reuters.com/article/nigerNews/idAFLDE75J1XB20110620.
\item \textsuperscript{131}See EU agrees to restore development aid to Niger, and also Niger sees $23 mln from US as aid program restarts, supra, and also A.U. P.S.C. Communiqué of the 266th Meeting, P 6, Doc. No. PSC/PR/Comm(CCLXVI), (March 16, 2011), http://www.au.int/en/sites/default/files/COMMUNIQUE_EN_16_MARCH_2011_PSD_266TH_MEETING_THE_P EACE_AND_SECURITY_COUNCIL_COUNCIL_SITUATION_NIGER.pdf
\item \textsuperscript{132}Of course the doctrine is still clearly advanced by a number of nations, notably the PRC, who themselves depart from it with regards to the Republic of China.
\end{itemize}
somewhat different tack. Recent cases suggest that the international community, led by The United States, the European Union and the United Nations, have indeed adopted a relatively coherent (though to my knowledge, unarticulated) doctrine, which I will call the “popular-electoral doctrine.” Put briefly, the popular-electoral doctrine holds that a non-secessionist, extralegal change of power will be acceptable to the international community only if it is primarily effectuated by civilian as opposed to military elements, and that even unacceptable transfers of power will be forgiven the instant that semi-competitive elections are held.

Under this approach, recognition was withheld from the coup-installed governments in Mauritania, Honduras, and Niger because they appeared to be military rather than civilian operations, despite the presence of democratic motivations in at least three of those cases. Yet these same internationally denounced regimes were all recognized as soon as elections were held. It is this element, subsequent recognition, which has been ignored by scholars critical of the current international treatment of coups. Consider the conclusion of a recent article by Eki Yemisi Omorogbe:

A second difficulty is that the AU appears unwilling to accept coups that could aid democratic development...The danger of the AU’s focus on the restoration of constitutional order is that it may shore up the position of a regime that lacks legitimacy in the eyes of its own citizens...

[I]t would be preferable if the AU adopted a more nuanced policy. As things stand, the AU’s failure to adopt a more nuanced approach leaves it open to the criticism that it continues to protect incumbent governments rather than advance the cause of democracy on the African continent.  

Like Omorogbe, a number of scholars take exception to the international community's refusal to recognize coups that probably promote democracy. However, they ignore the fact that

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133 As some of the cases discussed earlier demonstrate, transfers of power effectuated by the military but having strong popular support remain unacceptable.
134 Omorogbe, supra, 154.
since the end of the cold war, much of the international community's refusal to recognize coups has been relatively superficial, and is essentially reversed the moment elections are held. Assuming that this approach has any effect at all, it is doubly beneficial in that it discourages coups by opportunistic military officers who could exploit real or manufactured constitutional crisis' to seize power for undemocratic ends and it encourages any regime which has seized power to transition to democracy as soon as possible. Once we consider the way these countries are treated after elections are held, this popular-electoral doctrine actually seems fairly nuanced and pragmatic.

6. RECOGNITION

More problematically, the cases discussed seem to suggest that the withholding or granting of recognition will probably not have a substantial impact on subsequent events in countries where coups occur. In Mauritania, the forces behind the coup were able to hold onto power through elections of dubious legitimacy and were subsequently embraced by the international community. In Honduras, the Micheletti regime ignored international pressure, and proceeded essentially along a course of its own choosing. In Thailand, it is not entirely clear what forces were at work and to what extent the military junta truly operated without international approval. In Niger, the supreme council held elections with reasonable speed, however, it remains undetermined to what extent this was the result of pressure from other nations withholding recognition.

From the above evidence, one might conclude that the process of recognition is no longer necessary, is possibly confusing, and that we would be better served by removing recognition from the tool chest of international responses. We should remember, however, that recognition is far more useful when there is a prolonged struggle for control and it is necessary to actually
choose one government over another. In the above examples, *de facto* control was established immediately, and it was evident that absent international intervention, the new regime had effective control. In such a circumstance, a withholding of recognition is indeed unlikely to provide strong pressure. However, in cases involving a more prolonged struggle, recognition may yet have a significant role to play.

IV. POPULAR UPRISINGS

Indeed, a prolonged struggle is far more likely to occur in the case of popular uprisings. In a military coup, the incumbent government is at least partially deprived of its most effective means of retaining *de facto* control. Military coups are often planned well in advance, and will not proceed unless there is a strong chance of victory. By contrast, popular uprisings are more likely to be spontaneous, unpredictable, and may be waged without calculating the actual chances of victory. For these reasons, a prolonged struggle is more likely to be necessary to effectuate regime change. In such a circumstance, recognition of governments takes on increased importance.

1. KYRGYZSTAN 2010

Kurmanbek Bakiyev came to power in Kyrgyzstan after winning the controversial July 10, 2005 presidential election following the Tulip revolution. In the winter of 2009-2010, energy prices, a consistently intractable issue for leaders of Kyrgyzstan, became increasingly problematic for Bakiyev's regime. Because Kyrgyzstan has to import much of its energy from its neighbors, energy costs in the country are unusually high and not within the control of the Kyrgyzstani government. Throughout the winter of 2009-2010, Kyrgyzstanis experienced

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135 Kyrgyz elections important step forward for democracy in Central Asia, Reliefweb, July 11, 2005, available at http://reliefweb.int/node/178452. Some observers categorized the elections as far from free and fair.  
rolling blackouts and cutoffs along with constantly rising energy prices. The situation was particularly problematic for the Bakiyev regime because a certain amount of their energy costs were controlled by Russia, which sought to destabilize the regime in response to its increasing ties with the West. On April 1, Russia increased duties substantially which resulted in almost immediate protests.

On April 6, 2010, in the city of Talas, approximately one thousand protesters stormed the government headquarters and took government workers hostage. Security forces had a surprising amount of trouble retaking the building. Emboldened by “success” in Talas, protesters gathered in Bishkek on April 7. Although police attempted to break up the gathering, the mass of people swelled, and after breaking through the ranks of policemen, the now thousands of protesters stormed the White House, the office of Kyrgyzstan’s president. Additional protesters took over the parliament building. By late that day, Bakiyev had flown to southern Kyrgyzstan and opposition leaders had announced the formation of a new government headed by Roza Otunbayeva.

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137 Id.
141 Sustar, supra.
142 Sustar, supra. The demonstrators literally drove over the gates of the white house.
144 Opposition Forces In Kyrgyzstan Claim Power, Form Interim Government, Radio Free Europe, April 7, 2010,
The next day, Bakiyev admitted that he no longer had *de facto* control of the country, but refused to resign power.\textsuperscript{145} Meanwhile, Otunbayeva announced that elections would be held within six months.\textsuperscript{146} Bakiyev retreated to his hometown of Osh, refused to resign and demanded that the United Nations send troops in to restore order. Numerous pro-Bakiyev rallies were held in Osh. Gunshots forced Bakiyev to flee from one such rally on April 15.\textsuperscript{147} He quickly flew into exile and has not since returned.\textsuperscript{148}

Bakiyev's departure did not pacify the situation. In May, the ongoing conflict took on an ethnic dimension, leading to violent clashes between ethnic Kyrgyz and Uzbeki Kyrgyz.\textsuperscript{149} On June 27, the Otunbayeva regime held a referendum for amending the constitution to *decrease* the powers of the president. The referendum was resoundingly successful.\textsuperscript{150} On July 3, Roza Otunbayeva was formally sworn in as the President of Kyrgyzstan under the new constitution, which also barred her from running for reelection and required that her term end on December 31, 2011.\textsuperscript{151} On October 10, parliamentary elections were held, with Ata-Zhurt, a party seeking to restore Bakiyev to power, winning a 28% plurality of votes.\textsuperscript{152} On October 31, 2011, presidential elections were held, with former Prime Minister Almazbek Atambayev winning commandingly.

\textsuperscript{145} *Kyrgyz President Won't Back Down, As Opposition Claims Power*, Radio Free Europe, April 8, 2010, available at http://www.rferl.org/content/Kyrgyz_Opposition_Claims_Power_Vows_To_Investigate_Bakiys_Rule/2006140.html


\textsuperscript{151} *Kyrgyzstan: Roza Otunbaeva is appointed as the president until the end of 2011 without right for reelection*, Ferghana.news (Moscow), May 20, 2010, available at http://enews.fergananews.com/news.php?id=1708&mode=snews

although with some notable irregularities. Although with some notable irregularities.  

Once it became clear that Bakiyev was highly unlikely to return to power, both Russia and America moved quickly to solidify relations with the new regime. Within hours of Bakiyev's removal, Russia recognized the new government. America's State department had already contacted the Otunbayeva regime the previous day, and within a week, the American deputy secretary of state met with Otunbayeva. The following day, Ban Ki-moon, secretary general of the United Nations, released a statement essentially acknowledging the legitimacy of the Otunbayeva administration.

Otherwise, the international response was minimal and noncommittal. At least eight countries responded with vague statements of concern and calls for peace. Notably absent among these responses were demands that one particular party stand down or move aside. The uprising in Kyrgyzstan (and the International response to it) can be distinguished from that of a Thailand and Mauritania, as a civilian uprising rather than a coup d'état by the military. This suggests that while a military led coup d'état might be reflexively regarded as undemocratic, a genuinely popular uprising, though extralegal, will be more likely to be accepted by the international community.

157 Belarus, China, Germany, Georgia, India, Iran, Japan, Kazakhstan, Tajikistan, United Kingdom, Finland and Ukraine.
159 Although it is certainly possible that rapid approval from both Russia and the United States set a tone for other countries to follow.
2. LIBYA, 2011

Muammar Gaddafi had ruled Libya since leading a military coup and seizing power in 1969. Upon gaining control of the country he immediately outlawed the constitution and governed as an autocratic despot. Enjoying substantial power in Libya, Gadaffi dominated all aspects of government and created a kleptocracy where his family “ha[d] a direct stake in anything worth buying, selling, or owning.”

In the middle of January 2011, sporadic protests caused by delays in the construction of housing units broke out. In late January, writer Jamal al-Hajji called for demonstrations and protests in Libya similar to those in Tunisia and Egypt. He was arrested in response. Emboldened by the “Arab Spring”, a collection of recent popular uprisings in autocratic Islamic nations, civilian protest and unrest in Libya began in earnest on February 15. That evening, over 500 demonstrators protested the arrest of human rights lawyer Fathi Terbil.

Protests continued and expanded in the following days, to such an extent, that by February 18, police and army personnel in Benghazi were overwhelmed by (and in some cases defected to) the protesters. In the following days, numerous cities were taken and the state of

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the Gaddafi regime grew increasingly precarious. Close allies and a number of various senior political and military officials of Gaddafi either resigned or defected. By the end of February, Gaddafi's government had lost control of a significant portion of Libya.

On February 27, the National Transitional Council was established as an attempt to coordinate the various resistance efforts and give a political face to the opposition. The Council committed to drafting a national constitution and holding free and fair elections. On March 17, the United Nations Security Council met and passed Resolution 1973 in response to the situation in Libya. The resolution established a legal basis for military intervention in the Libyan civil war, demanded an “immediate ceasefire”, the establishment of a no-fly zone, and sanctioned all actions short of foreign occupation for the purpose of protecting citizens. All actions were justified on the basis of protecting Libyan citizens from the Gaddafi regime. Military operations began on March 19. Although seventeen states participated in either maintaining the no-fly zone or the naval blockade, the most substantial contributions came from the United States, the United Kingdom and France. In the following months Libyan rebels...
made slow but steady progress in overcoming Gadaffi's forces. By late August, Gadaffi loyalists controlled only small pockets of the country.\textsuperscript{176} On October 20, the National Transition Council captured the whole of Sirte and killed Gadaffi.\textsuperscript{177}

When compared to other recent extralegal transfers of power, the 2011 Libyan civil war can be considered almost an inversion of the standard. Whereas coups in Mauritania and Niger saw the international community withholding recognition in an attempt to delegitimize regimes that had \textit{de facto} control, Libya saw a number of nations granting recognition in an attempt to legitimize a regime before it had attained \textit{de facto} control. The ongoing nature of the conflict, combined with strong international hostility to the Gadaffi regime, caused many nations to release statements just short of recognition. Numerous countries referred to the NTC as the “legitimate representatives of the Libyan people” months before granting recognition.

Within days of forming, the NTC began reaching out to the West in an attempt to gain early recognition.\textsuperscript{178} This strategy was successful, as France recognized the NTC as the legitimate government of Libya on March 8, 2011.\textsuperscript{179} While France's recognition was hailed by those anxious to see Gaddafi leave power, it was considered premature by some, since Gaddafi still controlled a majority of Libya at that point.\textsuperscript{180} Libya's next recognition however, did not come from a Western power interested in promoting democracy, but instead from Qatar, who recognized the NTC on March 28, one day after signing a deal for oil exportation.\textsuperscript{181}

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{177} Raina El Gamal and Tim Gaynor, \textit{Gaddafi killed in hometown, Libya eyes future}, Reuters, October 20, 2011 available at http://www.reuters.com/article/2011/10/20/us-libya-idUSTRE79F1FK20111020
\item\textsuperscript{180} Id.
\item\textsuperscript{181} Margaret Coker, \textit{Qatar Recognizes Libyan Rebel Council}, Wall Street Journal (New York City), March 28, 2011,
\end{enumerate}
\end{footnotesize}
quickly followed from Maldives and Italy.\textsuperscript{182} From mid-April through the end of July, an additional 29 countries including the United States and the European Union officially recognized the NTC as the legitimate government of Libya. Of the thirty-three countries that recognized Libya before the rebels launched an offensive into Tripoli, thirty were either NATO members or Muslim dominated countries.\textsuperscript{183} A number of nations expressed support for the NTC but refused to recognize them until \textit{de facto} control had been achieved.\textsuperscript{184} Once the rebels entered Tripoli, even more nations moved to recognize the NTC. To date, 100 countries have officially recognized Libya, and an additional 32, voted “in favour” of accepting the NTC credentials as Libya's representative at the United Nations General Assembly.\textsuperscript{185} By the end of October, the NTC had also been recognized by the African Union, the IMF, the OIC, The United Nations, OPEC, and the World Bank.\textsuperscript{186}

Among countries that have refused to recognize the NTC, the most vocal opposition has come from ALBA-aligned nations. Led by Hugo Chavez, a staunch Gaddafi ally, ALBA nations have consistently denounced the NATO intervention as illegal and the NTC as an illegitimate puppet of NATO.\textsuperscript{187} Besides the ALBA nations, the UNGA motion to accept the NTC's


\textsuperscript{183} A comprehensive list of recognitions and other responses received by the NTC is available at: http://en.wikipedia.org/wiki/International_recognition_of_the_National_Transitional_Council

\textsuperscript{184} Id.


\textsuperscript{186} A comprehensive list of recognition and other responses received by the NTC is available at: http://en.wikipedia.org/wiki/International_recognition_of_the_National_Transitional_Council

credentials was opposed by members of the Southern African Development Community, (SADC) officially on procedural grounds, but more likely as a rebuke of Western interference in African affairs.  

At least three factors appear to be at work in the international response to the NTC: ideology, loyalty, and de facto control. A strong desire to express a preference for democracy (perhaps projected onto the NTC) over Gadaffi’s authoritarianism lay behind France's decision to recognize at such an early point in the conflict. Likewise, ideological hostility to Western interference in Africa clearly motivated the ALBA and SADC nations in opposing recognition for the NTC. Loyalty was also a significant factor, as some nations felt constrained from recognizing NTC due to a long-standing relationship with the Gadaffi regime. Finally, for many nations, the issue of de facto control was the most relevant factor in withholding recognition during the civil wars. Repeatedly, outside nations adopted a “wait-and-see” approach, whether fearing the effects in Libya of premature recognition or simply believing that it would be inappropriate to recognize a regime before de facto control is achieved.

Although not entirely unprecedented, the intense international involvement and concern in the outcome of the revolt against Gaddafi has evinced a growing disregard for the anti-interventionist conception of sovereignty widely accepted only years prior. Ostensibly, intervention in Libya stemmed from concern that Gaddafi would commit unacceptable atrocities against Libyan civilians in his bid to retain power. However among oil exporting nations, Gadaffi’s Libya imposed the largest tax on the export of oil. Thus the possibility that it was oil,

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189 See, for example, the case of Chad. See Anna Mahjar-Barducci, Chad, Gaddafi’s Best Ally, Hudson New York, July 1, 2011, available at http://www.hudson-ny.org/2237/chad-gaddafi-ally. It is also possible that some countries may have felt pressure to recognize the NTC out of a similar sense of loyalty to NATO, although I did not discover any evidence of such pressure.
rather than humanitarian concerns, that motivated Western intervention in the region, cannot be excluded.\textsuperscript{190}

3. RECOGNITION

In contrast to the military coups discussed earlier, the uprisings in Kyrgyzstan and Libya escaped widespread criticism.\textsuperscript{191} The Otunbayeva regime gained recognition from America and Russia almost immediately upon establishing control. The Transitional Council gained recognition from many parties before it had consolidated control and with the exception of the ALBA nations, was viewed sympathetically on the international stage.

The usage of recognition in these cases was quite different from that of the military coups. In the cases of military coup, recognition was granted or withheld despite the fact that it was likely to have a limited effect on subsequent events. Contrarily, in Kyrgyzstan and Libya, recognition was used by the recognizing nations to accomplish specific political goals. In the case of Kyrgyzstan, both Russia and America used recognition to encourage positive relations with the Otunbayeva regime. In Libya, recognition was used not only to declare which government would be considered as representing the state of Libya internationally, but also to express solidarity with or hostility to the clashing regimes.\textsuperscript{192} In Libya, recognition was the foundation of international support for the National Transitional Council and consolidated its international standing. Similarly, recognition was hardly irrelevant in Kyrgyzstan. Without recognition, the US and Russia may have had to resort to more expensive methods to engender support from the Otunbayeva regime. Abolishing recognition may have increased the confusion in Libya, as it might then be unclear why, on what grounds, and to what extent various nations

\textsuperscript{191} With the obvious exception of criticism from Gadaffi's allies.
\textsuperscript{192} Libya gave rise to the strange phenomenon of countries consistently recognizing the NTC as representing “the Libyan people” before formally recognizing.
were supporting the National Transitional Council or the Gaddafi regime. It probably should not
be said that recognition complicated the situation in Libya. For example, when France
recognized the National Transitional Council far before they had consolidated control of the
country, the message that France was attempting to send was quite clear, even if their factual
grounds for recognition were dubious. If recognition was neither irrelevant nor confusing in
these cases, opposition to its usage in these circumstances is likely to arise from a stance against
foreign interventionism as a whole, not the practice of recognition in particular. Rather, the
recent uprisings in Kyrgyzstan and Libya demonstrated the continued viability of recognition as
a tool states can use to relate to one another.

V. SECESSIONIST MOVEMENTS

Secessionist movements can be distinguished from other extra-constitutional transfers of
power in two critical ways. Firstly, for a secessionist movement to succeed a change in de facto
control may not be necessary. Secondly, unlike other transfers of power (which generally do
not threaten the legitimacy of the state itself), the secessionist movement necessarily involves
questions of recognition for both the government and the "state" seceding. With such distinctions
in mind, let us examine the role recognition of governments plays in secessionist movements.

1. SOUTH OSSETIA & ABKHAZIA, 2008

“There are countries that are recognized but [are] not actually
countries, like Afghanistan or Somalia. So for us, it's more important to
improve...life in Abkhazia,” - Maxim Gvindija, Foreign Minister of
Abkhazia

During the “life” of the Soviet Union, South Ossetia and Abkhazia operated semi-
autonomously within the Georgian SSR. Georgia, following independence from the Soviet

193 Demonstrated in the case of Kosovo, where the leaders of the "region" simply convened and signed a declaration
that Kosovo was now a sovereign state.
194 Joshua Kucera, Abkhazia: Venezuela Acts as Diplomatic Hub for Breakaway Territory, Eurasia.net, February 23,
Union, quickly abolished the autonomy of both regions. Legitimate\textsuperscript{195} separatist movements, aided by Russian operatives, fomented military conflict in both regions.\textsuperscript{196} This conflict resulted in South Ossetia breaking away from Georgia and gaining partial \textit{de facto} independence.\textsuperscript{197} The situation was paralleled in Abkhazia, where the Abkhazian minority seceded from Georgia in early 1990, leading to most of Abkhazia being controlled by an unrecognized government.\textsuperscript{198}

Russia, possibly out of a desire to weaken Georgia, provided support to both South Ossetian and Abkhazian nationals. The conflict remained essentially suspended until the 2003 ascension of Mikheil Saakashvili to the Presidency of Georgia.\textsuperscript{199} Upon assuming power, Saakashvili moved quickly to strengthen state institutions, create “passably democratic” conditions and implement a substantially more Western-oriented foreign policy.\textsuperscript{200} After success in restoring Georgian control to the disputed region of Adjara, Saakashvili made a small push to retake South Ossetia in June 2004, clashing with local and Russian militiamen.\textsuperscript{201} A ceasefire was ultimately brokered, but only after dozens had died.\textsuperscript{202}

Russia, already providing military and financial support to both regions, treated Georgia's maneuvers, at least rhetorically, as threats to the stability of the entire Caucasus.\textsuperscript{203} In 2006, a South Ossetian referendum proposing independence from Georgia received 99% support from

\textsuperscript{195} In the sense of having popular support.
\textsuperscript{197} Id.
\textsuperscript{198} Id.
\textsuperscript{202} id.
\textsuperscript{203} id.
voters. Meanwhile, Moscow was engaged in extensive nationalization of South Ossetians, providing an additional pretext for intervention in the conflict.

By mid-2008, both Georgia and Russia were accusing the other of preparing for war. After a number of relatively trivial skirmishes, Georgia began decrying the shelling of Georgian enclaves in South Ossetia. Not only were the shellings unsubstantiated, but international observers actually found that Georgia was aggressively attacking the separatists. In response to these “shellings,” Georgia initiated a major bombardment and then a military offensive into South Ossetia. With hostilities resuming in South Ossetia, Abkhazian forces moved to push Georgians out of the remaining areas that they controlled.

Both fronts of the conflict were unsuccessful for Georgia, whose military forces were dwarfed just by the number of Russian soldiers involved. Russian and South Ossetian forces successfully repelled Georgia from South Ossetia and parts of Abkhazia. Ultimately, Georgia lost control of all portions of South Ossetia and Abkhazia that were previously held.

As a result, a game of “palm tree diplomacy” ensued concerning recognition of South

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205 The process, dubbed “passportization” is discussed in European Union, Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG), Report §12, September, 2009, available at http://www.ceiig.ch/pdf/IIFFMCG_Volume_I.pdf. The idea here is that if these South Ossetians are now Russian citizens, Russia may intervene in South Ossetia to protect them
212 Id.
Ossetia and Abkhazia. To date, the effective governments of those regions have been recognized by: Russia, Nicaragua, Venezuela, and tiny island-states Nauru, Vanuatu and Tuvalu. Additionally the territories were recognized by, Transnistria and Nagorno-Karabakh, two other de facto independent territories. However, the (non)recognition of the territories appears to be the result of substantial diplomatic maneuvering by Russia, the United States, and possibly the European Union.

Russia, hoping to weaken the Saakashvili government, derail Georgia's entrance into NATO, and assert its influence in the region, has paid generous compensation to countries willing to recognize South Ossetia and Abkhazia. Nauru was paid $50 million to recognize the territories. Venezuela recognized both territories as part of a large weapons deal with Moscow. Belarus was reportedly offered $500 million to recognize Ossetia and Abkhazia but declined after the European Union threatened to withdraw their invitation to join the Eastern Partnership should Minsk recognize the territories.

America had allied itself with Georgia in hopes of promoting democracy (and a generally

\[213\] In all cases, recognition of the independence of each “state” was co-terminous with recognition of that state’s government.
\[216\] Abhazia, Южная Осетия и Приднестровье признали независимость друг друга и призвали всех к этому же, Abkhazia [South Ossetia and Transnistria, recognized each other's independence and called on all to the same], NEWSru (Russia), November 18, 2009, available at http://www.newsru.com/russia/17nov2006/aup.html.
\[221\] Although sounding like an organized crime syndicate, the Eastern Partnership is an international trade and political organization establishing deeper cooperation between post-Soviet states and the EU
Pro-Western orientation) in the Caucusus, checking Russia’s resurgence, and assuring access to Caspian oil and gas for Europe.\textsuperscript{223} Siding with Georgia in this dispute, the US may have applied substantial pressure to prevent recognition of the breakaway territories. Abkhazia claimed that the US was actively urging foreign governments not to recognize the territories.\textsuperscript{224} The Abkhazian foreign minister claimed that whenever visiting foreign countries he found “the problem is not that I am facing Georgian diplomats,” but that “I am facing American diplomats.”\textsuperscript{225}

Many commentators, comparing this situation with that of Kosovo, found that, regarding territorial integrity and self-determination, both Russia and the West were using directly opposite to those they had raised in that case.\textsuperscript{226} Indeed, it is likely that were the tables turned, and Abkhazia and Ossetia were aligned with the west and Georgia was aligned with Russia, both territories would have been recognized by a much larger portion of the world. Taken alone, this case would suggest that geopolitical allegiance, rather than facts or ideals, will be generally determinative of recognition. Additionally, the situation in Abkhazia and Ossetia suggests that with enough money, at least some recognition can be bought, although it is also likely that the minimal recognition received by those regions, despite substantial pressure, was ultimately embarrassing to Russia.

2. KOSOVO, 2008

In 1999, a longstanding territorial dispute between the Federal Republic of Yugoslavia (now Serbia) and the largely Albanian Kosovo region ruptured into open conflict in what came to

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\footnotetext[223]{Tremin, \textit{Supra}.}
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be known as the Kosovo war.\textsuperscript{227} At the end of the war, the UN Security Council adopted Resolution 1244, creating a United Nations administration in Kosovo, expelling Serbia, and envisioning a UN-facilitated process to resolve the conflict.\textsuperscript{228}

The United Nations initiated mediated negotiations in hopes of resolving the situation. Beginning on July 24, 2006, talks were held between Kosovo and Serbia, though both parties refused to compromise on the issue of independence.\textsuperscript{229} In early 2007, United Nations envoy Martti Ahtisaari unveiled a “compromise” plan that would ultimately lead to independence for Kosovo.\textsuperscript{230} Following Serbian rejection of this plan, and despite continued effort by the United Nations contact group, no substantial progress was made.\textsuperscript{231}

On February 17, 2008, the individual members of the Assembly of Kosovo, acting both in “a personal capacity” and as “the democratically elected leaders of the people,” unanimously declared Kosovo to be independent of Serbia.\textsuperscript{232} The terms of the declaration were fairly circumscribed, limiting Kosovo’s independence to the principles of the Ahtisaari plan, including only limited military capacity and requiring international supervision and substantial protection for minority ethnic communities.\textsuperscript{233}

The Kosovo assembly meeting consisted of a 109 member quorum. The eleven deputies representing the Serbian national minority boycotted the proceedings, but all other ethnic


\textsuperscript{232} Nga seanca plenare e jashtezakonshme solenme e kuvendit te Kosoves me rastin e shpalljes se pavaresise, te mbajtur me 17 Shkurt 2008 (“Extraordinary plenary session of the solemn assembly of Kosovo at the declaration of independence, held on 17 February 2008 “)

minority representatives were present and assented to the declaration.\textsuperscript{234}

From an international law perspective, Kosovo’s Declaration of Independence was immediately controversial. It dramatically embodied the conflict between two bedrock principles of international law: each state's right to territorial integrity, and the right of all peoples to self-determination.\textsuperscript{235} Many states believed that the outcome of Kosovo's declaration would resonate with separatist movements worldwide.\textsuperscript{236} Still, dozens of countries recognized Kosovo immediately.\textsuperscript{237} In October of 2008 the UNGA backed a Serbian request to seek an advisory opinion from the International Court of Justice on the legality of Kosovo's unilaterally proclaimed independence.\textsuperscript{238}

The International Court of Justice accepted the case. Channeling \textit{Lotus},\textsuperscript{239} the International Court held that for Kosovo's declaration to be “in accordance with” international law, it only needed to not be in violation of international law.\textsuperscript{240} The court went on to say that because the obligation to respect a state's territorial integrity did not apply to non-state actors and international law has no blanket prohibition on declarations of independence, the “adoption of the declaration of independence of 17 February 2008 did not violate general international law.”\textsuperscript{241}

With the Kosovo case, the court had the opportunity to address the conflict between the

\textsuperscript{234} \textit{Supra}, Kosovo declaration.
\textsuperscript{235} Both principles are enshrined in the U.N. Charter. See U.N. Charter art. 1, para. 2; id. art. 2, para. 4.
\textsuperscript{236} Mikulas Fabry notes that the prime justification for valuing territorial integrity over self-determination is “to foil internal, regional, and international instability.” \textit{See} Mikulas Fabry, Recognizing States: International Society and the Establishment of New States since 1776, 204, Oxford University Press, 2010.
\textsuperscript{237} A chronological list of all countries that have recognized Kosovo to date can be found at the appropriately named http://www.kosovothanksyou.com/.
\textsuperscript{239} S.S. “Lotus” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).
\textsuperscript{241} \textit{Id}, paras. 80, 84, 122.
principles of territorial integrity and a nation's right to self-determination. The court might have declared that one principle trumped another, or at least held that one principal was more important in this particular case. The court could have ruled on the scope of self-determination or on the statehood of Kosovo. Instead, the court did not address the consequences of the declaration and left the question of Kosovo's statehood open.\(^{242}\)

To date, the state and government of Kosovo have been recognized by 85 of the 193 United Nations member states, including large majorities of NATO and the European Union, as well as a number of Islamic nations.\(^{243}\) Kosovo's support among the NATO-aligned axis likely stems from both sympathy for the plight of Albanians during Serbian control of the region, and from a belief that the Kosovar government shares the values of peace, stability and democracy.\(^{244}\) Kosovo's support among Islamic nations probably resulted from feelings of solidarity with the largely Muslim Albanians regarding their struggles with the largely Orthodox Christian Serbs.\(^{245}\)

Obviously, a substantial number of countries have refrained from recognizing either the state or government of Kosovo, and some have been outspoken in opposing Kosovo's independence. Regarding motivations, these countries (besides Serbia)\(^{246}\) can be divided into two

\(^{242}\) The Harvard Law Review has argued that the court could have easily affirmed Kosovo's right to secede on the grounds that it suffered repression and denials of rights, easily distinguishing it from “weaker” separatist claims. See *International Law—Unilateral Secession*, 124 Harv. L. Rev. 1098 (2011). The article further argued that had the court backed the Kosovars on those grounds it could have incentivized states to increase the rights of minority groups while buttressing those states that treat their minority groups “less like the Kosovars and more like the Quebecers.”

\(^{243}\) No state has recognized the independence of the state of Kosovo without also recognizing the government of Kosovo as the legitimate governmental authority in that state.


\(^{246}\) Unsurprisingly, Serbia had the most extreme reaction to Kosovo's declaration, initially recalling its ambassadors from any country that recognized Kosovo. See *Serbia recalls ambassador from US*, BBC, February 19 2008,
groups: countries who fear that recognition of Kosovo would embolden their own separatist movements, and nations afraid of angering countries in the former category. For example, both India and Pakistan explicitly stated that they had a “desire” to recognize Kosovo, but could not do so for fear that it would embolden Kashmiri separatists.\textsuperscript{247}

Rather than Serbia, Russia has likely had the most detrimental effect on Kosovo's attempt to gain full international recognition. Russia's complicated\textsuperscript{248} opposition to Kosovo's independence arises both from its close relationship with Serbia and its desire to maintain sovereignty over the disputed area of Chechnya.\textsuperscript{249} Russia's veto (along with China's) is considered the probable reason why the UN Security Council has avoided granting Kosovo a status declaration.\textsuperscript{250}

The recognition (or lack thereof) of an independent Kosovo by the international community is notable in two ways: first, it is very uncommon for such a pronounced cleavage to exist between factions of the international community.\textsuperscript{251} Second, unlike other cases of extra-constitutional transfers of power, the international community's response to the situation in Kosovo seems to have substantially more to do with the perceived consequences of that recognition, rather than the facts on the ground or the particular nation's relationship with the

\begin{footnotesize}
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  \item Id.
  \item The relationship is “complicated” because although Russia officially opposes Kosovo's independence, they have relied on international acceptance of Kosovo's independence as binding precedent in favor of recognizing Abkhazian and South Ossetian independence.
  \item The only other example of a situation that has truly divided the international community is Western Sahara, where 57 nations retain diplomatic ties with the SADR, the de facto power in substantial parts of Western Sahara, over the objections of Morocco. The next closest example would be South Ossetia and Abkhazia, which was discussed earlier in this essay, and does not represent a very substantial division among the International Community.
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\end{footnotesize}
disputants. As one scholar noted, even among countries willing to recognize the Kosovo government, nearly all treat the situation as *sui generis*.

In part, because the International Court of Justice declined to clearly address the most important issues arising out of the Kosovo declaration, an international norm for negotiating the conflict between a state's territorial integrity and the right of peoples to self-determination remains unresolved. As the situation in Kosovo (specifically years of violent oppression on behalf of the occupying power and years of quasi-independence under UN administration) was unique, it may be some time before the international community has an opportunity to address this issue again.

3. OBSERVATIONS

Regarding secessionist movements, we remain regrettably distant from a consistent practice. If the decision of the International Court of Justice is any guide, international law neither condones nor prohibits declarations of independence, and will favor neither self-determination nor territorial integrity when the two principles conflict. Like Kosovo, it is probable that each future secessionist movement will be treated *sui generis*. Still, examining the conflicts in South Ossetia, Abkhazia, and Kosovo, we can at least identify four relevant factors likely to lead to the granting or denial of recognition to a secessionist movement:

1) *Geo-political allegiance*. President Saakashvili's dramatic embrace of the West was both canny and effective and helped ensure near universal denial of recognition to Georgia's breakaway territories, despite a substantial diplomatic offensive from Russia. However, if we instead consider a hypothetical breakaway region inside a country seen as hostile by much of the international community (for example, North Korea), we would likely observe a very different

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252 Obviously, this is a generalization, as certain countries' reaction to Kosovo's independence clearly relate to these factors. My claim here is meant principally in comparison to other recognition controversies.  
253 See Roth, supra, at 197.
result.

2) Human rights abuses. The substantial human rights abuses perpetrated by Serbia in the years following the breakup of the SFRY cost her substantial sympathy in the international community and gave justification to Kosovo's desire for independence. Likewise, the ethnic cleansing of Georgians in Abkhazia and South Ossetia in the early 1990s engendered support for Georgia's position. Clearly, any regime that wishes to maintain control of a breakaway region (or simply refrain from committing morally outrageous acts) would do well to avoid ethnic clensings and other human rights atrocities

3) Cooperation with intergovernmental organizations: Early on, Kosovo cooperated with the United Nations and repeatedly demonstrated good faith. Even though Kosovo's declaration of independence was unilateral, it opted to adopt the relatively strict framework for independence outlined in the Ahtisaari plan. Kosovo likely did this to signal to the international community that it was aware of the expectations placed upon new states and was prepared to meet them. This probably helped legitimate Kosovo in the eyes of outsiders.

4) Concerns for stability. Just as many regimes have gladly renounced any right to interfere in other country's domestic affairs in the hopes that they would also be able to operate free from outside interference, many nations will oppose secessionist movements entirely out of fear that their support would legitimate their own separatist populations. Thus "stability" remains an important concern in addressing secessionist crisis. Ultimately, even if a secessionist movement has strong political, historical, and moral justifications, it may be unable to win recognition on the basis that other nations do not want be seen as authorizing other separatist movements.

4. RECOGNITION

Theoretically, recognition of the newly seceding state should be determinative of the
recognition of the government of the new state. If the secession itself is not recognized, then there is no state for the putative government to be recognized as the government of. Likewise, if the secession is recognized, a new state has been created, and thus the new regime cannot be said to have seized power through illegitimate means. Of course, one could conjure a hypothetical circumstance where recognition of a state does not address recognition of that state's government (such as an effective secession movement that immediately splinters into a civil war), but in practice, recognition of the new state has been determinative. Thus if there is one circumstance where recognition of governments is least necessary, although also least problematic, it is with regard to secessionist movements. This understanding of recognition is supported by events in Kosovo, South Ossetia, and Abkhazia where, whenever any of them received “recognition” it was intended as recognition of both the state and of the government. We can take from this is that a separate recognition of governments should be unnecessary in the wake of secessionist movements, although circumstances might dictate a temporal gap between recognition of the independence of a particular state and the exchanging of diplomats.

Examining the “palm-tree diplomacy” evident in the wake of the South Ossetian and Abkhazian conflicts, one might argue that this is an ideal demonstration of why recognition is a practice whose time has come and gone. After all, if recognition can so openly be bought, how can it be justified? More likely, what Russia has demonstrated in attempting and failing to purchase wide-spreading recognition for Abkhazia and South Ossetia, is that outright purchasing of recognition is, at best, difficult. Additionally, arguing that naked economic incentives invalidate foreign policy decisions would presumably invalidate large swaths of international relations practice. Ultimately, what events in South Ossetia, Abkhazia, and Kosovo demonstrate is that recognition of states (and thus governments) in secessionist cases continues to be a
relevant international practice.

VI. CONCLUSION

We have seen that a coup d'état will be accepted by the international community only if it was primarily effectuated by civilian elements. We have also found that even “unacceptable” transfers of power will find subsequent validation if at least semi-competitive elections are held. We know that this validation or acceptance is often expressed through express or implicit recognition. We are left with this remaining question: whither recognition of governments? Does recognition still serve a valid purpose? Or does it simply confuse matters, and therefore ought to be abolished?

It is critical to remember that there remain circumstances (albeit limited) where recognition has not been replaced by a functional equivalent, and thus the issue of a government's status is clearly separate from approval or willingness to do business with that government. In a situation where multiple governments are fighting for control of an entire territory, or a situation where there is a desire to establish formal relations but not another means of doing so, recognizing a nation's government is a critical tool. That said, such circumstances are growing increasingly rare.

Outside of those conditions, we can draw a number of conclusions. Firstly, recognition of governments is unnecessary in response to successful secessionist movements because it performs a function better addressed through recognition of states. Secondly, regarding military coups and popular uprisings, we can say that recognition will frequently be neither effective nor problematic. When recognition is useful (such as in the popular uprisings of Kyrgyzstan and Libya), it is principally as a tool for prosecuting the foreign policy of the recognizing government. Even in these circumstances, the availability of numerous

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254 We should remember that geopolitical allegiance and other specific circumstances will continue to lead to variable and unpredictable practices by specific nations in specific circumstances. Nevertheless, we argue that at least for the coup d'état, a relatively clear international practice has emerged.
alternate methods of accomplishing analogous goals suggests that recognition is hardly essential. In at least three of the four military coups examined, recognition was clearly ineffective in pressuring the ascendant regimes to relinquish power.

If recognition is frequently inconsequential, why then, does it remain a subject of criticism? Perhaps because one's attitude towards recognition depends on whether one supports a foreign policy that demands more than Churchillian “respect” from other nations. Apparent critics of recognition are often criticizing the interventionist bent and ideological imperiousness of the recognizing government's foreign policy itself rather than the methodology of recognition. However, impugning the ends of a particular foreign policy should not disqualify the mean of recognition.

In the numerous cases presented in this article, the only instance where a nation's recognition practice was even arguably harmful to that nation was in Russia's attempts to purchase recognition for South Ossetia and Abkhazia. Even in that circumstance, the damage to Russia was superficial. For nations seeking to accomplish foreign objectives, recognition, even if unlikely to be effective, remains an inexpensive and low-risk strategy. For those reasons alone, we should continue to see recognition employed by the international community for some time to come.