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Recent Practice in Recognition of Governments: The Case of Libya between 2015-2020

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Recent Practice in Recognition of Governments: The Case of Libya between 2015-2020

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Οι απόψεις και θέσεις που περιέχονται σε αυτήν την εργασία εκφράζουν τον συγγραφέα και δεν πρέπει να ερμηνευθεί ότι αντιπροσωπεύουν τις επίσημες θέσεις του Εθνικού και Καποδιστριακού Πανεπιστημίου Αθηνών.

Abstract

During the Second Libyan Civil War (2014-2020), Libya experienced a deep governmental fragmentation due to the formation of two rival governments; the Government of National Accord (GNA) and the Eastern Government. This problematic has been overlooked as the GNA was often regarded as ‘the internationally-recognized government of Libya’. This study examines the recent practice in the recognition of these governments from December 2015 until November 2020. In the first part, it aims to present thoroughly their emergence and the recognition approaches followed by the international community. In the second part, the legal evaluation of these governments is attempted on the basis of the most commonly accepted recognition criteria; effective control and legitimacy. After applying these legal criteria on the specific Libyan factual situation, it is argued that as of November 2020, neither of the two aforementioned entities could be conclusively considered as the ‘de jure Government of Libya’.

Keywords

recognition of governments; international law; Libya; effective control; legitimacy

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Abbreviations

AU	African Union
EU	European Union
GNA	Government of National Accord
GNC	General National Congress
HoR	House of Representatives
ICD	Interim Constitutional Declaration
LIA	Libyan Investment Authority
LNA	Libyan National Army
LPA	Libyan Political Agreement
NOC	National Oil Company
NTC	National Transitional Council
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSMIL	United Nations Support Mission for Libya
USA	United States of America

Introduction

According to Herodotus, when Xerxes, the King of Persia, wanted to be recognized by the Hellespont as the King of the World, he whipped the tides with 300 lashes¹. In contemporary terms, Xerxes could be described as the Head of the State of Persia and the Hellespont as an entity refusing to recognize his status and his legal position; the whippings could be regarded as recognition practices. Even though this approach has been abandoned and the sea has remained unwhipped ever since, recognition of governments is still a perplexed issue.

Trying to shed light on this subject of international law, this paper is a case study on the recent practice in recognition of governments, as developed within the particular framework of the Libyan rival Governments during the Second Libyan Civil War, from December 2015, when the Skhirat Agreement that led to the formation of a National Unity Government was signed by the majority of the Libyan political stakeholders, until November 2020, when the Libyan Political Dialogue Forum was initiated and the Civil War was over; the first government, the Government of National Accord was led by Prime Minister Fayez al- Sharaj and was based in Tripolitania, while the second one, which will be called the ‘Eastern Government’ for the purposes of the present study, was led by Prime Minister Abdullah al-Thinni, supported by the House of Representatives and based in Cyrenaica, while its armed forces are led by Khalifa Haftar. This study aims to provide a thorough and extensive presentation and analysis of their emergence and the subsequent reaction of the international community. Furthermore, their legal evaluation is presented. Issues of human rights, international humanitarian law, use of force, international criminal law and international responsibility remain outside the scope of the present study, and are examined only to the extent that they are connected with recognition of governments.

The study consists of two parts. The first one presents the domestic and international reactions to Libya’s rival Governments. In particular, it analyzes the major events, which shaped Libya’s political landscape since the fall of Colonel Qaddafi and led to the fragmentation of the Libyan Government. Special emphasis is given to the domestic events that took place during the Second Libyan Civil War and specifically, after the signature of the Skhirat Agreement in December 2015, and the subsequent emergence of two distinct and opposing ruling apparatuses. This sketching of the relevant historical, legal and political framework will be complemented by the extensive presentation of the exact recognition approaches followed by the international community towards the rival entities. To this aim, the practice of eight states (USA, UK, Russia, France, Germany, Italy, Greece and Turkey) and three international organizations (UN, EU and

¹ Herodotus, *Ηροδότου Ιστορίαι*, vol 3 (Ωκεανίδα 2000) 129-130.

AU), which were most intensely involved in the dispute, is analyzed, through primary sources, like UN documents and Ministries of Foreign Affairs statements, while an attempt to draw similarities and differences over the examined approaches is made. The conclusions of this research are set within the general framework of the recent practice regarding recognition of governments.

The second part of this study can be described as the empirical one, as it attempts to apply the recognition of governments criteria on the specific case of Libya. Specifically, the rival Libyan Governments and their potential to be recognized as the legitimate Government of Libya under international law, are examined in accordance with the two established recognition criteria, which are the effective control doctrine and the legitimacy doctrine. These criteria are further divided in their components; the territorial and institutional control and the legitimacy of origin and exercise. Regarding the structure, it should be noted that in the beginning, this part aims to present the theoretical framework of each criterion and the relevant international practice. Subsequently, the ad hoc circumstances of the Libyan rivals are analyzed. Finally, the application of the legal criteria on the specific Libyan factual framework takes place. The conclusions of both parts are presented in the end.

At first, certain pivotal terms for the understanding of the study, have to be analyzed and explained. To begin with, recognition could be defined as the “unilateral expression of will formulated by one or more States, individually or collectively, acknowledging the existence of a de facto or de jure situation or the legality of a legal claim, with the intention of producing specific legal effects, and in particular accepting its opposability as from that time or from the time indicated in the declaration itself”². It is a discretionary act formulated by states and international organizations³ in conformity with international law and with the intention of creating certain legally binding, opposable and enforceable effects on the basis of specific facts, situations or claims⁴. It has to be mentioned that disputes concerning its character, as well as its nature have turned it into one of the most nebulous, controversial or even paradoxical subjects of international law⁵.

² International Law Commission ‘Sixth Report on unilateral acts of States’ (2003) UN Doc A/CN.4/534 (63). The term was defined for the first time as “the free act by which one or more States acknowledge the existence in a certain territory of a politically organized human society, independent of any other existing state and capable of observing the precepts of international law” by the Institut de Droit International ‘La reconnaissance des nouveaux Etats et des nouveaux gouvernements, Session de Bruxelles’ (1936).

³ Recognition acts of international organizations are unilateral acts of collective origin, formulated by the organization’s competent organ in accordance with its rules, see ILC (n 2) 59.

⁴ Ibid 63-65.

⁵ Hans Kelsen, ‘Recognition in International Law: Theoretical Observations’ (1941) 35 American Journal of International Law 605; Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* (Oxford University Press 1998) 21.

Its profound relationship with facts and the large (practically unlimited) quantity of concepts subjected to it, have resulted to its inherently broad definition, where limits between facts and law are not easily distinguishable. Therefore, it has been claimed that recognition is “a matter of fact and not of law”⁶. While it has been interwoven with factual situations, this trait does not deprive it of its legal nature. In fact, recognition attaches a certain legal status to facts and states of affairs on the basis of certain rules⁷. As Waldock has stated, it could be better described as a “mixed question of fact and law”⁸.

Another controversy has arisen concerning its legal or political nature. Even though it is widely considered as a question of (international) law⁹, various scholars have also argued that its nature is purely political¹⁰. Their arguments are based on the fact that States usually take into account political considerations in order to recognize an entity¹¹. However, this political dimension does not affect the legal character of recognition. Kelsen distinguished between 2 acts of recognition; a political and a legal, where the former is arbitrary, declaratory and denotes the recognizing State’s willingness to enter into political relations with the recognized entities, while the latter is constitutive of the entity’s existence vis-à-vis the recognizing State and thus, relative¹².

Talmon supports this view, distinguishing between political and legal recognition. The first one which is discretionary, potentially conditional and subject to unilateral withdrawal, brings on enhanced political relations and material, financial and moral support towards the recognized entity, while the incumbent government’s international standing and legal status remains intact. The legal one on the other hand, establishes the fact that the recognized entity meets the necessary criteria in order to be considered as a government under international law and that the

⁶ Robert Jennings and Arthur Watts (eds), *Oppenheim’s International Law*, vol. 1 (9th edn, Oxford University Press 2008) 677.

⁷ James Crawford, *The Creation of States in International Law* (2nd edn, Oxford University Press 2006) 5.

⁸ Humphrey Waldock, ‘General Course on Public International Law’ (1962) Selected Courses of the Hague Academy of International Law 146.

⁹ Hersch Lauterpacht, ‘Recognition of Governments: I’ (1945) 45 Columbia Law Review 815, 816. Alexandrowicz-Alexander advocated recognition’s quasi-judicial character, see Charles Henry Alexandrowicz-Alexander, ‘The Quasi-Judicial Function in Recognition of States and Governments’ (1952) 46 American Journal of International Law 631, 632.

¹⁰ Joe Verhoeven, ‘La reconnaissance internationale, déclin ou renouveau ?’ (1993) 39 Annuaire français de droit international (1993) 11.

¹¹ According to M. J. Peterson, ‘Political Use of Recognition: The Influence of the International System’ (1982) 34 World Affairs 324, 328, the political uses of recognition may be distinguished in those expressing friendship or hostility toward a new government and those granting recognition for a particular act or promise regarding recognized entity’s future policy.

¹² Kelsen (n 5) 605, 609. According to Lauterpacht (n 9) 818, both the legal and the political acts of recognition are governed by international law, applied by different organs; the former by the judiciary and the latter by the executive. It has to be noted that when US President Obama recognized the Syrian Opposition Coalition as “the legitimate representative of the Syrian people” in 2012, the State Department clarified his act as a “political and not a legal step”, see Brad R. Roth, ‘Whither Democratic Legitimism: Contextualizing Recent Developments in the Recognition and Non-Recognition of Governments’ (2014-2015) 108 AJIL Unbound 214.

recognizing government will treat it in this capacity. This act is relative, unconditional and may be withdrawn only when the factual situation (and as a result, accordance with recognition of governments criteria) is overturned¹³. Nevertheless, recent theory has argued that it is a political act within a legal context, having significant legal consequences¹⁴.

Moreover, recognition has provoked one of the greatest doctrinal debates in international law. The issue at stake is whether recognition creates or not, the international legal personality of the recognized entity. According to the positivist theory, recognition has a constitutive character. Each coherent system of rules needs an entity which will determine its subjects. International system lacks a superior authority competent of this task. As a result, states (through their governments) are granted this competency. By recognizing new entities, they enable them to be considered as subjects of international law, subjecting them to the body of rules of international law and conferring on them all relevant rights and obligations¹⁵. A major problem of this theory is that States could arbitrarily refuse recognition to entities entitled to claim it, in order to avoid their inclusion in the international system. This approach was particularly prominent during the colonial and post-colonial era, when western states used recognition to evaluate newly established political entities' maturity to join the "community of civilized nations"¹⁶. Thus, it has been stated that States have a legal duty to recognize an entity, as soon as the necessary prerequisites are met¹⁷.

On the contrary, adherents of natural law argue that recognition has a merely declaratory function, as the status of the recognized entity is achieved as soon as its necessary requirements are met. They link it to political reasons that are indifferent to its legal status¹⁸. However, it is a rather complex issue, which cannot be easily resolved. To be precise, one has to examine closely the functions accomplished by recognition. While it is true that acquisition of statehood cannot be based upon the discretion of each state, recognition has constitutive effects in relation to several specific matters, such as the exchange of diplomatic representatives¹⁹. As a consequence,

¹³ Stefan Talmon, 'Recognition of Opposition Groups as the Legitimate Representative of a People' [2013] Chinese Journal of International Law 219, 231-234, 243.

¹⁴ ILA Committee on Recognition/ Non-Recognition in International Law, 'Fourth (Final) Report' (2018) 14.

¹⁵ Crawford (n 7) 13; According to Dapo Akande, 'Palestine as a UN Observer State: Does this Make Palestine a State?' (*EJIL:Talk!*, 3 December 2012) <<https://www.ejiltalk.org/palestine-as-a-un-observer-state-does-this-make-palestine-a-state/>> accessed 15 November 2020, collective recognition of states within the framework of international organizations can be considered as having constitutive effect on their statehood.

¹⁶ Emmanuelle Tourme-Jouannet, 'The International Law of Recognition' (2013) 24 European Journal of International Law 667, 668.

¹⁷ Lauterpacht (n 9) 81; Louis Henkin (ed.), *Restatement (Third) of the Foreign Relations Law of the United States*, (American Law Institute Publishers 1987) par. 203.

¹⁸ Crawford (n 7) 23.

¹⁹ Law Review Editors, 'Recognition in International Law: A Functional Reappraisal' (1967) 34 The University of Chicago Law Review 857, 882. This view is dismissed by Crawford (n 7) 27-28, who supports the declaratory view, once specific recognition criteria exist.

one cannot dismiss categorically one theory or the other, as both can be used to describe certain aspects of recognition. Nonetheless, nowadays, this dichotomy has been rejected as of limited importance²⁰.

As noted before, recognition is an institution applied upon a great quantity of concepts; states, governments, territorial changes, administrative and judicial acts of governments can be recognized by subjects of international law²¹. Its diversified objects and the absence of an a priori restriction concerning their discretion to recognize every entity they decide to, are justified by the significance laid upon sovereignty in the international system²². However, states and governments have been regarded as its most important objects; States being the principal subjects of international law and governments acting as their principal organs. While recognition of states has been thoroughly examined in the past, this has not been the case regarding recognition of governments, which constitutes the main theme of the current study²³.

Recognition of governments is a complex and rather obscure subject, where political considerations, legal doctrines and factual situations complement one another. In order to fully understand the subject's sense, one has to define its constitutive components and mainly, the notion of government. According to Kelsen, Government is "the individual or body of individuals which by virtue of the effective constitution of a state, represents the state in its relations with other states, ie is competent to act on behalf of the state in its relations with the community of states"²⁴. The international representation of the state is a very significant function of governments, since they act as proxies of states, being the organizational machineries, which enable states to take part in international relations, exercise their rights and fulfill their obligations²⁵. While this definition focuses not only on the effective constitution, but also on the entity's competence regarding its relations with states, Roth has proposed a more pragmatic definition, based on the factual situation, rather than on its international standing; he considers that an institution constituting the ruling apparatus over a territory and its population, is a Government²⁶.

²⁰ ILA Committee on Recognition/ Non-Recognition in International Law, 'Resolution 3/2018' (78th Conference, Sydney 2018).

²¹ International Law Association (n 3) 1.

²² Verhoeven (n 10) 7, 11.

²³ A certain problem is that while there are specific criteria of statehood (based on the Montevideo Declaration), there are no equivalent criteria for "governmenthood", see Anne Schuit, 'Recognition of Governments in International Law and the Recent Conflict in Libya' (2012) 14 International Community Law Review 381, 388. It has to be noted that this conclusion was also expressed in the ILA 2018 Resolution on Recognition.

²⁴ Kelsen (n 5) 615.

²⁵ Siegfried Magiera, 'Governments' *Max Planck Encyclopedia of Public International Law* (2007) <[Oxford Public International Law: Governments \(ouplaw.com\)](https://www.ouplaw.com/oxford-public-international-law/governments)> accessed 15 November 2020. According to Talmon, the states act through their governments, which have the *jus repraesentationis omnimodae*, see Talmon (n 5) 115.

²⁶ Brad R. Roth, *Governmental Illegitimacy in International Law* (Oxford University Press 2000) 8.

It has to be noted that under these definitions, both the GNA and the Eastern Government which have fully formed institutional structures and constitute competent ruling apparatuses over their respective territories and populations, can be considered as governments in international law. The evaluation of the position of the Libyan National Army (LNA) of Khalifa Haftar within the context of the Libyan conflict, follows the statements of both the Eastern Government and the LNA itself, which consider the latter as the armed forces of this authority, and not as an extraneous and independent armed group.

By combining the definition of recognition and government and by placing the subject in its proper dimensions, recognition of governments can be defined as follows; it constitutes the unilateral, discretionary act through which subjects of international law express their opinion regarding the legal status of an entity, which constitutes the effective ruling apparatus of a territory²⁷. In other words, the acknowledgement of a certain legal position of the recognized government is accompanied by the recognizing state's intention to deal with this entity as the government of a state, establishing diplomatic relations and granting it immunities and privileges within its domestic legal order²⁸. State practice has developed two main criteria for the assessment of a government under international law; the effective control doctrine, which takes into account the factual extent of control exercised by the government in question, and the legitimacy doctrine, which renders the legitimacy of a regime conditional upon its accordance with the domestic legal order.

This subject of international law rose into prominence during the first decades of the 19th century and mainly when the Spanish Provinces of Latin America proclaimed their independence. At this time, the creation of new states led to the simultaneous recognition of states and their governments, resulting in a theoretical confusion between the two terms.

Even though there is a close relation between these two types of recognition, they are not identical²⁹. In many cases an entity meets the necessary criteria for statehood, but recognition of its ruling apparatus is denied by other states due to political reasons. A typical example of this phenomenon is the unconstitutional change of government. In this case, other states may recognize the existence of the state, but withhold the recognition of its government. For example, both the British and the US Governments postponed the recognition of the Bolshevik

²⁷ It has to be noted that Talmon (n 5) 24, 29 argues that recognition of governments indicates the recognizing subject's readiness to establish official relations with the recognized Government.

²⁸ Malcolm N. Shaw, *International Law* (6th edn, Cambridge University Press 2008) 455.

²⁹ James Crawford, *Brownlie's Principles of International Law* (8th edn, Oxford University Press 2012) 151.

Government, even though the Soviet Union constituted by all means a state and it met all necessary criteria³⁰. On the contrary, a government may be recognized without being accompanied by recognition of a certain state. For instance, the US and the French Governments recognized the Czecho-Slovak National Council as a Provisional Czecho-Slovak Government after its declaration of independence on 18 October 1918, despite the fact that it did not exert effective control over Czecho-Slovakian territory and although, Czecho-Slovakia did not exist as a state at the time³¹.

Recognition of governments is distinguished in de jure and de facto recognition. De jure recognition means recognition of a de jure government, while de facto recognition amounts to recognition of a de facto government³². Historically, de jure recognition could be granted to new states and governments solely by their former sovereign. Until then, all other states could recognize them only de facto³³. Contemporary theory rejects this approach and considers the recognition by the parent state as unnecessary, if all the necessary criteria are met³⁴.

These variants have various differences. First of all, a de jure government is exclusively the government of a state and thus, each state can only have one de jure government³⁵. On the contrary, there may be more de facto governments in the territory of the same state. That is why, in *New York Chinese TV Programs v. UE Enterprises*, the US Circuit Court of Appeals ruled that due to the fact that both the People's Republic of China and the Republic of China (Taiwan) claimed to constitute the sole legitimate Chinese Government, whereas only the former did exercise effective control over the Chinese territory, its recognition as the de jure Government of China necessarily amounted to the de-recognition of Taiwan, since only one de jure government may exist in each state³⁶. As a result, de jure recognition denotes a sovereign authority, while de facto recognition may indicate an array of governmental types; an effective regime, an unconstitutional government, a regime fulfilling only some recognition of governments requirements, a partially successful government or an illegal government under international law³⁷. A typical example of a de facto government is the case of insurgents. According to

³⁰ Talmon (n 5) 27, 35.

³¹ The Czecho-Slovakian State was recognized by the Allied Powers in a Treaty on 10 September 1919, see Talmon (n 5) 78.

³² Talmon (n 5) 60. Nevertheless, many jurists consider this distinction as vague, see Charles L. Cochran, 'De Facto and De Jure Recognition: Is there a Difference?' (1968) 62 *The American Journal of International Law* 457, 460

³³ Talmon (n 5) 56.

³⁴ Zaim M. Nedjati, 'Acts of Unrecognized Governments' (1981) 30 *International and Comparative Law Quarterly* 388, 389. However, Jure Vidmar, 'Explaining the legal effects of recognition' (2012) 61 *International and Comparative Law Quarterly* 361, 368, 378, using the examples of Timor Leste and Bangladesh, considers that a new entity's recognition becomes universal, only after the expression of consent from its former sovereign.

³⁵ Lauterpacht (n 9) 823.

³⁶ Talmon (n 5) 105.

³⁷ Talmon (n 5) 60.

Lauterpacht, during civil wars, insurgents cannot be recognized de jure, but only de facto. This approach, he adds, constitutes an established principle of international law³⁸.

Furthermore, de facto recognition produces limited effects. As a de facto government does not amount to the government of a sovereign state, it is not entitled to jurisdictional immunities and cannot claim ownership over state assets outside its territory, as happens in the case of de jure governments. Moreover, the type of recognition granted to a government, affects the specific nature of relations between the recognizing and the recognized government. For example, de jure recognition usually amounts to the expression of preparedness for normal diplomatic relations, whereas de facto recognition expresses the willingness of the recognizing state to maintain limited diplomatic or consular relations with the recognized government³⁹. Thus, Turkey appointed an ambassador in Libya, only after the NTC managed to exercise effective control over the capital and was recognized as the de jure Government of the state⁴⁰.

Another distinction is that between express and implied recognition. In express recognition, states issue open and unambiguous recognition declarations⁴¹. Nonetheless, recognition may be deduced implicitly through the nature of dealings between two governments, which indicate the intention of the recognizing government to accord recognition to the other one. For example, a message of congratulations to a new government or the formal establishment of diplomatic relations usually indicate this government's recognition. After all, even in recognition declarations, the use of the word "recognize" may be omitted and replaced by other words, denoting the same intention of the state⁴². Last but not least, there are cases, where a state does implicitly recognize another state or government, even though it expressly insists on its non-recognition towards that entity⁴³.

³⁸ Hersch Lauterpacht, 'Recognition of Insurgents as De Facto Government' (1939) 3 The Modern Law Review 1, 20. In this framework, the British courts decided in the *Government of Republic of Spain v. S.S. Arantzazu Mendi and Others* case that the British Government had accorded de facto recognition to the Government formed by the Franco insurgents, while retaining de jure recognition of the democratically elected Spanish Government and in spite of the British Government's denial that such de facto recognition had been accorded to Franco, see Herbert W. Briggs, 'Relations Officieuses and Intent to Recognize: British Recognition of Franco' (1940) 34 American Journal of International Law 47.

³⁹ Nedjati (n 34) 388.

⁴⁰ Turkish Ministry of Foreign Affairs, 'Bilateral Relations between Turkey and Libya' (mfa.gov.tr) <[Bilateral Relations between Turkey and Libya / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](http://Bilateral%20Relations%20between%20Turkey%20and%20Libya%20-%20Rep.%20of%20Turkey%20Ministry%20of%20Foreign%20Affairs%20(mfa.gov.tr))> accessed 15 November 2020.

⁴¹ Shaw (n 28) 462.

⁴² Talmon (n 5) 4-5.

⁴³ For instance, according to Talmon, in spite of Turkey's express non-recognition of the Republic of Cyprus, it can be deduced by its overall behavior towards it, that it recognizes it implicitly as one of two sovereign states in Cyprus, see Stefan Talmon, 'Chypre : écueil pour la Turquie sur la voie de l'Europe' (2005) 51 Annuaire français de droit international 85, 89.

In spite of the aforementioned major doctrinal debates concerning the nature of the recognition of governments, states started to differentiate their practice. In particular, during the 1960s France and Belgium decided to abolish the practice of recognition of governments. Their new policy was expressly stated in their notes towards the Boumedienne Government of Algeria and the Qaddafi Government of Libya respectively, where both states declared that thenceforth they would recognize only states and not governments⁴⁴. Various reasons dictated this decision and mainly, the practical difficulties caused by the political use of recognition in conjunction with the widespread belief that recognition of a new government amounted to its approval. As stated by the Australian Minister of Foreign Affairs and Trade in 1988: “Recognition of a new Government inevitably led to public assumptions of approval or disapproval of the Government concerned, and could thereby create domestic or other problems for the recognizing Government”⁴⁵.

Subsequently, more States followed this example and issued similar declarations. In particular, the British Foreign Secretary announced in 1980 that the United Kingdom would not recognize thenceforth governments “in accordance with common international practice”⁴⁶. It has to be noted that despite this trend, recognition of new states was never rejected⁴⁷, because it has been stated that the existence of states provides the necessary framework to deal with governmental changes, without resorting to recognition of governments⁴⁸. However, Talmon has argued that this change of state practice does not amount to the abolition of recognition of governments, but that it denotes a change in the way recognition is accorded. In other words, he concludes that the differentiation brought on by the abovementioned declarations is the replacement of express and formal recognition of governments declarations by more implicit practices⁴⁹.

Nonetheless, this field of international law regained its significance in the beginning of the second decade of the 21st century. Specifically, when revolutions against the Arab authoritarian

⁴⁴ M. J. Peterson, ‘Recognition of Governments Should Not Be Abolished’ (1983) 77 American Journal of International Law 31, 42. Lauterpacht considered recognition of governments as a necessary and substantial act due to “the uncertainty, brought about by the events of the revolution, as to who is the holder of effective power”, see Hersch Lauterpacht, ‘Recognition of Governments: II’ (1946) 46 Columbia Law Review 37, 51-52.

⁴⁵ ‘Minister for Foreign Affairs and Trade, Press Release 19 January 1988’ reprinted in [1988] Australian International Law News 49. In particular, Australia wanted to find an easy and simple way to restore relations with the Fijian government, which had emerged by a coup d’etat previously criticized by the Australian government, see Hilary Charlesworth, ‘The new Australian recognition policy in comparative perspective’ (1991) 18 Melbourne University Law Review 1, 2-3

⁴⁶ Colin Warbrick, ‘Recognition of Governments’ (1993) 56 Modern Law Review 92. For an extensive presentation of this decision of the Government of the UK, see Colin Warbrick, ‘The New British Policy on Recognition of Governments’ (1981) 30 International and Comparative Law Quarterly 568.

⁴⁷ New Zealand constitutes an exception, claiming that it has abolished the practice of making explicit statements on recognition of states. Nevertheless, according to Talmon, in this case express recognition has been replaced by the implied way of recognition, see Stefan Talmon, ‘New Zealand’s Policy of Implied Recognition of States: One Step Ahead or Falling Behind?’ (2010) University of Oxford Legal Research Paper No 70/2010, 8.

⁴⁸ Peterson (n 44) 31.

⁴⁹ Talmon (n 5) 3.

regimes began to spread all over the Middle East and North Africa, the international community had to confront a question; how to deal with the political branches of the rebels, which started to form ruling apparatuses, rivaling incumbent regimes and claiming to constitute the sole legitimate governments of their respective states. In this context, various recognition formulas were invented, so that foreign states and international organizations were able to deal with these entities, support them, or even express their disapproval.

A typical example of this phenomenon was the case of Libya in 2011, when massive riots against Colonel Qaddafi took place and the international community had to decide if the regime of Qaddafi or the political branch of the rebels could claim the position of the Government of Libya. Whilst several approaches were followed, the revolution escalated into a conflict and later into a Civil War, which was hoped to stop with the UN-led unification efforts that resulted in the signature of the Libyan Political Agreement (or Skhirat Agreement) in December 2015. This Agreement was expected to provide an inclusive transitional framework, which would facilitate Libya's democratic transition, by leading the country to the organization of free and fair elections. However, this aim has not been accomplished to this day and Libya has not managed to be governed by a unified government. On the contrary, in the wake of the Agreement, two distinct ruling machineries were formed; the one called the 'Government of National Accord' based in Tripoli and controlling Tripolitania and the 'Eastern Government' based in Cyrenaica and exerting control over the East and the South. The international community tried to deal with them, by resorting to the recognition of governments criteria.

The present study will try to elucidate this governmental riddle, by tracing the current recognition of governments trends followed by the international community in the specific case of Libya (with parallel references to the contemporary development of the concept, both in Africa and worldwide) and by applying the two main recognition criteria (the effective control doctrine and the legitimacy doctrine), in order to reach certain conclusions on the nature and the content of the two rival Libyan Governments.

Part One: Libya's Rival Government(s): Domestic and International Reactions

a) Background on Libya's Governmental Fragmentation

Libya is a North African state, which had been governed by Colonel Qaddafi for almost 40 years. In the wake of the so-called 'Arab Spring' movements in various Arab states, a revolution against Qaddafi's regime started in Benghazi, on 15 February 2011. Subsequently, demonstrations took place all over the country and the rebels took control of many eastern areas and cities, such as Misrata. Qaddafi tried to suppress these protests violently and it was reported that he was deploying mercenaries in order to quell resistance. Various atrocities were reported, as for example the death of 233 civilians⁵⁰.

Following these acts of the Government of Libya, foreign Governments started to recognize the National Transitional Council, which acted as the political branch of the rebels, as "the legitimate representative of the Libyan people". This wording did not amount to the recognition of the NTC as Libya's government, but offered several practical advantages, while it acknowledged and supported the rebels' struggle against Qaddafi⁵¹.

Subsequently, states elevated the status of the NTC, recognizing it as Libya's legitimate Government. In spite of the entity's lack of democratic origin through free and fair elections, its struggle against Qaddafi's authoritarian regime, the fact that it had promised the organization of elections and its inclusiveness, as it encompassed the majority of Libyan society's factions, could be regarded as legitimizing factors. However, the effective control exerted by Qaddafi over a considerable part of the Libyan territory, made the claim of the NTC over the position of the de jure Government of Libya, dubious⁵².

As the conflict escalated, the Arab League and the Organization of Islamic Cooperation highlighted the United Nations Security Council's specific responsibilities to protect civilians in

⁵⁰ Patrick CR Terry, 'The Libya intervention (2011): neither lawful, nor successful' (2015) 48 *The Comparative and International Law Journal of Southern Africa* 162, 164.

⁵¹ Stefan Talmon, 'Recognition of the Libyan National Transitional Council' (2011) University of Oxford Legal Research Paper No 38/2011, 2. The United Kingdom firstly recognized the NTC as the "legitimate political interlocutor" for the Libyan people, aiming to support its cause. Subsequently, the British Government altered its recognition position and recognized it as "the legitimate representative of the Libyan people" and finally, as "the legitimate governing authority in Libya", see Colin Warbrick, 'British Policy and the National Transitional Council of Libya' (2012) 61 *International and Comparative Law Quarterly* 247, 250.

⁵² Dapo Akande, 'Recognition of Libyan National Transitional Council as Government of Libya' (*EJIL:Talk!*, 23 July 2011) <<https://www.ejiltalk.org/recognition-of-libyan-national-transitional-council-as-government-of-libya/>> accessed 15 November 2020.

Libya and urged it to take several measures, including the imposition of a no-fly zone on Libyan military aviation⁵³. As a result, the UNSC faced the anticipation of the international community to take action against the Qaddafi regime.

Responding to this situation, the UNSC adopted Resolution 1970 pursuant to Chapter VII of the UN Charter on 26 February 2011. According to the Resolution, the case was referred to the Prosecutor of the International Criminal Court, while the Council imposed arms embargo on Libya⁵⁴, as well as travel ban and assets freeze on the Qaddafi family and their closest affiliates⁵⁵.

Subsequently, on 17 March 2011, the Council adopted Resolution 1973 pursuant to Chapter VII of the Charter. In this Resolution, the Council took a step further, authorized Member States to take all necessary measures to protect civilians and civilian populated areas under threat of attack by the Qaddafi regime and imposed a no-fly zone on the airspace of Libya, in order civilians to be protected⁵⁶. Furthermore, it imposed assets freeze on several fundamental Libyan financial institutions, like the National Oil Corporation, the Libyan Investment Authority and the Central Bank of Libya. In addition, it established a Panel of Experts mandated to gather, examine and analyze information from states, UN bodies, regional organizations and other interested parties regarding the implementation of the measures decided in Resolution 1970 and Resolution 1973, to make recommendations in order to improve the implementation of the relevant measures and to provide reports to the Council on the situation in Libya⁵⁷.

In accordance with the Resolution, a NATO-led multi-national coalition initiated 'Operation Unified Protector' in Libya on 19 March 2011⁵⁸. The armed conflict provoked by this military intervention could be described as mixed; an International Armed Conflict taking place between

⁵³ League of Arab States, 'The Outcome of the Council of the League of Arab States Meeting at the Ministerial Level in Its Extraordinary Session on the Implications of the Current Events in Libya and the Arab Position' (2011) Resolution No. 7360/2011. For an analysis of the jurisdiction of the ICJ to order the establishment of a no-fly zone over Libya, see Stefan Talmon, 'Could the International Court of Justice Indicate a 'No-Fly Zone' over Libya?' (*EJIL:Talk*, 25 February 2011) <<https://www.ejiltalk.org/could-the-international-court-of-justice-indicate-a-%e2%80%98no-fly-zone%e2%80%99-over-libya/>> accessed 15 November 2020.

⁵⁴ The arms embargo was imposed to all arms transfer to the territory of Libya and not solely on the Libyan Government, see Dapo Akande, 'Does SC Resolution 1973 Permit Coalition Military Support for the Libyan Rebels?' (*EJIL:Talk!*, 31 March 2011) <<https://www.ejiltalk.org/does-sc-resolution-1973-permit-coalition-military-support-for-the-libyan-rebels/>> accessed 15 November 2020.

⁵⁵ UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970.

⁵⁶ Akande (n 54), considers that UN Member States pursuant to UNSC Resolution 1973, could arm Libyan rebels solely on the ground of protecting civilians. Otherwise, they would violate the arms embargo imposed by UNSC Resolution 1970. According to Bassiouni, the intervening states were permitted by the UNSC to interpret freely the terms of its authorization, in order maximum protection of civilians to be achieved, see M. Cherif Bassiouni (ed), *Libya from repression to revolution: a record of armed conflict and international law violations, 2011–2013* (Brill 2013) 223.

⁵⁷ UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973.

⁵⁸ David D. Kirkpatrick, Steven Erlanger and Elisabeth Bumiller, 'Allies Open Air Assault on Qaddafi's Forces in Libya' *The New York Times* (New York, 19 March 2011) <<https://www.nytimes.com/2011/03/20/world/africa/20libya.html>> accessed 15 November 2020.

the Qaddafi forces representing the State of Libya and the Coalition forces, and a Non-International Armed Conflict between the Libyan Government and the rebels⁵⁹.

It has to be noted that the adoption of UNSC Resolution 1973 constitutes the first time that the UNSC invoked the ‘responsibility to protect’ principle, in order to authorize UN Member States to intervene (and even use force) in the internal affairs of a state⁶⁰. According to the principle, the protection of civilians is a primary responsibility of their respective state. Nevertheless, if that state is unable or unwilling to fulfil its obligation, responsibility is taken up by the international community collectively. This principle, firstly expressed by the UN Secretary General in 2004, links a state’s sovereignty to its responsibility to protect its own citizens and to meet its obligations towards the international community. If that is not possible, the international community itself shall take on and fill the gap on the basis of collective security.

Powell considers this first initiation of the principle as a ‘multilateral constitutional moment’; multilateral, as action must be taken by many states and solution to the problem cannot be offered by any single state on its own, and constitutional, because it marks a normative shift concerning the interrelation between several UN Charter’s fundamental provisions, like the protection of human rights, sovereignty and the prohibition of interference in the internal affairs of a state⁶¹.

Under these circumstances, Libya’s envoys to the UN started to differentiate their position from the official Government’s acts. To begin with, Libya’s ambassador to the UN, Mohamed Shalgham, condemned Qaddafi’s reaction against the protesters, who simply asked for their freedom and the respect of their rights. Thus, he asked the Libyan Head of State to “[l]eave Libyans alone” and urged the UNSC to impose sanctions on the Qaddafi family and other high-profile regime officials. In parallel, the Libyan ambassador to the UN Human Rights Council informed the Council that thenceforth the Libyan mission would not represent the Libyan Government, but the Libyan people, and pleaded for help.⁶² In other words, Qaddafi’s brutal suppression of the protests led to the renunciation of the regime, even by its own appointees, who called the UN to take action.

⁵⁹ Marko Milanovic, ‘How to Qualify the Armed Conflict in Libya?’ (*EJIL:Talk!*, 1 September 2011) <[How to Qualify the Armed Conflict in Libya? – EJIL: Talk!](#)> accessed 15 November 2020.

⁶⁰ Catherine Powell, ‘Libya: A Multilateral Constitutional Moment’ (2012) 106 *American Journal of International Law* 298. However, Constantine Antonopoulos, “‘The Legitimacy to Legitimise’: The Security Council Action in Libya under Resolution 1973 (2011)’ (2012) 14 *International Community Law Review* 359, 378, contends that the NATO-led intervention exceeded the mandate of the UNSC authorization, as it provided arms to the rebels and granted premature recognition to the NTC as the Libyan Government.

⁶¹ Powell (n 60) 303.

⁶² *Ibid* 311.

On 16 September 2011 the General Assembly approved by majority the appointee of the NTC as the representative of Libya⁶³. However, despite the fact that 114 Member States voted in favor of the approval of the representation of Libya by the NTC, the latter was not automatically recognized by them as Libya's Government in their bilateral relations, as well. In particular, a state representative's vote in favor of the admission of a state in an international organization or of the replacement of an entity as the state's agent in the organization does not bind the state outside of that specific context, but is strictly limited within the specific operational framework of the organization⁶⁴.

As the conflict escalated, the UNSC adopted Resolution 2009 on 16 September 2011. The Resolution established the United Nations Support Mission for Libya (UNSMIL) as an integrated special political mission aiming to support Libya's transition to a democratic and more stable regime⁶⁵. Its mandate included support to the legitimate transitional Libyan authorities and financial institutions, the exercise of mediation between the rival parties and reporting on human rights conditions and violations. The UNSMIL's engagement in the mitigation of the Libyan conflict has been significant and it has co-operated constructively with the parties to the conflict, in order to promote unification efforts and to ameliorate human rights conditions. The Mission is headed by the UN Secretary-General's Special Representative in Libya. The first appointee was Ian Martin, succeeded by Tarek Mitri in 2012, Bernardino Leon in 2014, Martin Kobler in 2015, Ghassan Salame in 2017, Stephanie Williams in 2020 and Ján Kubiš in 2021.

The UNSMIL was instrumental in the adoption of the Interim Constitutional Declaration (ICD) by the NTC. This Declaration constituted Libya's transitional constitutional framework, which would amplify the opponents' struggle for power and would provide them with a certain operational guide. According to its provisions, it would be replaced by a permanent Constitution drafted by the Constitutional Drafting Assembly⁶⁶. Nonetheless, its application was not met without reaction and thus, several ICD's key articles were amended after pressure from the

⁶³ UNGA Res 66/1 (16 September 2011) UN Doc A/RES/66/1.

⁶⁴ Emmanuel Roucounas, *Δημόσιο Διεθνές Δίκαιο* (Νομική Βιβλιοθήκη 2015) 434.

⁶⁵ The mission's mandate was extended consecutively with UNSC Resolutions 2022 (2011), 2040 (2012), 2095 (2013), 2144 (2014), 2238 (2015), 2323 (2016), 2376 (2017), 2434 (2018) and 2486 (2019).

⁶⁶ A Constitution Drafting Assembly was elected in February 2014. According to its mandate, the Assembly would draft the Libyan Constitution, presenting its first draft within 120 days after its first session. After a long delay, it finally presented a Draft Constitution in July 2017. Nonetheless, the procedure and the final draft were challenged in front of the Bayda Court of Appeal, which found various procedural irregularities and annulled its vote. Subsequently, the Supreme Court of Libya overturned the Court of Appeal decision and ruled in favor of the Constitution's validity. Nevertheless, the HoR amended the ICD, and required additional conditions in order the draft Constitution to come into force. In particular, the decision would be taken by referendum and instead of the previously required two-thirds majority in the whole region, a new condition of 50% plus one votes in each of the 3 voting districts of Tripolitania, Cyrenaica and Fezzan was required. This requirement posed further difficulties in the procedure. For the constitution-making process in Libya, see Darin E W Johnson, 'Conflict Constitution-Making in Libya and Yemen' (2017) 39 University of Pennsylvania Journal of International Law 293.

Higher Interim Council of Barqa, a provincial council that was part of the so-called “federalist movement” of the East, which insisted on the decentralization of state institutions and on the equal representation of the east provinces in the distribution of power⁶⁷.

In this framework, Libya held its first elections after 40 years of Qaddafi rule and a 200-member General National Congress (GNC) was elected on 7 July 2012. The distribution of seats was decided in accordance with the 3 main regions’ population, and with regard to political considerations; as a result, Tripolitania was represented by 106 seats, Cyrenaica by 60 seats and Fezzan by 34. 120 representatives were elected through direct vote, while the remaining 80 through a closed-list proportional representation system. The majority of the proportional seats (39 seats out of 80) was won by the National Forces Alliance, 39 seats by the Justice and Construction Party, 3 by the National Front and the remaining 120 by individual candidates⁶⁸. Ali Zeidan was appointed as Libya’s Prime Minister.

Despite the fact that the GNC constituted Libya’s first elected body in 40 years, it started to introduce legislation initiatives that altered the democratic elements of the regime and canceled hopes for the democratic transformation of the country. In the beginning, it amended the ICD’s provision which required a 134-vote threshold in order legislation to be passed, reducing it to 120 votes. Subsequently, it lowered the threshold even more, by voting the fifth ICD amendment, which provided the GNC with the exceptional power to pass legislation with 101 votes. This act was condemned by both politicians and the public, as it was drafted under pressure from armed groups, revolutionaries and political Islamists. As a consequence, it undermined the GNC’s position as an inclusive, democratically elected institution, which operated in favor of all Libyans.

The GNC was further criticized, after the introduction of the Political Isolation Act, which intended to prohibit Qaddafi’s former supporters from taking part in the new Libyan political landscape. However, the Act was adopted amid a voting procedure marked by blatant interferences of various armed groups, who even besieged the Ministry of Justice⁶⁹. In this way, armed groups became the most important players of the Libyan political scene, undermining the GNC’s role and putting into question both its efficacy and its orientation towards the democratic transformation of Libya.

⁶⁷ Democracy Reporting International, *At a Glance: Libya’s Transformation 2011-2018; Power, Legitimacy and the Economy* (2018) 21.

⁶⁸ Ibid 23.

⁶⁹ Ibid 24.

The situation was deteriorated, when Prime Minister Ali Zeidan resigned and Abdullah al-Thinni was appointed as caretaker Prime Minister. When Ahmad Mitig was appointed as Zeidan's successor, his appointment was challenged in front of the Supreme Court in Tripoli, which ruled that it was unconstitutional. During this period, al-Thinni retained his position.

In the meanwhile, parliamentary elections were held on 25 June 2014. The elections were marked by an extremely low turnout of 18% of registered voters, amid battles between armed groups on the outskirts of Tripoli, and resulted in the election of the new legislative body, the House of Representatives. However, the GNC refused to relinquish its power and stated that its term had not expired in accordance with the ICD.

The international community took side in this dispute and recognized the HoR as the "sole legislative authority in the country"⁷⁰. At the same time, caretaker Prime-Minister al-Thinni refused to resign in favor of the new Prime Minister appointed by the GNC. As a result, al-Thinni and the House of Representatives relocated to Tobruk, forming a Government parallel to the GNC apparatus already existing in Tripoli⁷¹. The al-Thinni-led and HoR-supported Government was regarded by the international community as the legitimate Government that would promote democracy and stability in Libya.

These prospects were founded on the mandate of the HoR, which would initiate the necessary procedure for the organization of presidential elections. However, the House adopted an amendment to the relevant article of the ICD and decided to delay the procedure, claiming security reasons. Also, it ignored the fact that the High National Election Commission had the technical capacity to support the organization of elections. As a consequence, the Parliament and its Speaker Aguila Saleh assumed provisionally presidential powers.

It has to be noted that 2 months after the HoR's election, its legitimacy was questioned in front of the Supreme Court of Tripoli due to the fact that it had not appointed or held presidential elections 45 days after its first session. The Court nullified its election, but the verdict was rejected by the HoR, which accused the GNC of meddling with the procedure⁷².

⁷⁰ UNSMIL 'Briefing by Bernardino Leon SRSG for Libya' (*unmissions.org*, 2014) <[Briefing by Bernardino León SRSG for Libya - Meeting of the Security Council 15 September 2014 | UNSMIL \(unmissions.org\)](#)> accessed 15 November 2020.

⁷¹ Democracy Reporting International (n 67) 27-28.

⁷² It has to be noted that Justice in Libya is the sole state institution that has not been fragmented during the conflict. Thus, the Supreme Court of Libya is seated in Tripoli and we do not observe the formation of a parallel Supreme Court in other Libyan cities, as has happened with other Libyan state institutions, like the National Oil Corporation or the Central Bank. However, during the occupation of Sirte by the Islamic State, it had established official courts in its occupied territory in Northern Libya, see René Provost, *Rebel Courts: The Administration of Justice by Armed Insurgents* (Oxford University Press 2021) 107.

In March 2015, the HoR appointed Khalifa Haftar, a former Libyan officer and later head of an armed group, as general commander of Libya's armed forces with the rank of field marshal. Various names have been given to these forces; Haftar referred to them as the Libyan Arab Armed Forces⁷³, his supporters as 'al-jaysh' (the army)⁷⁴, the international community as the Libyan National Army and the UN Panel of Experts as the Haftar Armed Forces⁷⁵.

In the meanwhile, the UN envoys Bernardino Leon and Martin Kobler attempted to convince all the rival players to form a national unity Government. Thus, they supported unification efforts, which would lead to the re-organization of the Libyan political scene. After various failures and amended drafts, members of the GNC, the HoR and the civil society signed the Libyan Political Agreement on 17 December 2015 in Skhirat, Morocco⁷⁶.

The Agreement provided a certain institutional framework and a delegation of powers between the three principal State organs; the Government of National Accord (formed by the Presidency Council and the Council of Ministers), the House of Representatives and the High Council of State. The GNA would constitute the sole executive authority of the State, the HoR would act as its sole legislative body and the High Council of State as the highest consultative Assembly of the State⁷⁷.

Within the GNA, the President of the Presidency Council would represent the State in its foreign relations, accredit representatives of states and foreign bodies in Libya, supervise the work of the Council of Ministers, and guide the Council of Ministers with regards to the performance of its terms of reference as well as preside over its meetings. In parallel, the Presidency Council of the Council of Ministers would assume the functions of the Supreme Commander of the Libyan

⁷³ According to Rule 4 of Customary International Humanitarian Law, armed forces consist of all organized armed forces, groups and units, which are under a command responsible to a State party in an international armed conflict for the conduct of its subordinates. It has been argued that it may also apply to State armed forces in non-international armed conflicts, see Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge University Press 2009) 14. Haftar deliberately uses the term "armed forces", when referring to his group, as he wants to highlight its role as the official Libyan army.

⁷⁴ Tim Eaton and others, *The Development of Libyan Armed Groups Since 2014; Community Dynamics and Economic Interests* (Chatham House 2020) 22-23.

⁷⁵ UNPE 'Letter dated 29 November 2019 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council' (2019) UN Doc S/2019/914. In this framework, the 2021 UNPE Report uses the term 'Haftar Affiliated Forces' to refer to armed groups affiliated to the LNA, see UNPE 'Letter dated 8 March 2021 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council' (2021) UN Doc S/2021/229, 6.

⁷⁶ 'UN welcomes 'historic' signing of Libyan Political Agreement' ([news.un.org](https://news.un.org/en/story/2015/12/518412-un-welcomes-historic-signing-libyan-political-agreement), 17 December 2015) <<https://news.un.org/en/story/2015/12/518412-un-welcomes-historic-signing-libyan-political-agreement>> accessed 15 November 2020; Patrick Haimzadeh, 'Libya's uncertain new government' *Le Monde diplomatique* (Paris, March 2016) <<https://mondediplo.com/2016/03/05libya>> accessed 15 November 2020.

⁷⁷ Libyan Political Agreement (17 December 2015) (LPA) art 4, 5.

army, would appoint and dismiss ambassadors and representatives of Libya in international organizations based on a proposal from the Minister of Foreign Affairs, appoint and remove senior officials, declare states of emergency, war and peace, and conclude international agreements and conventions provided that they are endorsed by the House of Representatives⁷⁸. The Council of Ministers would exercise the executive authority and ensure normal functioning of public state institutions and structures by establishing and implementing the Government program for the duration of its term and by proposing the necessary draft laws for performing its tasks and submitting it to the HoR for endorsement⁷⁹.

The LPA further provided that the HoR would undertake the legislative authority for the transitional period, granting the vote of confidence or no confidence to the Government of National Accord, adopting the general budget, performing oversight over the executive authority and endorsing the public policy submitted by the Government⁸⁰. Moreover, the HoR would consult with the State Council, in order to reach consensus after the endorsement of the Agreement, to agree on the incumbents of the position of Governor of the Central Bank of Libya, Head of the Audit Bureau, Head of the Administrative Oversight Authority, Head of the Anti-corruption Authority, Head and members of the High National Electoral Commission, Head of the Supreme Court and the Public Prosecutor⁸¹.

The Agreement marked a new era in the Libyan political scene and introduced a different institutional structure, which would facilitate the transition to democracy. Fayez Al-Saraj, a HoR member from Tripoli was appointed as Prime Minister and President of the Presidency Council and he formed a Government temporarily hosted in Tunis⁸². According to the provisions of the Agreement, caretaker Prime Minister al-Thinni would resign, as soon as the proposed GNA cabinet was accepted by the HoR.

In this framework, on 31 December 2015, Aguila Saleh, the Speaker of the HoR, endorsed the Agreement and on 26 January 2016, the House voted in favor of the Agreement, but rejected draft article 8, which would enable the Presidency Council to appoint the head of the armed

⁷⁸ LPA art 8.

⁷⁹ LPA art 9.

⁸⁰ LPA art 13.

⁸¹ LPA art 15.

⁸² International Crisis Group, 'The Libyan Political Agreement: Time for a Reset? Middle East and North Africa Report No. 170' (4 November 2016) 3.

forces and which would put in danger Haftar's position as their general commander. Moreover, it rejected the proposed GNA cabinet and did not endorse the new Government⁸³.

In spite of the lack of endorsement, the GNA arrived in Tripoli by sea in March 2016. During the first months after its landing on Libyan soil, it had to engage in a conflict with the GNC Government over control of the capital. Finally, it managed to gain control over the city and its institutions by allying with local armed forces. However, a provincial court, the Court of Appeal of Bayda ruled that the emergence of the GNA was unconstitutional and that its acts were null and void, as the Libyan Political Agreement had not been concluded in accordance with the Interim Constitutional Declaration.

In this framework, the HoR continued to deny endorsing it, in spite of the fact that renewed compositions of the Presidency Council and the Cabinet were submitted regularly. The ongoing dispute between the two bodies resulted in the eventual formation of two distinct entities with complete governmental structure and fully formed institutions, both claiming the position of the *de jure* Government of Libya; the GNA, headed by Prime-Minister Sarraj and based in Tripoli, and the Eastern Government, supported by the Tobruk-located HoR and led by the Bayda-based Prime-Minister Abdullah al-Thinni. Both entities constituted the ruling apparatuses in their respective territories and could thus be considered as Governments in international law.

In the following years, tension between the rival Governments escalated and attacks, offensives and military operations set the tone of the relations between them. Large-scale operations took place in Central Libya and both sides struggled to maximize their control over the Libyan territory and the natural resources, being backed and supported by foreign actors. This conflict was classified by the UN High Commissioner as a non-international armed conflict between the 'GNA, its affiliated armed groups and third States supporting it against the LNA'. Furthermore, the airstrikes allegedly conducted by third states in support of the LNA and against the GNA could be regarded as a parallel international armed conflict between the GNA and third states in support of the LNA⁸⁴.

Various reconciliation attempts were made and talks were held in Vienna in 2016, in Paris, in Cairo and in Abu Dhabi in 2017, and in Palermo in 2018. Nevertheless, these meetings were not

⁸³ Democracy Reporting International (n 67) 33; Roland Friedrich and Francesca Jannotti Pecci, 'Libya: unforeseen complexities' in Paul R. Williams and Milena Sterio (eds), *Research Handbook on Post-Conflict State Building* (Elgar 2020) 435.

⁸⁴ UNHRC 'Situation of human rights in Libya and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya: Report of the United Nations High Commissioner for Human Rights' (23 January 2020) UN Doc A/HRC/34/75 4. What has been disputed is which entity constitutes the Government of Libya and as a consequence, represents the State party to the conflict.

fruitful and their decisions on the implementation of a ceasefire between the two parties, were not implemented. In this context, Salame promoted a 3-point plan, which included ceasefire, implementation of the arms embargo and intra-Libyan dialogue. Finally, after initiatives of the German Government, a Conference was held in Berlin on 19 January 2020. 12 countries (Germany, China, France, Russia, the UK, Egypt, the UAE, Italy, the Congo, Turkey and Algeria) and 4 international organizations (the United Nations, the European Union, the Arab League and the African Union) as well as both Sarraj and Haftar attended it. Nonetheless, the Libyan leaders did not meet each other.

At the Conference, the participating parties reaffirmed their strong commitment to Libyan-led and Libyan-owned political procedures, as the only feasible solution of the conflict. In addition, they supported the Libyan Political Agreement as the only viable framework for Libya, and called for the establishment of a functioning Presidency Council and the formation of a single, unified, inclusive and effective Libyan Government approved by the House of Representatives. The ultimate aim of this procedure would be the organization of free, fair, inclusive and credible parliamentary and presidential elections, organized by an independent and effective High National Elections Commission. In addition, they called for the implementation of ceasefire between the two rival Governments⁸⁵. Nonetheless, military operations continued to take place in Libya.

In an attempt to mitigate the conflict, Sarraj called for the peaceful resolution of the crisis, which could be achieved through elections and by reaching an agreement on a constitutional framework. On 6 May 2020, Abdulsalam Erhouma, the Head of the Constitutional Drafting Assembly, stated that a national referendum had to be organized, in order the constitutional proposal of 29 July 2017 to be evaluated by the people and the constitutional process to be concluded. In this context, the High National Elections Commission declared its readiness to organize elections followed by a constitutional referendum at any time⁸⁶.

However, massive protests burst out throughout the country in August 2020. The GNA suppressed them violently, while the Prime Minister of the Eastern Government al-Thinni, submitted his resignation to the Speaker of the HoR Saleh on 14 September 2020. The

⁸⁵ UNSC 'Letter dated 22 January 2020 from the Permanent Representative of Germany to the United Nations addressed to the President of the Security Council' (22 January 2020) UN Doc S/2020/63, 4.

⁸⁶ UNSC 'Report of the Secretary-General on the UN Support Mission in Libya' (25 August 2020) UN Doc S/2020/832, 2.

resignation would be reviewed by the HoR⁸⁷. In parallel, Sarraj announced his intention to resign before the end of October. Nonetheless, he withdrew his resignation on 30 October 2020, stating that he would remain in his position until the intra-Libyan political procedures resulted in a unified Government.

In October 2020, the Libyan crisis entered a new phase. On 23 October, both sides agreed to a permanent, country-wide complete cease-fire agreement, with immediate effect⁸⁸. The following day, 24 October 2020, has been widely considered as the end of the Second Libyan Civil War. Subsequently, a new round of peace and unification meetings were held between the rival Governments and several factions of Libyan society. This series of meetings has been named the ‘Libyan Political Dialogue Forum’ and aimed to lead to elections, in order to facilitate the Libyan institutions with democratic legitimacy.

To this end, meetings were held in Tunis under the auspices of the UN in November. Amid attempts to reach a political compromise and resolve the conflict, the participants tried to create the new constitutional framework for Libya. The practical conclusion of the conference was the setting of 24 December 2021, as the date of elections in the country.

The most important result of this effort was the HoR-approved formation of the National Unity Government (NUG) under Mohamed al-Menfi as Chairman of the Presidential Council and Abdul Hamid Dbeibeh as Prime Minister on 10 March 2021, which united the rival institutions and ended the duality of governments in Libya. An analysis of subsequent developments, such as the withdrawal of confidence to the NUG by the HoR and the postponement of the December 2021 elections, exceeds the temporal scope of this study and is not included in it.

b) The International Community’s Reaction

The international community’s reaction to the ongoing institutional division in Libya could be described as mixed. The majority of states promoted a political solution to the crisis, considering a Unity Government as the sole entity capable of representing and protecting all Libyans⁸⁹. In

⁸⁷ Samy Magdy, ‘Officials say east Libya government resigns amid protests’ *The Washington Post* (Washington 14 September 2020) <[Officials say east Libya government resigns amid protests - The Washington Post](#)> accessed 15 November 2020.

⁸⁸ Nick Cumming-Brush and Declan Walsh, ‘Libya Cease-Fire Raises Hopes for Full Peace Deal’ *The New York Times* (New York 23 October 2020) <[Libya’s Two Main Factions Agree to a Cease-Fire - The New York Times \(nytimes.com\)](#)> accessed 15 November 2020.

⁸⁹ French Ministry for Europe and Foreign Affairs, ‘Terrorist attack in Benghazi - Joint statement by the ambassadors and Special Envoys to Libya’ (*diplomatie.gouv.fr*, 27 October 2015) <[Terrorist attack in Benghazi - Joint statement by the ambassadors and Special Envoys to Libya \(27.10.15\) - Ministry for Europe and Foreign](#)

particular, UK Foreign Minister Elwood described it as the only viable means ‘of establishing effective, legitimate governance, restoring stability and tackling the threats posed by Daesh and illegal migration’⁹⁰.

In this framework, in November 2015, the French Government along with the Governments of Algeria, Germany, Italy, Morocco, Spain, Tunisia, the United Arab Emirates, the United Kingdom and the United States welcomed the support rendered on the formation of a Government of National Accord by the majority of the House of Representatives in Tobruk and the majority of the General National Congress in Tripoli, which constituted the two elected (and thus able to claim legitimacy) entities in Libya. Furthermore, they encouraged all parties to form such a Government in order to establish effective, legitimate and stable governance in a united Libya⁹¹.

After the Skhirat Agreement and the formation of the Presidential Council, most foreign states withdrew recognition from the al-Thinni Government and accorded it to the newly formed NGA. In particular, in a Joint Statement, the Ministers of Foreign Affairs of France, Germany, Italy, the United Kingdom and the United States and the High Representative of the European Union for Foreign Affairs and Security Policy recognized de jure the Government of National Accord as the “only legitimate government” in Libya, having sole oversight over the economic institutions in Tripoli. This Statement highlighted the support granted to the Government by “a majority of members of the House of Representatives”, linking recognition to the fulfillment of the procedure set out by the Libyan Political Agreement⁹². Thus, German Foreign Minister Steinmeier called the Presidency Council to submit a new cabinet list to the Parliament, while he

[Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020; French Ministry for Europe and Foreign Affairs, ‘Libya - Meeting between Laurent Fabius and Martin Kobler, the United Nations Secretary-General’s Special Representative for Libya’ ([diplomatie.gouv.fr](#), 25 November 2015) <[Libya - Meeting between Laurent Fabius and Martin Kobler, the United Nations Secretary-General’s Special Representative for Libya \(25.11.15\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020.

⁹⁰ UK Foreign Office, ‘Foreign Office Minister urges support for UN process in Libya’ ([gov.uk](#), 13 December 2015) <[Foreign Office Minister urges support for UN process in Libya - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 2020.

⁹¹ French Ministry for Europe and Foreign Affairs, ‘Libya Statement’ ([diplomatie.gouv.fr](#), 27 November 2015) <[Libya Statement \(27.11.15\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020. This call for unity under the GNA was repeated in a statement in October 2016, see French Ministry for Europe and Foreign Affairs, ‘Libya – Occupation by force of the Libyan High Council of State’ ([diplomatie.gouv.fr](#), 17 October 2016) <[Libya – Occupation by force of the Libyan High Council of State \(17.10.16\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020. It has to be noted that in post-conflict frameworks, the organization of free elections does not only transfer legitimacy to the elected bodies and authorities, but also affects popular confidence in the state’s institutions, thus providing long-term stability, see Paul R. Williams and Milena Sterio, *Research Handbook on Post-Conflict State Building* (Elgar 2020) 3.

⁹² French Ministry for Europe and Foreign Affairs, ‘Statement after the Ministerial Meeting in Paris on Libya’ ([diplomatie.gouv.fr](#), 13 March 2016) <[statement on libya 13th march cle82f4c6.pdf \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020. This express recognition of the GNA as the “sole legitimate government” was repeated in a “Joint Communiqué on Libya”, see Turkish Ministry for Europe and Foreign Affairs, ‘Joint Communiqué on Libya’ ([mfa.gov.tr](#), 16 May 2016) <[Ministerial Meeting for Libya Joint Communiqué, 16 May 2016, Vienna / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](#)> accessed 15 November 2020.

urged the Parliament “in Tobruk” to endorse it. In this way, Germany expressed emphatically its view on the Parliament’s position as Libya’s legislative body, whose consent is necessary for the formation of a Unity Government⁹³.

Shortly after the arrival of the GNA in Libya, official foreign visits set the tone of the foreign states’ approach towards the new entity. Specifically, in April 2016, the French Ambassador met with members of the Presidential Council and with the heads of various Libyan public institutions, in an effort to express French support towards the National Unity Government. Concerning the two countries’ diplomatic relations, he stated that the reopening of the French embassy in Tripoli was under consideration, but it was halted due to concerns over the security situation in the country⁹⁴. In the same wavelength, in May 2016, Turkish Foreign Minister Çavuşoğlu visited Tripoli and met with the President and Members of the Presidency Council of the GNA, the Minister of Foreign Affairs and the Mayor of Tripoli⁹⁵. In this way, the Turkish government stressed emphatically its support for the National Unity Government⁹⁶.

On 16 May 2016, the Ambassadors of 6 western states issued a Joint Communiqué that highlighted the transitional character of the institutional framework prescribed by the LPA, while it stressed the HoR’s role as the legislative branch of the state. It has to be noted that every reference to the GNA’s position as the legitimate Government of Libya, had been complemented by the reference to the UNSC Resolution 2259 and to the ultimate aim of the formation of a “new, elected government”⁹⁷.

⁹³ German Federal Foreign Office, ‘Foreign Minister Steinmeier following the Foreign Ministers meeting on the situation in Libya - Press release’ (*auswaertiges-amt.de*, 13 February 2016) <[Foreign Minister Steinmeier following the Foreign Ministers meeting on the situation in Libya - Federal Foreign Office \(auswaertiges-amt.de\)](#)> accessed 15 November 2020; German Federal Foreign Office, ‘Foreign Minister Steinmeier on the current situation in Libya - Press release’ (*auswaertiges-amt.de*, 24 February 2016) <[Foreign Minister Steinmeier on the current situation in Libya - Federal Foreign Office \(auswaertiges-amt.de\)](#)> accessed 15 November 2020.

⁹⁴ French Ministry for Europe and Foreign Affairs, ‘Libya – Visit by the ambassador of France to Libya’ (*diplomatie.gouv.fr*, 14 April 2016) <[Libya – Visit by the ambassador of France to Libya \(April 14.04.16\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020; French Ministry for Europe and Foreign Affairs, ‘Libya – Telephone conversation between Jean-Marc Ayrault and Faye Serraj’ (*diplomatie.gouv.fr*, 29 April 2016) <[Libya – Telephone conversation between Jean-Marc Ayrault and Faye Serraj \(29.04.16\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020.

⁹⁵ Turkish Ministry of Foreign Affairs, ‘Foreign Minister Çavuşoğlu’s visit to Libya’ (*mfa.gov.tr*, 30 May 2016), <[No: 121, 30 May 2016, Press Release Regarding the Visit of Foreign Minister Çavuşoğlu to Libya / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](#)> accessed 15 November 2020.

⁹⁶ This approach was repeated during following years, as both Turkish and Italian governments regarded the exchange of visits as a means to express their ongoing support for the GNA. Specifically, when Italian Foreign Minister Di Maio received the Minister of Internal Affairs of the GNA, Fathi Bashaga, he intended to “confirm the Italian Government’s support for the Libyan GNA”, see Italian Ministry of Foreign Affairs, ‘Note from the Italian Ministry of Foreign Affairs’ (*esteri.it*, 3 February 2020) <[Note from the Italian Ministry of Foreign Affairs - Libya \(esteri.it\)](#)> accessed 15 November 2020. In the same wavelength, Çavuşoğlu paid an official visit to Tripoli on 22 December 2018 and expressed Turkey’s support to the UN-led political process and to the unity and territorial integrity of Libya. In parallel, Prime Minister Sarraj Turkey twice in 2018 and made contacts with President Erdoğan.

⁹⁷ French Ministry for Europe and Foreign Affairs, ‘Libya - Joint Statement by the Ambassadors of France, Germany, Italy, Spain, the United Kingdom, and the United States to Libya’ (*diplomatie.gouv.fr*, 25 February 2017)

This democracy-oriented approach and the need for democratic transition and organization of elections in Libya have been stressed by many states. In particular, US State Department Spokesperson Toner encouraged the GNA to oversee the transition to a new Government through peaceful elections⁹⁸. Subsequently, UK Foreign Secretary Johnson visited Libya and met with GNA Prime Minister Sarraj, Foreign Minister Siala and the President of Libya's High State Council Swehli, as well as with Agila Saleh and Ahmied Homa, President and second Vice-President of the HoR, which is described as 'Libya's parliament'⁹⁹. In this way, he tried to hold talks with every stakeholder of the Libyan political reality.

The need for an inclusive political solution was repeated by the UK Permanent Representative to the UN, Ambassador Rycroft, who stated that "[i]t's a real chance now for Libya to establish a truly national government, one that will enjoy the support of both the House of Representatives and the High State Council, and one that will be able to deliver for all its citizens", while he stressed that this structure is just transitional, in order "to promote national reconciliation, to agree a longer-term constitution and to prepare for elections"¹⁰⁰.

Subsequently, he further repeated the UK's support for the GNA as "the legitimate executive authorities under the Libyan Political Agreement" and the House of Representatives and the Higher Council of State as "Libya's legitimate institutions"¹⁰¹. On 21 May 2018, Deputy Permanent Representative to the UN Allen elaborated the British government's view on the preferred solution to the Libyan conflict. Specifically, he described it as "an inclusive political package" with three necessary elements; a constitution, parliamentary and presidential elections¹⁰².

<[Libya - Joint Statement by the Ambassadors of France, Germany, Italy, Spain, the United Kingdom, and the United States to Libya \(25.02.17\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020.

⁹⁸ US Department of State, 'Press Statement on Recent Events in Tripoli' (*state.gov*, 10 February 2017) <[On Recent Events in Tripoli - United States Department of State](#)> accessed 15 November 2020.

⁹⁹ UK Foreign Office, 'Foreign Secretary visits Tobruk' (*gov.uk*, 5 May 2017) <[Foreign Secretary visits Tobruk, Libya - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 2020.

¹⁰⁰ UK Foreign Office, 'Statement by Ambassador Matthew Rycroft, UK Permanent Representative to the UN, at the Security Council Briefing on Libya' (*gov.uk*, 16 November 2017) <["It's clear that Libya now faces a simple choice: a future of stability and security or a return to a past of violence and uncertainty" - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 2020.

¹⁰¹ UK Foreign Office, 'Statement by Ambassador Matthew Rycroft, UK Permanent Representative to the United Nations, at the Security Council meeting on Libya' (*gov.uk*, 19 April 2017) <["Libya needs urgent progress towards full political reconciliation now more than ever." - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 2020.

¹⁰² UK Foreign Office, 'Statement by Ambassador Jonathan Allen, UK Deputy Permanent Representative to the UN, at the Security Council Briefing on Libya' (*gov.uk*, 21 May 2018) <[A peaceful, secure, prosperous Libya through credible elections - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 2020.

In the same wavelength, French Minister for Europe and Foreign Affairs, Jean-Yves Le Drian visited Tripoli, Misrata, Tobruk, and Rajma on July 23, 2018, where he met with the main actors of the Libyan conflict¹⁰³. Furthermore, Le Drian invited Ministers and High Representatives of Libya, Tunisia, Algeria, Egypt, Morocco, Niger, Italy, the United States, the United Kingdom, China, Russia, the European Union, the African Union and the Arab League in New York on 24 September 2018. There he held consultations with Prime Minister Fayez Sarraj and UN Secretary General Special Representative Ghassan Salame in order to promote the unification of Libya's military and economic institutions and to chart a viable path towards the adoption of a constitution and the organization of credible, peaceful and well prepared elections as soon as possible. In this context, the HoR and its members were called to meet their responsibilities by adopting the appropriate electoral legislation¹⁰⁴.

Moreover, the international community was concerned over another major parameter of the Libyan conflict; the unity of and control over key Libyan financial institutions, such as the Libyan Central Bank, the Libyan Investment Authority and the National Oil Corporation, which are fundamental for Libya's future and which had been divided since the beginning of the conflict.

In a Joint Statement, the Governments of France, Italy, the United Kingdom, and the United States in July 2018, gave emphasis on Libya's oil resources, which 'must remain under the exclusive control of the legitimate National Oil Corporation and the sole oversight of the Government of National Accord'. In the same Statement, the four Governments expressed their appreciation towards the LNA's efforts to restore stability in Libya's oil sector¹⁰⁵.

In this context, the British Government highlighted the need for unification of Libyan financial institutions and mainly, the Central Bank of Libya. Also, Minister for Middle East and North

¹⁰³ During his visit, Le Drian met with Prime Minister Fayez al-Sarraj, President of the House of Representatives Aguila Saleh Issa, President of the High Council of State Khaled Mechri, and Khalifa Haftar. He stressed the need for the adoption of a constitutional platform before September 16, the holding of legislative and presidential elections on December 10, and the unification of economic and security institutions under civilian authority. France's emphasis on democratic transition was further stressed by Foreign Minister's intention to support Libya's High National Elections Commission, and the announcement of an increase in France's financial contribution for the organization of Libyan elections, see French Ministry for Europe and Foreign Affairs, 'Libya – Visit by Jean-Yves Le Drian' (*diplomatie.gouv.fr*, 23 July 2018) <[Libya – Visit by Jean-Yves Le Drian \(23.07.18\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020.

¹⁰⁴ French Ministry for Europe and Foreign Affairs, 'Press Release: Chair's conclusions of the September 24, 2018, Meeting on Libya' (*diplomatie.gouv.fr*, 25 September 2018) <[Press Release: Chair's conclusions of the September 24, 2018, Meeting on Libya \(25.09.18\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020.

¹⁰⁵ French Ministry for Europe and Foreign Affairs, 'Libya - Joint Statement on Welcoming Libyan National Oil Corporation Resuming Production' (*diplomatie.gouv.fr*, 12 July 2018) <[Libya - Joint Statement on Welcoming Libyan National Oil Corporation Resuming Production \(12.07.2018\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020.

Africa Cleverly called for the unimpeded operation of the ‘legitimate National Oil Corporation’. By this characterization, he expressed the view that the institutions appointed by and collaborating with the GNA constitute Libya’s legitimate financial institutions. In addition, in a case concerning the legitimacy of the Libyan Investment Authority’s board of directors, the UK Court of Appeal ruled in accordance with the one voice principle¹⁰⁶. In particular, the Court accepted the GNA-appointed board of directors, in compliance with British Government’s support for the GNA as “the legitimate executive authorities of Libya”, which in accordance with the Libyan Political Agreement, exercise “full oversight of national economic institutions”¹⁰⁷.

In parallel, the US Government emphasized the GNA-backed institutions’ role as the sole legitimate Libyan institutions. In particular, it was stated that the Libyan oil resources must remain under the exclusive control of the National Oil Corporation and the sole oversight of the Government of National Accord¹⁰⁸. In addition, the Tripoli-based Central Bank of Libya’s position as ‘Libya’s only legitimate central bank’ was highlighted¹⁰⁹.

When assessing recognition approaches, one has to take into account and avoid underestimating some states’ historical, geopolitical and financial interests in Libya. For instance, Italy is a neighboring country with many political, financial and strategic interests in Libya, which was an Italian colony until 1943. Since the formation of the GNA, the Italian Government had recognized and supported it, considering it as “the sole legitimate recipient of international security assistance” and the HoR as the legislative authority of the State¹¹⁰. Also, Italy maintains certain financial interests in the region, while the conflict harmed the interests of the Italian Eni Oil Company, and increased the flow of migrants across the Mediterranean, who were viewed as a potential threat to the Italian national security.

¹⁰⁶ According to the one voice principle, when a state’s Government has recognized an entity as the Government of a foreign state, the former’s courts are bound to treat the latter as the Government of a sovereign state, when adjudicating its disputes. This approach is followed, because the recognition of foreign states and governments forms constitutionally part of the function of the executive branch of the state, and the state must speak with one voice in its executive and judicial functions with regard to international relations.

¹⁰⁷ *Mahmoud v. Breish and Houssein* [2020] EWCA Civ 637, [2020] 7.

¹⁰⁸ US Department of State, ‘Situation in Southern Libya’ (*state.gov*, 14 February 2019) <[Situation in Southern Libya - United States Department of State](#)> accessed 15 November 2020.

¹⁰⁹ US Department of State, ‘Seizure by Malta of \$1.1 Billion of Counterfeit Libyan Currency’ (*state.gov*, 29 May 2020) <[Seizure by Malta of \\$1.1 Billion of Counterfeit Libyan Currency - United States Department of State](#)> accessed 15 November 2020.

¹¹⁰ Italian Ministry of Foreign Affairs, ‘Joint Communiqué on Libya by Algeria, Canada, Chad, China, Egypt, France, Germany, Jordan, Italy, Malta, Morocco, Niger, Qatar, Russia, Saudi Arabia, Spain, Sudan, Tunisia, Turkey, the United Arab Emirates, the United Kingdom, the United States, the European Union, United Nations, the League of Arab States, and the African Union’ (*esteri.it*, 22 September 2016) <[Joint Communiqué on Libya by Algeria, Canada, Chad, China, Egypt, France, Germany, Jordan, Italy, Malta, Morocco, Niger, Qatar, Russia, Saudi Arabia, Spain, Sudan, Tunisia, Turkey, the United Arab Emirates, the United Kingdom, the United States, the European Union, United Nations, the League of Arab States, and the African Union \(esteri.it\)](#)> accessed 15 November 2020.

In this context, Turkey is another country that has developed strong ties with Libya. After all, Tripolitania and Cyrenaica were Ottoman provinces until 1912, when they were incorporated into the Italian colonial empire¹¹¹. Turkey was one of the few countries, which maintained an embassy and a consulate in Tripoli during the various phases of the conflict¹¹². From the beginning, the Turkish government supported the GNA as the ‘sole legitimate government’ of Libya¹¹³ and continued to do so ever since¹¹⁴. In parallel, Turkey maintained great financial interests in the country, as most Libyan public works have been taken on by Turkish companies. It has to be mentioned that 8 out of 16 cases raised against Libya in front of the International Chamber of Commerce, concern Turkish companies.

In addition, Germany is another country that has invested heavily in Libya. It has supported financially the GNA, by allocating 7.5 million euros for the stabilization portfolio in 2018, and 11.5 million euros in 2019¹¹⁵. In addition, the French oil company Total owns 75 percent of drilling rights in the Al-Jurf oilfield, in addition to shares in the Waha, El Sharara, and Murzuq Basin fields, which are controlled by the eastern entity.

It has to be noted that research of state practice concerning the Libyan entities cannot exclude various important bilateral agreements signed between the GNA and other states. For example, the US Government signed a Memorandum of Understanding on cultural property protection with the GNA on 23 February 2017, and a Letter of Agreement defining mutual priorities for International Narcotics Law support to the Libyan Ministries of Justice and Interior, on 27 April 2018¹¹⁶. Most importantly, the GNA and Turkey concluded a Memorandum of Understanding on

¹¹¹ André Martel, ‘Le Royaume Sanusi de Libye (1951-1969)’ in *États et pouvoirs en Méditerranée (XVIe-XXe siècles). Mélanges offerts à André Nouschi. Tome I* (Cahiers de la Méditerranée no 41 1990) 144.

¹¹² The Turkish Embassy in Tripoli suspended its operations on 25 July 2014 due to security concerns, but resumed its services in January 2017, while the Turkish Consulate in Misrata has continued its operations without interruption. Both operate in GNA-controlled areas.

¹¹³ French Ministry for Europe and Foreign Affairs, ‘Joint Communiqué of the Ministerial Meeting for Libya’ (diplomatie.gouv.fr, 13 December 2015) <[Ministerial Meeting for Libya - Joint Communiqué \(Rome, Italy - 13.12.15\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](http://diplomatie.gouv.fr/IMG/pdf/13_12_15_Minist%C3%A8re_des_Affaires_%C3%A9trang%C3%A8res_Libye.pdf)> accessed 15 November 2020.

¹¹⁴ Maltese Ministry for Foreign and European Affairs, ‘Joint Statement by Foreign Ministers of Libya, Malta, and Turkey’ (gov.mt, 6 August 2020) <[Joint statement by the foreign ministers of Libya, Malta, and Turkey \(gov.mt\)](http://gov.mt/Document/1342)> accessed 15 November 2020.

¹¹⁵ German Federal Foreign Office, ‘Working together to help stabilise Libya’ (auswaertiges-amt.de, 13 November 2018) <[Working together to help stabilise Libya - Federal Foreign Office \(auswaertiges-amt.de\)](http://auswaertiges-amt.de/SharedDocs/Pressemitteilungen/DE/2018/11/libya.html)> accessed 15 November 2020; German Federal Foreign Office, ‘Libya and Germany: Bilateral relations’ (auswaertiges-amt.de, 1 June 2019) <[Libya and Germany: Bilateral relations - Federal Foreign Office \(auswaertiges-amt.de\)](http://auswaertiges-amt.de/SharedDocs/Pressemitteilungen/DE/2019/06/libya.html)> accessed 15 November 2020.

¹¹⁶ US Department of State, ‘United States and Libya Sign Cultural Property Protection Agreement’ (state.gov, 20 February 2018) <[United States and Libya Sign Cultural Property Protection Agreement - United States Department of State](http://state.gov/r/pa/prs/ps/2018/02/20180220-us-libya-cultural-property-protection-agreement)> accessed November 15, 2020; US Department of State, ‘Bureau of International Narcotics and Law Enforcement Affairs: Libya Summary’ (state.gov) <[Bureau of International Narcotics and Law Enforcement Affairs: Libya Summary - United States Department of State](http://state.gov/r/pa/prs/ps/2018/02/20180220-us-libya-cultural-property-protection-agreement)> accessed 15 November 2020.

Delimitation of Maritime Jurisdiction Areas in the Mediterranean, in November 2019¹¹⁷. This act brought on the reaction of Greece and Egypt, which considered that their maritime zones were violated as a result of the agreement¹¹⁸. These agreements were evidently concluded with the GNA in its capacity as the Government of Libya.

The aforementioned explicit and implicit state practice indicates the international community's insistence on the implementation of the Libyan Political Agreement, considering the GNA as (united) Libya's Government and the HoR as its Parliament. This approach denotes a strong reliance on legitimacy as a criterion for recognition of governments. In other words, the above-mentioned states were continuously referring to the UN-led and endorsed inclusive political agreement of Skhirat as the basis on which they established their recognition practice towards the rival Libyan Governments.

In spite of the actual division between the GNA and the HoR, which had formed two distinct and rival governing apparatuses in their respective territories, the aforementioned states continued to disregard facts and considered this struggle of power as a division between the same Government's executive and legislative branches. According to their perception, there were not two rival Governments in Libya, but one Government, which suffered from an intergovernmental dispute. The use of the term 'dispute' instead of 'conflict' is preferred, as conflict usually denotes military action and is typically used in the context of international humanitarian law¹¹⁹. In the case of Libya, the above-mentioned states regarded an armed group, General Haftar's LNA, and not another Government, as the GNA's principal military opponent.

¹¹⁷ It has to be noted that since the LPA is presented by Turkey as Libya's only valid political framework, the Libya-Turkey Memorandum of Understanding, which constitutes an international agreement, had to be concluded according to the procedure prescribed by the LPA. However, the MOU was not endorsed by the HoR, as required by art. 8 of the LPA.

¹¹⁸ Turkish Ministry of Foreign Affairs, 'QA-73, 1 December 2019, Statement of the Spokesperson of the Ministry of the Foreign Affairs, Mr. Hami Aksoy, in Response to a Question Regarding the Statements Made by Greece and Egypt on the Agreement Signed With Libya on the Maritime Jurisdiction Areas' (mfa.gov.tr, 1 December 2019) <[QA-73, 1 December 2019, Statement of the Spokesperson of the Ministry of the Foreign Affairs, Mr. Hami Aksoy, in Response to a Question Regarding the Statements Made by Greece and Egypt on the Agreement Signed With Libya on the Maritime Jurisdiction Areas / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](http://mfa.gov.tr)> accessed 15 November 2020.

¹¹⁹ The term 'armed conflict' is used in the context of article 2 of the Geneva Conventions of 1949, which concerns the application of humanitarian law in cases of international armed conflicts. In particular, according to Jean Pictet, *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC 1952) 32, 'any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place'. In the same wavelength, the International Criminal Tribunal on Yugoslavia ruled in *The Prosecutor v. Dusko Tadic* (2 October 1995) IT-94-1-A [70], that armed conflict exists whenever there is a resort to armed force between States. Last but not least, the term is also used in the context of article 3, which refers to non-international armed conflicts.

However, the GNA's wide recognition as the de jure government of Libya should not be taken for granted, as certain states may be considered as recognizing it de facto. Specifically, it has to be noted that Greece is one of the few European countries that did challenge the GNA's de jure position. First of all, the Greek Foreign Minister Dendias had invited both Haftar and Saleh in Athens. In addition, he met Saleh in Libya and expressed Greece's intention to operate a Consulate in Benghazi¹²⁰. Furthermore, he had been continuously referring to the GNA as "the government in Tripoli"¹²¹. In this way, he expressed the view that the GNA did not constitute the legitimate Government of Libya, but a local de facto Government in Tripoli. Regarding the Greek Government's intention to operate a Consulate in Benghazi, it should be mentioned that the establishment of consular relations between two Governments usually indicates recognition. Nonetheless, this is not certain, as there are cases, where despite the maintenance of consular relations, a government expressly refuses to recognize the other one¹²². In any case, it could amount to de facto recognition of the eastern Government.

Alternatively, when referring to the memoranda signed between the GNA and Turkey, Dendias had been describing them as "the memoranda signed between Mr Sarraj and Turkey", highlighting Sarraj's personal influence over the entity in contrast to its claim over the position of the government of Libya¹²³. This term was repeated in a Joint Declaration adopted by the Ministers of Foreign Affairs of Cyprus, Egypt, France, Greece and the United Arab Emirates on 11 May 2020¹²⁴. In parallel, he described the HoR as "the sole elected and internationally recognized state body" in Libya¹²⁵ and as the "country's only elected institution"¹²⁶. This

¹²⁰ Greek Ministry of Foreign Affairs, 'Statement of the Minister of Foreign Affairs, Nikos Dendias, following his meeting with the President of the Libyan House of Representatives, Aguila Saleh' (*mfa.gr*, 1 July 2020) <[Statement of the Minister of Foreign Affairs, Nikos Dendias, following his meeting with the President of the Libyan House of Representatives, Aguila Saleh \(Libya, 1 July 2020\) - Top Story \(mfa.gr\)](#)> accessed 15 November 2020.

¹²¹ Greek Ministry of Foreign Affairs, 'Interview of the Minister of Foreign Affairs, Nikos Dendias, in the Athens daily Eleftheros Typos, with journalist Apostolis Chondropoulos' (*mfa.gr*, 26 January 2020) <[Interview of the Minister of Foreign Affairs, Nikos Dendias, in the Athens daily Eleftheros Typos, with journalist Apostolis Chondropoulos \(26 January 2020\) - Top Story \(mfa.gr\)](#)> accessed 15 November 2020; Greek Ministry of Foreign Affairs, 'Interview of the Minister of Foreign Affairs, Nikos Dendias, on MEGA TV's evening news, with journalist Dora Anagnostopoulou' (*mfa.gr*, 27 July 2020) <[Interview of the Minister of Foreign Affairs, Nikos Dendias, on MEGA TV's evening news, with journalist Dora Anagnostopoulou \(27 July 2020\) - Top Story \(mfa.gr\)](#)> accessed 15 November 2020. The term "Tripoli-based officials" was used by the US delegation, which met with General Haftar on 25 November 2019, when it referred to their previous meeting with the GNA delegation, see US Department of State, 'U.S. Delegation Meets with General Khalifa Haftar' (*state.gov*, 25 November 2019) <[U.S. Delegation Meets with General Khalifa Haftar - United States Department of State](#)> accessed 15 November 2020.

¹²² For example, the UK Government maintains a Consulate in Taipei, but does not recognize de jure the Taiwanese Government, see Shaw (n 28) 463.

¹²³ Greek Ministry of Foreign Affairs, 'Minister of Foreign Affairs N. Dendias' interview with the newspaper 'Le Figaro' and journalist Alexia Kefalas' (*mfa.gr*, 14 June 2020) <[Minister of Foreign Affairs N. Dendias' interview with the newspaper 'Le Figaro' and journalist Alexia Kefalas \(14/06/2020\) - Top Story \(mfa.gr\)](#)> accessed 15 November 2020.

¹²⁴ Greek Ministry of Foreign Affairs, 'Joint Declaration adopted by the Ministers of Foreign Affairs of Cyprus, Egypt, France, Greece and the United Arab Emirates' (*mfa.gr*, 11 May 2020) <[Joint Declaration adopted by the Ministers of Foreign Affairs of Cyprus, Egypt, France, Greece and the United Arab Emirates \(11.05.2020\) - Announcements - Statements - Speeches \(mfa.gr\)](#)> accessed 15 November 2020.

¹²⁵ Greek Ministry of Foreign Affairs (n 121).

description stresses the HoR's legitimacy of origin stemming from the 2014 elections, which offers it an enhanced position in comparison to the GNA.

Another interesting point is the approach followed by several states towards the Eastern Government, as it could be deduced that despite their official compliance with and support for the UN-led solution, they recognize it de facto. In particular, Russia¹²⁷ had formally adhered to the UN-endorsed Libyan Political Agreement and had participated in the Berlin Conference, signing its Conclusions. Nonetheless, Russian Prime Minister Medvedev shed light on Russia's recognition approach, as he stated that "The only thing to which I should probably draw your attention to is that there are no simple solutions in all these conflicts, but there is a need, by using comprehensive approaches, relying on international institutions and invoking international law, to seek agreement, use all kinds of compromise solutions to achieve agreements and ultimately rely on the will of the people who live in these countries"¹²⁸. This view highlights the importance of international law and UN-led procedures in resolving cases of duality of government, while it draws attention to compromise attempts and resorts to popular will, as the final test for the legitimacy of a regime.

However, Prime Minister Medvedev had also stated that Libya "no longer exists as a full-fledged state", but it has been "divided into parts", while "there are several leaders who have gathered here (in Libya)", with Sarraj being "one of Libya's executive leaders"¹²⁹. Medvedev's reference to "several" leaders of a state "divided into parts" and in particular, Sarraj's position as "one" among these leaders (rather than 'the' executive leader of Libya) leads to the deduction that Russia did not consider the GNA as the sole Government in Libya, but either argued that there were a de jure and a de facto Government, or two de facto Governments. This pragmatic approach over Libya's division and the acknowledgement of the emergence of more entities, is actually based on the effective control doctrine, which takes into consideration each Government's extent of actual control over territory.

Moreover, Egypt and the UAE formally supported the UN-led initiatives towards the mitigation of the conflict. Nevertheless, it has been reported that they supplied the Eastern Government

¹²⁶ Greek Ministry of Foreign Affairs (n 120).

¹²⁷ According to Russian Prime Minister Dmitry Medvedev, regional conflicts 'must be settled diplomatically based on the UN Charter and the supremacy of international law', while the conflict in Libya be resolved 'peacefully and non-violently, through dialogue based on law' and without foreign interference, see Russian Ministry of Foreign Affairs, 'Dmitry Medvedev's interview with Algerian news agency APS' (*mid.ru*, 9 October 2017) <[News - The Russian Government](#)> accessed 15 November 2020.

¹²⁸ Russian Ministry of Foreign Affairs, 'Russia-Algeria talks' (*mid.ru*, 27 April 2016) <[The Ministry of Foreign Affairs of the Russian Federation \(mid.ru\)](#)> accessed 15 November 2020.

¹²⁹ Russian Ministry of Foreign Affairs, 'International conference on Libya' (*mid.ru*, 13 November 2018) <[The Ministry of Foreign Affairs of the Russian Federation \(mid.ru\)](#)> accessed 15 November 2020.

with arms and military equipment¹³⁰. Furthermore, Egyptian President Abdel Fatah al-Sissi had threatened to invade militarily in Libya, if the armed forces of the GNA crossed a redline extending from Sirte to Jurfa¹³¹. This perception of a certain, limited territory which can be under the control of the GNA, indicates that according to Egypt, the Government of Tripoli could not raise claims over the whole Libyan territory and that, thus, it could not be considered as the de jure Government of Libya. This view is reinforced by the concerns expressed by the Egyptian Government over the extent of control exercised on the GNA by Turkey. In other words, they doubted the efficacy and the independence of the Government. Consequently, as the lack of these necessary requirements of a government deprives it of its de jure character, Egypt's approach over the GNA's flaws indicates that it merely considered the latter as the de facto Government of the western part of Libya.

After examining the recognition approaches towards the rival Governments, it has to be noted that the international community has recognized ambiguously the principal role of General Haftar in the conflict. In particular, German Foreign Minister Steinmeier stated that General Haftar was “the key figure in Tobruk” who needed to be won over to support the GNA, while it was needed to integrate him into Libya's future political structures in order to prevent a split in the country¹³². This statement highlighted the prominent role of Haftar as the rival entity against the GNA, but also the need to include him in any political process. Moreover, on July 25, 2017, President Macron invited “the Chairman of the Presidential Council of the Government of National Accord, Fayez Al Sarraj, and the Commander of the Libyan National Army, Khalifa Haftar” in Paris, where a Joint Declaration was issued¹³³. It is rather interesting that despite the HoR's appointment of Abdullah al Thinni, as head of its executive branch, France considered Khalifa Haftar, the head of the Libyan National Army (which theoretically constitutes HoR's armed forces) as the GNA's main political opponent, distinguishing his regime from the HoR.

¹³⁰ UNPE ‘Letter dated 5 September 2018 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council’ (2018) UN Doc S/2018/812, 26; Akram Kharief, ‘Libya's proxy war’ *Le Monde Diplomatique* (Paris, September 2020) <<https://mondediplo.com/2020/09/04libya>> accessed 15 November 2020.

¹³¹ Heba Saleh, ‘Egypt threatens military action in Libya if Turkish backed forces seize Sirte’ *Financial Times* (London, 21 June 2020) <<https://www.ft.com/content/e6aa87b0-5e0b-477f-9b89-693f31c63919>> accessed 15 November 2020.

¹³² German Federal Foreign Office, ‘Foreign Minister Steinmeier after the foreign ministers meeting on Libya’ (*auswaertiges-amt.de*, 16 May 2016) <[Foreign Minister Steinmeier after the foreign ministers meeting on Libya - Federal Foreign Office \(auswaertiges-amt.de\)](https://www.auswaertiges-amt.de/en/foreign-minister-steinmeier-after-the-foreign-ministers-meeting-on-libya)> accessed 15 November 2020.

¹³³ French Ministry for Europe and Foreign Affairs, ‘Libya - Joint Declaration’ (*diplomatie.gouv.fr*, 25 July 2017) <[Libya - Joint Declaration \(25.07.17\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](https://diplomatie.gouv.fr/fr/actualites/declarations-de-jointes-libya)> accessed 15 November 2020; French Ministry for Europe and Foreign Affairs, ‘Security Council Press Statement on Libya’ (*diplomatie.gouv.fr*, 26 July 2017) <[UN - Libya - Security Council Press Statement on Libya \(26.07.17\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](https://diplomatie.gouv.fr/fr/actualites/declarations-de-jointes-libya)> accessed 15 November 2020.

In parallel, Italian Foreign Minister Di Maio had met with both Sarraj and Haftar, stating that he (Haftar) “definitely has a role; it’s not I but the facts that recognize it and this is something we cannot ignore”¹³⁴, while Greece invited him to Athens on 17 January 2020, recognizing his prominent role in the Libyan conflict¹³⁵. This approach was adopted by the USA, as well. Specifically, the US delegation held regular talks with the LNA¹³⁶. Moreover, in a briefing on the situation in Libya, Haftar was described as one of the “Libyan leaders”, while it was stressed that the US Government “did not ask him to surrender”, as “there is a role (for him) in shaping Libya’s political future”. It could be argued that these statements over Haftar’s military role in the conflict amount to recognition of belligerency. In this case, states acknowledge that an insurgent group, which is neither a state nor a government, has been turned into an effective, organized entity that conducts hostilities in accordance with humanitarian law and accepts responsibility for its wrongdoings. However, this practice is believed to have fallen into desuetude¹³⁷.

In spite of the recognition of a certain role to Haftar by several states, other states rejected any political talks with him and considered him merely as the head of an armed group¹³⁸. For instance, Turkey did not accord any institutional role to Haftar, who was described as the “leader of the illegitimate armed forces in eastern Libya”, who “takes control of the Libyan state as the commander of the so-called Libyan National Army”, because he “aims to create a military dictatorship in the country”, in opposition to “the Government of National Accord and all other legitimate institutions of Libya established with the Libyan Political Agreement”¹³⁹. In a further effort to stress his illegitimacy, as well as his action out of and against any institutional

¹³⁴ Italian Ministry of Foreign Affairs, ‘Di Maio: «On Libya we need realism. Italy does not take sides in this war» (la Repubblica)’ (*esteri.it*, 19 December 2019) <[Di Maio: «On Libya we need realism. Italy does not take sides in this war» \(la Repubblica\) \(esteri.it\)](https://www.esteri.it/esteri/en/2019/12/19/di-maio-on-libya-we-need-realism-italy-does-not-take-sides-in-this-war-(la-repubblica)-esteri.it/)> accessed 15 November 2020.

¹³⁵ Greek Ministry of Foreign Affairs, ‘Interview of the Minister of Foreign Affairs, Nikos Dendias, on ERT evening news, with journalist Antriana Paraskevopoulou’ (*mfa.gr*, 17 January 2020) <[Interview of the Minister of Foreign Affairs, Nikos Dendias, on ERT evening news, with journalist Antriana Paraskevopoulou \(17 January 2020\) - Top Story \(mfa.gr\)](https://www.mfa.gr/en/press-releases/interview-of-the-minister-of-foreign-affairs-nikos-dendias-on-ert-evening-news-with-journalist-antriana-paraskevopoulou-17-january-2020-top-story-mfa-gr/)> accessed 15 November 2020.

¹³⁶ US Department of State, ‘Senior State Department Official on U.S. Engagement with Libya’ (*state.gov*, 28 February 2020) <[Senior State Department Official on U.S. Engagement with Libya - United States Department of State](https://www.state.gov/speakers/spo-2020-02-28/speakers-sp-2020-02-28-01/)> accessed 15 November 2020; US Department of State, ‘US call on LNA to observe cessation’ (*state.gov*, 21 March 2020) <[The United States Calls on LNA To Observe Cessation of Hostilities in Libya - United States Department of State](https://www.state.gov/speakers/spo-2020-03-21/speakers-sp-2020-03-21-01/)> accessed 15 November 2020; US Department of State, ‘U.S.-LNA Discussion on Militia Demobilization’ (*state.gov*, 2 July 2020) <[U.S.-LNA Discussion on Militia Demobilization - United States Department of State](https://www.state.gov/speakers/spo-2020-07-02/speakers-sp-2020-07-02-01/)> accessed 15 November 2020.

¹³⁷ Crawford (n 7) 380-382, 419.

¹³⁸ An armed group is ‘the armed wing of a non-state party to a non-international armed conflict, and may be comprised of either dissident armed forces, or other organized armed groups, which recruit their members primarily from the civilian population, but have developed a sufficient degree of military organization to conduct hostilities on behalf of a party to the conflict’, see ‘Armed groups’ (How does law protect in war? - Online casebook) <[Armed groups | How does law protect in war? - Online casebook \(icrc.org\)](https://www.icrc.org/eng/laws-and-tools/armed-groups/armed-groups-how-does-law-protect-in-war-online-casebook-icrc.org/)> accessed 15 November 2020.

¹³⁹ Turkish Ministry of Foreign Affairs, ‘No: 94, Press Release Regarding the Statements of Haftar, the Leader of the Illegitimate Militia Forces in Libya, on 27 April 2020’ (*mfa.gov.tr*, 29 April 2020) <[No: 94, 29 April 2020, Press Release Regarding the Statements of Haftar, the Leader of the Illegitimate Militia Forces in Libya, on 27 April 2020 / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](https://www.mfa.gov.tr/no-94-29-april-2020-press-release-regarding-the-statements-of-haftar-the-leader-of-the-illegitimate-militia-forces-in-libya-on-27-april-2020/rep.-of-turkey-ministry-of-foreign-affairs-mfa.gov.tr)> accessed 15 November 2020.

framework and mainly, the Libyan Political Agreement, he was described as a “pirate”¹⁴⁰. In this way, the Turkish government expressed the view that the LNA constituted an armed group, extraneous to the legitimate framework agreed in Skhirat.

As denoted by the aforementioned approaches, the legal assessment of the recognition of Haftar is rather complicated. In an effort to elucidate this practice, one could resort to a certain view of Talmon with regard to recognition of governments. Specifically, he argues that the wording matters in recognition declarations, as there is a distinction between the recognition of an entity ‘as something’ and the recognition ‘of something’; the former denotes the recognizing state’s view that the recognized government fulfills the necessary criteria of the status it is accorded, while reference to the latter without recourse to the *de jure/de facto* concept enables the recognizing state to establish relations with the recognized entity¹⁴¹.

By applying this opinion in the present case, it could be contended that the GNA’s recognition “as Libya’s legitimate government” indicates the international community’s position that it fulfills all the necessary government requirements, whilst the acknowledgement “of” Haftar’s role as a key player, who cannot be ignored, denotes willingness to enter into relations with him. This approach may be considered as taking into consideration the effective control doctrine in recognition of Governments and especially in its most extreme form. Whilst both entities (GNA and HoR) claiming a certain degree of legitimacy are recognized as the state’s legitimate institutions, Haftar’s autonomous role within the Eastern Government and his control over a preponderant part of the territory leads to a limited recognition of his prominent position in the Libyan conflict.

Another significant parameter of the situation in Libya is the engagement of international organizations and most notably, the Organization of United Nations. The United Nations have been involved in the Libyan crisis since the first stages of the anti-Qaddafi revolution. The Organization mainly operates in the country through the UNSMIL.

One of its most notable achievements was the adoption of the Libyan Political Agreement, signed in Skhirat, Morocco, on 17 December 2015. Specifically, in January 2015, the UN launched the negotiations that would produce an inclusive political agreement for a power-sharing deal to surmount institutional and military fractures. The process was led by UN Special

¹⁴⁰ Turkish Ministry of Foreign Affairs, ‘No: 218, Press Release Regarding the Inclusion of a Turkish Maritime Transportation Company within the List of Sanctions in connection with Libya at the Meeting of the EU Foreign Affairs Council’ (mfa.gov.tr, 21 September 2020) <[T.C. Dışişleri Bakanlığı Turkish Consulate General In Dubai \(mfa.gov.tr\)](http://T.C. Dışişleri Bakanlığı Turkish Consulate General In Dubai (mfa.gov.tr))> accessed 15 November 2020.

¹⁴¹ Talmon (n 5) 40-41.

Representative León, who was replaced by Martin Kobler in November 2015. This effort's aim was to create a Unity Government and to lead gradually to a new constitution and the organization of elections. In the talks participated representatives of both rival Parliaments, the HoR and the GNC, independent personalities, representatives of armed groups, political parties, municipalities, women and other civil society organizations¹⁴².

The Libyan Political Agreement was endorsed by UNSC Resolution 2259 (2015), which welcomed the formation of the Presidency Council and called upon it to form a Government of National Accord, and to finalize interim security arrangements necessary for stabilizing Libya, and called upon Member States to respond urgently to requests from it for assistance. Furthermore, it endorsed the Rome Communiqué of 13 December 2015 which supported the Government of National Accord as the 'sole legitimate government of Libya'. Thus, it requested that all Member States fully support the efforts of the Special Representative of the Secretary-General and work with the Libyan authorities and UNSMIL to develop a coordinated package of support to build the capacity of the GNA, and called upon them to respond urgently to requests for assistance from the GNA for the implementation of the Libyan Political Agreement. Last but not least, it called upon the GNA to protect the integrity and unity of key Libyan financial institutions and most notably, the National Oil Company, the Central Bank of Libya and the Libyan Investment Authority, and for these institutions to accept the authority of the Government of National Accord¹⁴³. It has to be noted that Resolution 2259 was not adopted pursuant to Chapter VII of the Charter and thus, it cannot be considered as binding upon Member States¹⁴⁴.

The UNSC continued to express its support for the GNA in every occasion, considering the Libyan Political Agreement as the only viable framework to end the Libyan political crisis. It has to be noted that concerning LPA-created institutions, like the GNA, which were mandated to perform their duties within a precise period of time, the UNSC has stressed that the LPA constitutes the valid instrument throughout the entire transitional period and that incorrect deadlines simply undermine the UN's peace-building efforts in the country. Moreover, it acknowledged the HoR's significant role during this period and encouraged it to draft and approve a new electoral law, as well as to finalize a new Libyan Constitution¹⁴⁵. In this context, it welcomed every effort towards the organization of elections in Libya. For instance, it welcomed the technical preparations initiated by the GNA and the High Electoral Committee, for national

¹⁴² International Crisis Group (n 82) 1.

¹⁴³ UNSC Res 2259 (2015) UN Doc S/RES/2259.

¹⁴⁴ Only UNSC's resolutions adopted pursuant to Chapter VII are considered binding upon Member States and the organs of the Organization, see Roucouas (n 64) 542.

¹⁴⁵ UNSC 'Statement by the President of the Security Council' (7 December 2017) UN Doc S/PRST/2017/24; UNSC 'Statement by the President of the Security Council' (14 December 2017) UN Doc S/PRST/2017/26).

elections and stressed the need of elections as soon as possible, although it acknowledged that it necessarily required that “proper conditions are in place”¹⁴⁶.

As the conflict deteriorated, the UNSC highlighted the importance of the Libyan financial institutions’ integrity and unity under the control of the GNA. In parallel, it condemned the involvement of parallel institutions in usurping Libya’s wealth-producing resources, as for example in the case of illicit exports of petroleum in areas controlled by the eastern government. The eastern government’s augmented exercise of control over the majority of Libyan financial resources and the subsequent lack of oversight by the national unity government was further acknowledged by the Council, which acting under Chapter VII, requested that the GNA informed the Committee as soon as it exercised sole and effective oversight over Libya’s 3 key institutions; the Central Bank of Libya, the National Oil Corporation and the Libyan Investment Authority¹⁴⁷.

The wording used by the UN organs in order to refer to the main actors of the Libyan conflict is also indicative of the way the Organization perceived each entity’s status, role and legitimacy. In particular, the UN Human Rights Council Special Rapporteur on the human rights of internally displaced persons in Libya, called the GNA as the “Government of Libya”, while the Eastern Government is referred to as the “Benghazi authorities”¹⁴⁸. In this way, the latter’s claim for legitimacy over the entirety of Libyan territory is rejected and it is regarded as a local de facto Government based in Benghazi. Taking into consideration that the HoR’s seat is located in Tobruk, interim Government’s seat is in Al-Bayda and Haftar’s Headquarters are located in Benghazi, the choice of the latter as the rival authorities’ place of reference indicates the UN’s view of him as being the actual head of the eastern entity.

Moreover, it could be deduced that the UN distinguish between Haftar and the HoR. When Salame recalls his meetings with key Libyan actors, he refers to the talks he held with “General Haftar and politicians who support him”, and does not make a direct reference of the House of Representatives as the main political body, which supports Haftar¹⁴⁹. In this context, the Panel of Experts initially referred to the Eastern Government’s armed forces in its annual Reports as the

¹⁴⁶ UNSC ‘Statement by the President of the Security Council’ (6 June 2018) UN Doc S/PRST/2018/11.

¹⁴⁷ UNSC Res 2509 (11 February 2020) UN Doc S/RES/2509.

¹⁴⁸ UNHRC ‘Report of the Special Rapporteur on the human rights of internally displaced persons on her visit to Libya’ (10 May 2018) UN Doc A/HRC/38/39/Add.2

¹⁴⁹ UNSC ‘Records of the 8667th meeting’ (18 November 2019) UN Doc S/PV/8667.

‘Libyan National Army’¹⁵⁰. Nevertheless, in the 2019 report, it referred to them as “Haftar’s armed forces”¹⁵¹.

Furthermore, the UN supported every attempt to resolve the crisis. In 2020, the UNSC welcomed the Berlin Conference and endorsed its conclusions¹⁵², while Special Representative Williams accelerated her efforts in order to prepare the organization of the new intra-Libyan political procedure, called the ‘Libyan Political Dialogue Forum’. Thus, she had been holding talks with various factions of the Libyan society. The conference took place under the auspices of the UN. It has to be mentioned that out of 75 participants representing the main Libyan geographical, social and political constituencies, 26 were elected by the HoR and the High Council of State, and 49 selected by UNSMIL. The initiation of this series of talks and meetings under the supervision and support of Special Representative Williams, denoted the continued interest of the UN on the resolution of the crisis.

The European Union was actively involved in the efforts for mitigation and resolution of the Libyan conflict, as well. In particular, it assisted Libya’s political transition to stability and supported the UN-led mediation efforts. Thus, it worked closely with the UNSMIL to support the implementation of the LPA and the organization of elections, which would lead to democratic governance. It has to be noted that the EU has formed, along with the UN, the League of Arab States and the African Union, the ‘Libya Quartet’, which constitutes a group consisting of representatives of the aforementioned international organizations, that aims to coordinate their attempts to advance the political efforts and assist Libya during the transitional period¹⁵³. To this end, the EU had highlighted the importance of inclusiveness of the political process, through the participation of all legitimate Libyan stakeholders. Last but not least, it had recognized the GNA as Libya’s de jure Government, while José Antonio Sabadell, the EU Ambassador to Libya handed over his credentials to Prime Minister Sarraj on 10 October 2020 in Tripoli¹⁵⁴.

Furthermore, the EU cooperated with the GNA in certain fields, like the protection of migrants, refugees and internally displaced people in Libya. Specifically, the EU has allocated €367.7

¹⁵⁰ UNPE (n 130) 9.

¹⁵¹ UNPE (n 75) 6.

¹⁵² UNSC Res 2510 (12 February 2020) UN Doc S/RES/2510.

¹⁵³ EU External Action Service, ‘Joint Communiqué of the Libyan Quartet’ (eeas.europa.eu, 23 May 2017) <https://eeas.europa.eu/headquarters/headquarters-homepage_en/26764/Meeting%20of%20the%20Libya%20Quartet:%20Joint%20Communiqu%C3%A9> accessed 15 November 2020.

¹⁵⁴ EU External Action Service, ‘José Sabadell becomes new EU Ambassador to Libya’ (eeas.europa.eu, 21 October 2020) <https://eeas.europa.eu/delegations/libya_en/87297/Jos%C3%A9%20Sabadell%20becomes%20new%20EU%20Ambassador%20to%20Libya> accessed 15 November 2020.

million through the European Union Trust Fund in Africa, in projects concerning the protection and assistance to migrants, refugees and internally displaced people, the stabilization of Libyan municipalities and an integrated border management. In addition, it has set up two missions under the Common Security and Defense Policy with relevance to migration. The former, the EU Border Assistance Mission in Libya constitutes an integrated border management mission, with the mandate of providing capacity-building, assistance and crisis management in the field of security sector reform with a focus on police, criminal justice, border security and migration. The latter, EUNAVFOR Med Operation 'Sophia' was launched to counter human trafficking and smuggling by taking action against criminal networks and by disrupting their business model. From June 2016 until 2020, the operation supported the Libyan Navy and Coastguard with capacity building and trainings, and contributed to the implementation of the UN arms embargo and was succeeded by Operation 'Irinì', which was launched on 31 March 2020¹⁵⁵.

As Libya is an African country, one has to resort to the relevant practice of the African Union, in order to fully comprehend the international community's approach towards Libya's rival governments. Specifically, the Union had engaged in many working groups for the promotion of Libyan political dialogue and the amelioration of relations between the two entities, along with the United Nations and the European Union. Moreover, it had stressed the need of an inclusive solution to the crisis, which shall incorporate all different factions of the Libyan society, the tribes and women¹⁵⁶. In this framework, it considered the GNA as Libya's legitimate government, referred to Sarraj as the Prime Minister of Libya in its official website and had relocated its Office for Libya to Tripoli to operate as closely as possible to the realities on the ground and cooperate with the western authorities¹⁵⁷.

In conclusion, the majority of the international community recognized the GNA as Libya's legitimate executive branch, in an express way. In parallel, they had recognized the HoR as Libya's legitimate legislative body. This approach was followed by the UN, the EU and the AU, as well. The treatment of these two institutions, which had formed parallel and fully operational distinct structures, as components of the same apparatus in accordance with the Libyan Political Agreement, leads to the conclusion that the majority of the inter-national community regarded

¹⁵⁵ W. Th. Douma and others (eds), *The Evolving Nature of EU External Relations Law* (Asser Press 2021) 317; UNPE 2021 (n 75) 5.

¹⁵⁶ African Union, 'Discours du Président de la Commission de l'Union africaine, S.E. Moussa Faki Mahamat à la réunion ministérielle sur la Libye' (au.int, 5 October 2020) <<https://au.int/fr/speeches/20201005/discours-du-president-de-la-commission-la-reunion-ministerielle-sur-la-libye>> accessed 15 November 2020.

¹⁵⁷ African Union, 'Remarks by the Chairperson of the African Union Commission Moussa Faki Mahamat, at the opening of the Fifth Meeting of the High Level Committee of the African Union on Libya' (au.int, 17 April 2018) <<https://au.int/en/speeches/20180417/remarks-chairperson-african-union-commission-moussa-faki-mahamat-opening-fifth>> accessed 15 November 2020.

their alienation as an intergovernmental dispute. Moreover, their insistence on the implementation of the political agreement signed in Skhirat, can be considered as a recognition approach based on the legitimacy doctrine.

Nonetheless, the examination of several states' practice indicates that they did not follow this approach, but recognized the GNA as the local de facto Government of Tripoli. This practice may be founded on the effectiveness doctrine, which acknowledges a government's effective control over its territory. Regarding General Haftar, the HoR-appointed Head of the Army, the majority of states and international organizations regarded him as an extraneous player, who led an armed group in the country, without having an institutional link to the official structure of the state. The acknowledgment of his role as a key player in the conflict may be considered as simply serving the practical aim of establishing relations with him.

After analyzing the recognition practice followed by the international community in Libya and realizing its mainly legitimacy-oriented direction, it would be rather interesting to examine if and to what extent, this approach has influenced the subsequent cases, where issues of recognition of governments have been raised. Specifically, two major governmental changes took place during 2021; the Government of Myanmar was overthrown by a military coup d'etat, which established a junta regime, while the Taliban returned to power in Afghanistan. In both cases, the international community has not responded in a uniform way with regard to the application of the recognition criteria, even though legitimacy has continued to play an important role in formal recognition declarations.

In the case of Myanmar, the coup was universally condemned. The military regime has not been recognized formally, while the EU Parliament recognized the National Unity Government (NUG, the opposition entity) as "the only legitimate representatives of the democratic wishes of the people of Myanmar" and the French Senate adopted a resolution that highlighted the need to recognize the NUG as the Government of Myanmar¹⁵⁸. However, it has been argued that certain states, ie China, have initiated informal talks with the junta moving towards de facto recognition, in an attempt to establish ties with the entity exerting control over the country in accordance with

¹⁵⁸ EU Parliament 'Resolution on Human Rights Situation in Myanmar, including the situation of religious and ethnic groups' (2021/2905/RSP); Sebastian Strangio, 'EU Parliament Voices Support for Myanmar's Opposition Government' (*The Diplomat*, 11 October 2021) <<https://thediplomat.com/2021/10/eu-parliament-voices-support-for-myanmars-opposition-government/>> accessed 20 October 2021; French Senate, 'Résolution portant sur la nécessité de reconnaître le Gouvernement d'unité nationale de Birmanie' (*Senat*, 5 October 2021) <<http://www.senat.fr/leg/tas21-002.html>> accessed 20 October 2021.

the effective control doctrine¹⁵⁹. Last but not least, the rejection of the military regime's request for recognition by the UN General Assembly, would offer, according to Barber, a unique opportunity to voice a strong message towards the international isolation of undemocratic governments¹⁶⁰.

The case of Myanmar has been characterised by the paradox of the presence of representatives of opposite governments before different UN organs. Specifically, the positions of the Myanmar representative at the UNGA, at the International Labor Organization and at the World Health Organization have been occupied by representatives of the civil Government. However, a representative of the junta was initially heard by the UN Human Rights Council, while the International Court of Justice has been communicating the junta-controlled Myanmar Embassy in Brussels with regard to the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* case. Nonetheless, the ICJ will have to decide which Government is entitled to represent the state of Myanmar in the proceedings of the aforementioned case, as the NUG issued a declaration in order to withdraw Myanmar's preliminary objections and highlighted its position as the country's de jure Government¹⁶¹.

With regard to the other recent recognition case, the case of the Taliban Government in Afghanistan, it has to be noted that the response of the international community was not uniform, although it has not been recognized formally by any state or international organization so far. In particular, while there are many states, like Canada and France, which refuse any contact with the regime, the general trend is to withhold formal recognition, but to maintain channels of communication with it, as its effective control over the Afghan territory cannot be ignored¹⁶². In

¹⁵⁹ John Liu and Thompson Chau, 'China Warms Up to Myanmar's Generals' (*Foreign Policy*, 17 November 2021) <<https://foreignpolicy.com/2021/11/17/china-myanmar-military-regime-recognition-investment/>> accessed 20 November 2021.

¹⁶⁰ Rebecca Barber, 'Could the General Assembly Exclude Myanmar from the UN by Refusing To Recognise the Credentials of its Ruling Military Junta?' (*EJIL:Talk!*, 26 February 2021) <<https://www.ejiltalk.org/could-the-general-assembly-exclude-myanmar-from-the-un-by-refusing-to-recognise-the-credentials-of-its-ruling-military-junta/>> accessed 1 March 2021.

¹⁶¹ Marc Weller, 'Is the ICJ at Risk of Providing Cover for the Alleged Genocide in Myanmar?' (*EJIL:Talk!*, 11 February 2022) <<https://www.ejiltalk.org/is-the-icj-at-risk-of-providing-cover-for-the-alleged-genocide-in-myanmar/>> accessed 11 February 2022; Larry D. Johnson, 'What's wrong with this picture? The UN Human Rights Council hears the military Junta as the legitimate government of Myanmar' (*EJIL:Talk!*, 31 March 2021) <<https://www.ejiltalk.org/whats-wrong-with-this-picture-the-un-human-rights-council-hears-the-military-junta-as-the-legitimate-government-of-myanmar/>> accessed 1 April 2021. For the problematic of governmental recognition before international organizations and international courts and tribunals, see Rebecca Barber, 'How Should Governments Decide Whether or not to Recognise other Governments, and can the General Assembly Help?' (*EJIL:Talk!*, 6 December 2021) <<https://www.ejiltalk.org/how-should-governments-decide-whether-or-not-to-recognise-other-governments-and-can-the-general-assembly-help/>> accessed 7 December 2021, and Niko Pavlopoulos, 'Contested Governments and State Representation before International Courts and Tribunals' (*EJIL:Talk!*, 29 September 2021) <<https://www.ejiltalk.org/contested-governments-and-state-representation-before-international-courts-and-tribunals/>> accessed 1 October 2021.

¹⁶² According to Marcelo Kohen, 'Rien dans le droit international n' empêche la reconnaissance du Gouvernement des Talibans' (*Graduate Institute*, 2 September 2021) <<https://www.graduateinstitute.ch/communications/news/rien-dans-le-droit-international-nempêche-la-reconnaissance-du-gouvernement-des>> accessed 10 September 2021, the

this context, the EU has held talks with representatives of the Taliban in Doha and UK officials have met with members of the group in Kabul. However, formal recognition has been conditioned upon the respect of human rights, the equal participation of women and the inclusive and open character of the regime. Those conditions denote the growing importance of legitimacy of exercise of power in the international practice. It has to be noted that the Taliban Government has made intense efforts to gain recognition from states and international organizations, confirming, in this way, the high value of recognition of Governments nowadays¹⁶³.

After the presentation of the recent governmental changes and their handling by the international community, it can be deduced that the legitimacy principle followed by the majority of states and international organizations vis-a-vis the rival Libyan Governments, has continued to play a significant role in the subsequent recognition approaches towards undemocratic governments, constituting a major element taken into consideration in the recognition process. Thus, formal declaration statements and de jure recognition of illegitimate regimes have been prevented, although implicit de facto recognition based on the effective control doctrine continues to take place, as well. After all, the political dimension of the matter and the significance of each case's ad hoc conditions which influence recognition decisions and do not permit the formation of a uniform practice for the aforementioned recognition criteria, cannot be disregarded.

recognition of the Taliban Government is not prevented nor prohibited by international law, as the relevant decisive criterion is the exercise of effective control over the Afghan territory. Nonetheless, its elevation to the governmental status would render Afghanistan responsible for every violation of rights brought on by the regime.

¹⁶³ Federica Paddeu and Niko Pavlopoulos, 'Between Legitimacy and Control: The Taliban's Pursuit of Governmental Status' (*Just Security*, 7 September 2021) <<https://www.justsecurity.org/78051/between-legitimacy-and-control-the-talibans-pursuit-of-governmental-status/>> accessed 10 September 2021. Regarding the Taliban's seek of recognition from the Credentials Committee of the UNGA, see Rebecca Barber, 'Will the Taliban Represent Afghanistan at the UN General Assembly?' (*EJIL:Talk!*, 1 September 2021) <<https://www.ejiltalk.org/will-the-taliban-represent-afghanistan-at-the-un-general-assembly/>> accessed 2 September 2021.

Part Two: Two Governments, One Libyan State? Resorting to the Recognition of Governments Criteria

a) Recognition according to the Effective Control Doctrine

Recognition of governments is a political act with major legal consequences, which conceptually emerges in cases of change of governments. Governments, acting as proxies of states, are comprised by individuals, who, as all human beings, have limited lifespans and act often in unexpected ways, resulting in unprecedented situations concerning the character, the duration and the formation of the ruling apparatuses in which they participate. This unstable nature has brought on the need for certain and objective criteria in order each governmental change to be assessed.

This necessity is further stressed by the absence of a centralized authority in the international legal system. The fact that there is no superior international legal authority and that sovereign equality has been considered as the foundation of the international system, has highlighted the significance of objective and ideologically neutral requirements for determining whether an entity will be recognized as a State's Government.

That is why, effective control over the territory, the state institutions and the governmental apparatus has been considered as the most strictly defined and easily assessed criterion in recognition of governments¹⁶⁴, as it does not provide great discretion in granting recognition. In this way, various political considerations and subsequent abuses can be omitted¹⁶⁵. It is rather interesting that according to Lauterpacht, since the 17th and 18th century jurists like Grotius and

¹⁶⁴ It has to be stated that effectiveness is one of the components of statehood, as well. Roth argues that a state is not an effectively self-governing territorially-based political community, but a territorially-based political community, which ought to be self-governing upon the decision of other (already existing) states, see Brad Roth, *Sovereign Equality and Moral Disagreement* (Oxford University Press 2011) 176.

¹⁶⁵ Peterson (n 44) 39. Specifically, imposing various conditions on new governments has been considered as an abusive practice. For instance, many states and particularly the United States made recognition conditional on the new entities' assurance to comply with their predecessors' international obligations, see Charles G. Fenwick, 'The Problem of the Recognition of de Facto Governments' (1948) 1 *Inter-american Juridical Yearbook* 18, 25. In this context, the European Community required 'a Yugoslav republic to commit itself, prior to recognition, to adopt constitutional and territorial guarantees ensuring that it has no territorial claims towards a neighboring Community State and that it will conduct no hostile propaganda activities versus a neighboring Community State, including the use of denomination which implies territorial claims', see Extraordinary EPC Ministerial Meeting, 'Press Release 129/91- Declaration on Yugoslavia' (Brussels 16 December 1991). This unusual recognition requirement was included in the Declaration after Greek pressures and it was presented as an aspect of European states' discretionary power to accord recognition. Even though it was not illegal under international law, it was paradoxical, as it rendered European states both parties to and judges of the procedure, see Photini Pazartzis, 'La reconnaissance d'«une république yougoslave»: la question del' ancienne République yougoslave de Macédoine (ARYM)' (1995) 41 *Annuaire français de droit international* 281, 289.

Pufendorf supported the application of the effective control doctrine as it was more convenient, in comparison with the legitimacy principle, which could be based on the divine rights of kings¹⁶⁶. More recently in 1987, the American Law Institute expressed the view that ‘international law does not generally address domestic constitutional issues, such as how a national government is formed’¹⁶⁷.

Effectiveness can be defined as ‘the de facto control of the administrative structure of the State and the acquiescence of the State’s population to the new government, expressed through the absence of armed resistance to the new authority’¹⁶⁸. According to the effective control doctrine, ‘ex factis ius oritur’¹⁶⁹. Lauterpacht argued that effective governments have right to claim recognition by the international community. He considered that this right is based on vast state practice, but also on the principles of independence of states and prohibition of intervention¹⁷⁰.

The significance of effective control was acknowledged by the Institute of International Law which adopted a Resolution, which stated that ‘to recognize a government is to attest on its own behalf of its effectiveness’¹⁷¹. In the same context, the Third Restatement of the Foreign Relations Law of the United States defines recognition of governments as the ‘formal acknowledgment that a particular regime is the effective government of a state and implies a commitment to treat that regime as the government of that state’¹⁷².

Moreover, the majority of jurists have contended that effectiveness is the main criterion of recognition of Governments¹⁷³, while state practice has granted recognition to effective regimes, as well. Specifically, Japan, Brazil, France and the United Kingdom, among others, have considered effective control as a leading criterion in recognizing new governments¹⁷⁴. The

¹⁶⁶ Lauterpacht (n 9) 830.

¹⁶⁷ Henkin (n 17) par. 203.

¹⁶⁸ Eduardo Jimenez de Arechaga, *Derecho Internacional Publico*, vol. II (Fundacion de Cultura Universitaria 1995) 57.

¹⁶⁹ Crawford (n 7) 45.

¹⁷⁰ Lauterpacht (n 44) 38.

¹⁷¹ Institut de Droit International (n 2) art 10.

¹⁷² Henkin (n 17) par. 203.

¹⁷³ Hersch Lauterpacht, ‘De facto Recognition, Withdrawal of Recognition and Conditional Recognition’ (1945) 22 *British Yearbook of International Law* 164, 172; Charles De Visscher, *Les effectivites du droit international public* (Pedone, 1967) 39-40; Santiago Benadava, *Derecho Internacional Publico* (LexisNexis 2001) 113; Pierre-Marie Dupuy, *Droit International Public* (Dalloz 2002) 100.

¹⁷⁴ ILA Committee on Recognition/Non-Recognition in International Law, ‘Third Report’ (Johannesburg 2016) 8; For the French practice, see Olivia Danic, ‘L’évolution de la pratique française en matière de reconnaissance de gouvernement’ (2013) 59 *Annuaire français de droit international public* 511, 517.

justification of this approach lies to the fact that States want to conclude agreements and carry out activities with governments which have the capacity to fulfill their obligations¹⁷⁵.

The effective control's role as the leading requirement for recognizing a Government was stressed by Arbitrator Taft in the landmark *Tinoco Concessions Arbitration* award, where he argued that "when recognition vel non of a government is, by such nations, determined by inquiry, not into its de facto sovereignty and complete governmental control, but into its illegitimacy or irregularity of origin, their non-recognition loses something of evidential weight on the issue with which those applying the rules of international law are alone concerned"¹⁷⁶. This award is considered as a leading precedent in establishing the effective control doctrine as the fundamental condition of recognition of governments¹⁷⁷. It has to be noted that during that arbitration, the British Government stated that the Tinoco Government was the only de jure and de facto Government of Costa Rica, in spite of the fact that it had not recognized it formally and had not entered into official relations with it for political reasons¹⁷⁸.

In another iconic decision, *Republic of Somalia v. Woodehouse Drake & Carey (Suisse)*, the High Court ruled that 'the factors to be taken into account in deciding whether a government exists as a government of a state are a) whether it is the constitutional government of the state; b) the degree, nature and stability of administrative control, if any, that it of itself exercises over the territory of the state; c) whether Her Majesty's Government has any dealings with it and if so, what is the nature of these dealings; and d) in marginal cases, the extent of international recognition that it has as the government of the state'¹⁷⁹. In accordance with these criteria, the Court ruled that there was no effective Government in Somalia.

In this case, despite the existence of an interim Government, its emergence through an international conference and its recognition by several states and the UN, the lack of effective control over the country's territory and the administrative apparatus deprived it of any claim to be recognized as Somalia's Government. The Court stated that it would take into account only 'considerations of legal characterization', considering effectiveness as a legal criterion of

¹⁷⁵ It has to be noted that effectiveness is a requirement of statehood, as well. In particular, the existence of a government in effective control of a defined territory to the exclusion of other entities is considered as fundamental in recognition of states, see Crawford (n 7) 59.

¹⁷⁶ *Tinoco Arbitration (GB v Costa Rica)* (1923) 1 RIAA 369.

¹⁷⁷ Cornelia Hagedorn, 'Tinoco Arbitration Concessions' (*Max Planck Encyclopedias of International Law*, December 2006) <[Oxford Public International Law: Tinoco Concessions Arbitration \(ouplaw.com\)](https://www.ouplaw.com/oxford-public-international-law/tinoco-concessions-arbitration/)> accessed 15 November 2020.

¹⁷⁸ Talmon (n 5) 34.

¹⁷⁹ Maria Aristodemou, 'Choice and Evasion in Judicial Recognition of Governments: Lessons from Somalia' (1994) 5 *European Journal of International Law* 532, 538.

government¹⁸⁰. Aristodemou contends that this decision tried to draw attention to effective control, which is a legal concept, rather than to political considerations, that (should) constitute the real reason behind recognition decisions¹⁸¹.

The significance of effective control has been obvious, even in governmental statements concerning the abolition of recognition of Governments practice. Specifically, Waldergrave, the British Minister of State for Foreign and Commonwealth Affairs stated that following the decision of the UK Government to abolish recognition of governments, decisions on foreign Governments' status would be based on their ability to control their territory by themselves, along with the relevant British interests¹⁸². In the same wavelength, the Swiss practice on recognition of Governments is based on the effectiveness exercised by each entity claiming to be a state's Government, which influences the way the Swiss government interacts with it¹⁸³.

Moreover, it has been argued that despite the democratic legitimacy principle's increased significance in depriving a regime of its legitimacy, this regime's continued exercise of effective control over the state's territory does not affect its status as that state's Government under international law¹⁸⁴. As a consequence, any recognition of other entities as that state's Government amounts to premature recognition and (if accompanied by internationally wrongful acts against that state) may even result in the recognizing state's international responsibility¹⁸⁵.

It has to be noted that the effective control test consists of various specific elements, such as control over preponderant territorial parts of the country, control of the capital and main governmental institutions, popular support, stability and permanence and the absence of decisive foreign interventions¹⁸⁶. In particular, in 1927, the International Commission of American Jurists prepared a draft convention (which nevertheless remained unratified) following the standard practice, which provided that "a Government is to be recognized whenever it fulfills the following conditions: a) Effective authority with a probability or stability and consolidation, the orders which, particularly as regards taxes and military service, are accepted by the inhabitants,

¹⁸⁰ Warbrick (n 46) 94.

¹⁸¹ Aristodemou (n 179) 549.

¹⁸² Cited in Talmon (n 5) 7.

¹⁸³ Tribunal pénal fédéral, Numéro de dossier: RR.2018.241, Arrêt du 12 novembre 2019, Cour des plaintes : Entraide judiciaire internationale en matière pénale à la Libye (2019) 8.

¹⁸⁴ Talmon (n 13) 239. In 2011, UK Foreign Minister Hague stated that he had signed a directive revoking Qaddafi's diplomatic immunity. However, the directive, which constituted the necessary instrument under State Immunity Act, did not deprive Qaddafi of his immunity. According to Talmon, it would be extremely unusual to withdraw recognition from a Head of State still controlling effectively preponderant parts of the state, see Stefan Talmon, 'De-Recognition of Colonel Qaddafi as Head of State of Libya' (2011) 60 *International and Comparative Law Quarterly* 759, 760, 763

¹⁸⁵ Lauterpacht (n 9) 823; Schuit (n 23) 399.

¹⁸⁶ Lauterpacht (n 44) 37; Schuit (n 23) 389-391.

b) Capacity to discharge pre-existing international obligations, to contract others, and to respect the principles established by international law”¹⁸⁷.

In the same wavelength, a British proposal in the UN General Assembly Ad Hoc Political Committee attempted to present effective control as the necessary requirement for the representation of the State in the UN, codifying it as following: “the right of a government to represent the Member State concerned in the United Nations should be recognized if that government exercises effective control and authority over all or nearly all the national territory, and has the obedience of the bulk of the population of that territory, in such a way that this control, authority and obedience appear to be of a permanent character”¹⁸⁸. Although the proposal was not accepted, it does shed light on the exact meaning of the doctrine and its perception by states.

As can be deduced by the above-mentioned practice, the effective control doctrine consists of specific elements and especially governmental control over the territory and the state institutions, the absence of foreign interference and the existence of popular support. In the following sub-chapters, an attempt to assess the rival Libyan Governments from the aspect of effective control and these constituent factors will be made.

i. Territorial and institutional control

Control over the Libyan territory was highly uncertain. The GNA arrived in Tripoli in March 2016 by sea, after failed attempts to land at Tripoli’s International Airport. In the beginning, it remained confined in a naval base, because the GNC Government led by Khalifa Ghwell opposed its arrival. The GNC still controlled governmental buildings, including the Ministries of Defence and Justice, as armed groups from Misrata controlled key districts of the capital. For instance, Ghwell reopened Tripoli’s Airport, organizing a much publicized ceremony, in order to declare his control over the capital’s most significant infrastructure¹⁸⁹.

Furthermore, he created the National Guard, which was composed of ‘anti-Government of National Accord’ armed groups from Misrata and Tripoli. This group, along with the Al-Marsa al-Kubra Brigade and groups supported by the former Libyan Islamic Fighting Group, clashed with groups from Tripoli, such as the Special Deterrence Force, the Abu Salim Brigade and the

¹⁸⁷ Charles G. Fenwick, ‘The Recognition of De Facto Governments’ (1968)131 World Affairs 177, 178.

¹⁸⁸ Roth (n 26) 258.

¹⁸⁹ UNPE ‘Letter dated 1 June 2017 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council’ (2017) UN Doc S/2017/466, 10.

Tripoli Revolutionaries Brigade, which supported the GNA. Finally, the GNA managed to oust the rival Government and its supporters from Tripoli¹⁹⁰.

In the meanwhile, the Eastern Government had managed to control large areas in the East and the South. In particular, General Haftar achieved relative military victories in the areas of Suq al-Hut, Busnayb and Sabri and by March 2017, he controlled most of Benghazi¹⁹¹. Gradually, he acquired control of Benghazi and Derna, and started moving his army westwards, conquering many regions previously controlled by the GNA. In this way, he managed to control vast areas of the Libyan territory.

In 2019 extensive conflicts between the two entities took place, when Haftar began taking control of the southern region. On 4 April 2019, Haftar launched operation 'Flood of Dignity' with the aim of conquering Tripoli. During this period, GNA's control was diminished, extending only in Tripoli and its immediate outskirts and it was widely considered that Tripoli's conquest was a few weeks' matter. However, after April 2020, the GNA forces were reinforced by foreign troops and began to launch their counter-offensive, driving gradually LNA forces back to the east. They took control of al Watiya Air Base, an important operational base for the GNA's Air Force. Also, they strengthened their positions around Tripoli, retook control of Tripoli International Airport and the town of Tarhouna.

On 5 June 2020, Haftar lost his last stronghold in the west and retreated his forces. GNA further pressed him to the east and approached Sirte, Qaddafi's birthplace, which is located 450km east of Tripoli. As a result, the GNA has regained much of its pre-2019 territory, establishing its presence not only in Tripoli and its surrounding area, but in most of northwestern Libya. However, the UN Secretary-General expressed his concerns over the ongoing clashes between non-State armed groups in Tripoli, after the withdrawal of the LNA¹⁹².

In the south, the power struggle between the two Governments could be described as ambiguous, because in many communities, forces affiliated to the LNA controlled security and forces allied with the GNA controlled public financing. These peculiarities may be explained, if one takes into

¹⁹⁰ Ibid 9-10, where it was reported that the Presidency Council was internally divided, as well; Democracy Reporting International (n 67) 33.

¹⁹¹ UNPE (n 189) 13. In March 2017, armed groups supporting the GNC Government were ousted from the Qusur, Fallah and Qarqarish areas.

¹⁹² UNSC 'Report of the Secretary-General: Implementation of Resolution 2491' (2 September 2020) UN Doc S/2020/876, 6.

consideration the fact that the Libyan social structure and the subsequent power struggle are based on the tribal system and not on formal state institutions¹⁹³.

In conclusion, it has to be noted that neither the GNA nor the Eastern Government could claim control over a preponderant part of the Libyan territory. Doubtless the latter controlled a greater and more extensive geographical area, but the former had managed to retain control over the capital and was advancing eastwards and southwards. Control over the capital has been considered as a decisive criterion in granting recognition to a Government. In the cases of Kazavubu/Lumumba dispute in Congo/Leopoldville, Royalist/Republican forces in Yemen and Khmer Rouge/opposition forces in Kampuchea, control over the capital was regarded as the fundamental criterion, in order to maintain recognition of an already existing *de jure* Government, while the conquer of the capital by opposition forces led to the loss of this status by the former Government and to the emergence of the opposition political body as the new *de jure* Government of the state.

Another effectiveness criterion is the exercise of control over the state apparatus and the most crucial public institutions¹⁹⁴. Specifically, an effective government does not control solely a state's territory, but has to discharge governmental functions and control the state's financial and wealth-producing resources, as well. Thus, Taliban's effective control over Afghanistan and the establishment of governmental institutions led some scholars to consider the US-Taliban conflict as an international armed conflict between the USA and the State of Afghanistan, *de facto* represented by the Taliban regime, even before their total domination over the country¹⁹⁵.

In Libya, even before 2016, key financial institutions were deeply divided in parallel entities. They were located in the west and in the east, but claimed legitimacy to act as Libya's sole financial institutions, while neither side exercised substantial control over infrastructure, assets and personnel¹⁹⁶. In 2017, the UN Panel of Experts stated that it was difficult to identify the appropriate and competent Libyan interlocutors, as the GNA had weak operational capacity, and its control over the administration was very limited, while other actors were active and supported from both the population and armed groups¹⁹⁷.

¹⁹³ Eaton and others (n 74) 53.

¹⁹⁴ Warbrick (n 46) 94.

¹⁹⁵ Milanovic (n 59).

¹⁹⁶ This fragmentation has resulted in reduced oversight and increased cases of misappropriation. For example, both entities have been accused of misspending, see UNPE (n 189) 52-53.

¹⁹⁷ Ibid 7.

One of Libya's most important institutions is the National Oil Corporation. It has been divided in two rival entities, backed by the GNA and the HoR and headquartered in Tripoli and Benghazi, accordingly. Several unification attempts were made between the heads of the two institutions, Mustafa Sanallah and Naji al-Maghrebi in Malta, Tunisia and Turkey, even before the GNA's arrival in Tripoli. Subsequently, a relevant agreement was signed in Vienna on 16 May 2016, followed by a technical agreement signed in Istanbul.

However, this effort was not successful for various reasons. First of all, the HoR did not support it, expressing concerns regarding the sharing of revenue and the representation of Eastern officials in the unified board of governors. In addition, the Eastern institution pressed the western to transfer its headquarters in Benghazi. Furthermore, the GNA faced internal disputes concerning appointments and the allocation of resources in the National Oil Corporation. Finally, the eastern institution withdrew from the agreement on 13 March 2017. As a result, both entities issued statements claiming their sole legitimacy over Libya's oil resources, but the Western National Oil Corporation as of June 2017 seemed to play the leading role, both institutionally and technically¹⁹⁸.

Nonetheless, the eastern institution attempted to illicitly export crude oil, signing contracts, which offered large discounts. In addition, on 26 June 2018, the LNA transferred control of the oil facilities in the Gulf of Sirte to the eastern Corporation, which issued a letter welcoming the decision and stating that it was the sole entity authorized by law to sell crude oil. As a consequence, the western Corporation declared force majeure in the two terminals operational at the time, but regained control of the oil facilities on 11 July 2018, retaining its leading role both institutionally and in terms of control of facilities and infrastructure on the ground¹⁹⁹. In 2019, the Eastern Government appointed a new Head of the eastern National Oil Corporation, as well as a board of directors of a new petroleum marketing company, which intended to take over distribution of oil in the east. Nevertheless, the western Corporation continued to control institutionally and technically oil exploitation in Libya.

Another divided institution was the Central Bank of Libya. Its Western branch was located in Tripoli and was headed by Sadik al-Kebir, while the Eastern was headquartered in al-Bayda and led by Ali al-Hibri. Both claimed the governorship of the unified Bank, but the western branch

¹⁹⁸ Ibid 53.

¹⁹⁹ UNPE (n 140) 37.

de facto controlled the majority of staff and the Presidency Council's financing and managed the Bank's accounts and the revenue generated by oil exports²⁰⁰.

Furthermore, the western branch maintained a certain degree of autonomy towards the GNA and Prime Minister Sarraj, with whom it had disagreed in various occasions. The eastern branch, supported by Prime Minister Al-Thinni and the HoR, had money printed by a Russian company. This action was accepted by the GNA, but the Western Bank did not approve its circulation in Tripoli²⁰¹. Last but not least, several unification attempts failed and as of December 2019, the division existed between the two competitive entities²⁰².

Another major institution was the Libyan Investment Authority, which managed Libyan assets abroad and constituted Libya's sovereign wealth fund. Since 2016, two rival institutions had emerged; the first one was located in Malta and was headed by Hassan Bouhadi, while the other one in Tripoli and was governed by Abdulmagid Breish.

At first, the GNA maintained lines of communication with both entities, while the Eastern Government arrested, intimidated and prevented the head of the Malta-based branch from traveling, in order to force him to approve the appointment of a new Chief Executive Officer. Subsequently, the GNA appointed a new 'Interim Steering Committee' that would serve as both Chief Executive Officer and board of directors, until it managed to transfer the governance structure of the Authority to Tripoli through the correct formal procedure. However, the new Chief Executive Officer was refused access to the Authority's offices in Tripoli. Finally, he managed to enter with the assistance of armed personnel.

Former Tripoli-based Officer Breish took the case to the Tripoli Administrative Court, which rejected the appointment of the Steering Committee. He managed to regain access to the Authority's headquarters, being allegedly supported by armed men. According to the UN Panel of Experts, occupation of the Authority's offices is dependent on the assistance of armed personnel²⁰³. After the court ruling, the GNA replaced the 'Interim Steering Committee' with an 'Interim Management Committee' and appointed Ali Mahmoud Hasan as its head, prohibiting dealings with Breish.

²⁰⁰ UNPE (n 189) 56.

²⁰¹ Ibid 56.

²⁰² UNPE (n 75) 43.

²⁰³ UNPE (n 189) 57.

Hasan submitted an application to the High Court of Justice of the United Kingdom, claiming to be the validly appointed Chairman of the LIA. Breish challenged this argument, but the High Court ruled that he was precluded from challenging the constitutionality of the GNA by the ‘one voice’ principle²⁰⁴. According to the ‘one voice’ principle, recognition is a prerogative of the executive branch. Thus, judicial authorities need to comply with governmental guidance on the matter. In the present case, the British Government had certified that it recognized the GNA as the government of Libya. On 15 May 2020, the Court of Appeals confirmed this position²⁰⁵. It has to be noted that all assets held outside of Libya prior to 2011 remain frozen, following sanctions imposed by Security Council’s Resolution 1973²⁰⁶.

The eastern Investment Authority’s viability was affected by the formation of the Military Authority for Investment and Public Works (MAIPW). This Authority intended to guarantee financial independence for the LNA and had taken on control and oversight over major agricultural and industrial projects. Moreover, in 2016 the HoR adopted the military investment law and the Interim Government created the Defence Committee with the aim of allocating funds for the LNA. In parallel, the eastern Central Bank of Libya allocated a third of its spending to the LNA from 2016 till 2018²⁰⁷.

Apart from the aforementioned national investments and assets, foreign investment in Libya has been also significant. In this context, it has to be noted that 16 cases against the Libyan State have been brought in front of the International Court of Arbitration of the International Chamber of Commerce for adjudication, since 2011. They include the following cases; Ghenia (Turkey) v. Libya, Shinhan (Republic of Korea) v. Libya, Tekfen and TML (Turkey) v. Libya, Strabarg (Austria) v. Libya, Nurol (Turkey) v. Libya, Guris (Turkey) v. Libya, Etrak (Turkey) v. Libya, D.S. Construction (UAE) v. Libya, Ustay (Turkey) v. Libya, Simplex (India) v. Libya and Trasta (UAE) v. Libya, which are still pending, Al-Kharafi (Kuwait) v. Libya, Sorelec (Turkey) v. Libya, Olin (Cyprus) v. Libya and Cengiz (Turkey) v. Libya, which decided in favor of the investor, and Way2B (Portugal) v. Libya, which decided in favor of the State. It is noteworthy that the Court has not occupied itself with the dispute between the two parallel Governments, but has taken the GNA’s standing as the Government of Libya, for granted .

²⁰⁴ For an extensive presentation of the US recognition case law and the interaction between the US Government and the US Courts on matters of recognition of governments, see Mary Beth West and Sean D. Murphy, ‘The Impact on U.S. Litigation on Non-Recognition of Foreign Governments’ (1990) 26 Stanford Journal of International Law 435.

²⁰⁵ *Mahmoud* (n 107) 25.

²⁰⁶ Giorgio Sacerdoti, ‘Freezing sovereign wealth funds assets abroad under U.N. Security Council’s Resolutions: The case of the implementation in Italy of asset freezes against Qadhafi’s Libya’ (*ssrn*, 20 May 2012) <[Freezing Sovereign Wealth Funds Assets Abroad Under U.N. Security Council's Resolutions: The Case of the Implementation in Italy of Assets Freezes Against Qadhafi's Libya by Giorgio Sacerdoti :: SSRN](#)> accessed 15 November 2020, 1-2.

²⁰⁷ Eaton and others (n 74) 28-31.

To sum up, effective control over a greater portion of the Libyan territory was exercised by the Eastern Government. However, the GNA continued to control the capital Tripoli and a significant portion of northwestern Libya. In addition, control over the financial institutions, which are crucial for the economic viability of each regime, was divided between parallel entities, with a certain lead of the western institutions.

ii. Foreign interference

Since the 19th and early 20th century, foreign intervention has been considered as a disqualifying factor in recognition of Governments. In particular, Great Britain, France and the United States did not recognize the Rivas Government of Nicaragua, which was aided by American adventurers. Similarly, the United States did not recognize the Imperial Government of Mexico, which was established thanks to France's intervention²⁰⁸.

During the 1970s, foreign assistance had been used to justify the non-recognition of the Lon Nol and Heng Samrin Governments of Cambodia in 1970 and 1979, respectively. In particular, these governments were installed in Cambodia (called Kampuchea at the time), due to the intervention of Vietnamese troops. In this case, it was reported that this regime's effective control did not amount to anything else than the foreign troops' effectiveness²⁰⁹.

Similarly, during the Angolan Civil War, 3 armed factions struggled for prevalence; the Popular Movement for the Liberation of Angola (MPLA) supplied by the USSR and Cuba, the National Front for the Liberation of Angola (FNLA), aided by Zaire and the USA, and the National Union for the Total Independence of Angola (UNITA), supported by China and South Africa. On 23 October 1975, South Africa intervened with 5,000 heavily armored fighters on the side of UNITA. In parallel, 24,000 Cuban troops arrived to aid the MPLA. Responding to the intervention, the UNSC held seven relevant meetings and condemned it in March 1976. Both the South African and the Cuban interventions raised concerns over the independence of the respective movements and led to their non-recognition by the international community. As depicted in the Cambodian and the Angolan precedents, the presence of foreign states' armed forces in a government's territory and their substantial contribution to its functional capability leads to its non-recognition by the international community.

²⁰⁸ Peterson (n 44) 37.

²⁰⁹ Ibid 38; Colin Warbrick, 'Kampuchea: Representation and Recognition' (1981) 30 International and Comparative Law Quarterly 234,235.

In the case of Libya, it has been reported that both sides depend heavily on foreign financial and military support, in what has been described as a proxy war²¹⁰. According to the UN Panel of Experts, the interference of foreign fighters in Libya is a direct threat to the security and stability of the country.

To begin with, both sides recruit foreign mercenaries and armed groups. Specifically, former commanders of the ‘Sudan Liberation Army’ confirmed that the LNA had approached major Darfuri commanders²¹¹. In January 2019, that group supported the LNA during its operations into the south. It composed of approximately 200 fighters and was located in the Fezzan region. ‘Minni Minawi’ was another ‘Sudan Liberation Army’ faction, which was allied with the LNA. It was composed of approximately 300 fighters based in Jufra, where it is tasked with defending the line of communication between Tripoli and Jufra. Moreover, another Sudanese group composed of approximately 500 to 700 fighters, supported the LNA and is organized in small units.²¹²

Further 1,000 Sudanese fighters from the ‘Rapid Support Forces’ were deployed to Libya on 25 July 2019 in order to guard critical national infrastructure and enable the LNA to conduct offensive operations. In addition, a contract was signed in Khartoum between General Dagalo, on behalf of the Transitional Council of Sudan, and the Canadian company Dickens & Madson (Canada) Inc. on 7 May 2019. According to the agreement, the company would ‘strive to obtain funding for your Council from the Eastern Libyan Military Council in exchange for your military help to the LNA (Libyan National Army)’. Last but not least, the LNA was supported by the Chadian armed group ‘Front pour l’alternance et la concorde au Tchad’, which was composed of approximately 700 men based in Jufra and was tasked to defend the surrounding area.

Another major problem was the deployment of many Russian security companies, which were recruited by the Eastern Government. Reportedly, a Russian security company, called Russian Security Systems (RSB Group), operated the LNA’s air force. Moreover, personnel of the Wagner Group had been reported to take part in LNA operations against Tripoli²¹³. The UN Working Group on the Use of Mercenaries has reported the support provided to the LNA by Russian private military personnel and particularly, the Wagner Group, whose fighters were used

²¹⁰ Kharief (n 130).

²¹¹ UNPE (n 189) 18.

²¹² UNPE (n 75) 9.

²¹³ Kharief (n 130).

as snipers and directed artillery fire from at least September 2019 to May 2020, when it was reported that they had withdrawn²¹⁴.

In parallel, the GNA also relied heavily on foreign troops in order to enhance its military presence in the battlefield. In particular, it recruited the ‘Justice and Equality Movement’, which was composed of approximately 160 fighters in order to operate in Tripoli and in the area between Zillah and Sebha. Also, the Chadian group ‘Conseil de commandement militaire pour le salut de la république’, composed of approximately 300 men, fought alongside the GNA and was reportedly based in the areas of Al Qatrún, Murzuq and Sebha, while it was allegedly involved in criminal and trafficking activities of all kinds, linking southern Libya to the Chadian region of Tibesti²¹⁵. Another pro-GNA group was the Chadian ‘Union des forces de la résistance’. Finally, various groups were divided in factions supporting either the GNA or the LNA. For instance, the ‘Union of Forces for Democracy and Development’ composed of 100 fighters was distinguished in subgroups supporting both sides in the area of Waw al Kabir²¹⁶.

Turkish military support for the GNA and its extent have also raised concerns. SADAT International Defence Consultancy, a Turkish security company collaborating with Turkish secret services was operating in Tripolitania. SADAT had taken on the training of Syrian fighters ‘imported’ by Turkey in December 2019 in order to reinforce GNA’s armed forces. UN Working Group on the Use of Mercenaries Rapporteur Kwaja stated that ‘[t]hese fighters were recruited through armed factions affiliated with the Syrian National Army that have been accused of serious human rights abuses in Syria’. Regarding allegations of recruitment of Syrian underage boys, he added that ‘[w]e are concerned that these children come from an extremely vulnerable social and economic situation and are being exploited for the purpose of recruitment as mercenaries’²¹⁷. According to the Pentagon’s Report on Counter-terrorism, Turkey had deployed between 3,500 and 3,800 paid Syrian fighters to Libya over the first three months of 2020, changing the outcome of the conflict, while the UNPE has estimated that the numbers of Syrian fighters during the various phases of the conflict have ranged from 4,000 to a maximum of 13,000 men²¹⁸. Turkey’s involvement has been considered as its ‘most forceful intervention’ in

²¹⁴ OHCHR ‘Libya: Violations related to mercenary activities must be investigated – UN experts’ (17 June 2020) <[OHCHR | Libya: Violations related to mercenary activities must be investigated – UN experts](#)> accessed 15 November 2020.

²¹⁵ UNPE (n 75) 10-11.

²¹⁶ Ibid 11.

²¹⁷ OHCHR (n 214).

²¹⁸ Isabel Debre, ‘Pentagon report: Turkey sent up to 3,800 fighters to Libya’ *The Washington Post* (Washington, 17 June 2020) <[Pentagon report: Turkey sent up to 3,800 fighters to Libya - The Washington Post](#)> accessed 15 November 2020; UNPE 2021 (n 75) 8.

the region, since the Ottoman era²¹⁹. It has also been reported that Yemeni fighters from the Muslim Brotherhood party and equipped by Turkey, were operating in Libya²²⁰. In the same wavelength, during his visit in Libya on 4 July 2020, the Turkish Minister of Defence, Hulusi Akar, stated that Turkish forces in Libya were providing military training, cooperation and advisory functions, while the UNPE reported that Turkey deployed frigates and used short-range air defence systems and man-portable air defence systems in order to protect important locations in western Libya²²¹.

On the other side, the HoR asked officially from the Egyptian Government to intervene in Libya, on 13 July 2020. Subsequently, Egyptian President Sisi met with a delegation of tribal leaders from Eastern Libya, who repeated this request. On 20 July, the Egyptian parliament authorized the deployment of Egyptian troops for combat missions outside the country with the aim of defending its national security against “criminal armed militias and foreign terrorist elements”²²².

The request of the HoR constituted an invitation for intervention. It has to be noted that the prohibition of intervention of a state in the domestic affairs of another state is a fundamental rule of international law. This rule is founded on article 2 par. 4 of the UN Charter, and has also acquired customary basis. Nonetheless, intervention in another state is exceptionally permitted in cases of self-defence, authorization by the Security Council under Chapter VII of the UN Charter, actions by regional organizations approved by the Council and upon invitation by an incumbent Government²²³. Thus, determination over which entity is to be considered as the Government of the state is of utmost importance, as only the internationally recognized de jure Government is entitled to request and permit foreign military intervention in the state²²⁴.

This permission is not granted to opposition groups, as the International Court of Justice in the *Nicaragua* case ruled that ‘[i]ndeed, it is difficult to see what would remain of the principle of non-intervention in international law, if intervention, which is already allowable at the request of

²¹⁹ Declan Walsh, ‘In Stunning Reversal, Turkey Emerges as Libya Kingmaker’ *The New York Times* (New York, 21 May 2020) <[In Stunning Reversal, Turkey Emerges as Libya Kingmaker - The New York Times \(nytimes.com\)](https://www.nytimes.com/2020/05/21/world/middleeast/turkey-libya.html)> (accessed November 15, 2020)>; Frédéric Bobin, ‘Guerre en Libye : le maréchal Haftar affaibli par l’implication croissante des Turcs’ *Le Monde* (Paris, 17 April 2020) <[Guerre en Libye : le maréchal Haftar affaibli par l’implication croissante des Turcs \(lemonde.fr\)](https://www.lemonde.fr/libya/article/2020/04/17/haftar-affaibli-par-l-implication-croissante-des-turcs_6058882_1612846.html)> accessed 15 November 2020.

²²⁰ Kharief (n 130).

²²¹ UNSC (n 86) 4; UNPE 2021 (n 75) 16.

²²² International Crisis Group, ‘Averting an Egyptian Military Intervention in Libya’ (*Crisis Group*, 27 July 2020) <[Averting an Egyptian Military Intervention in Libya | Crisis Group](https://www.crisisgroup.org/en/regions/middle-east-north-africa/libya/briefing/Averting-an-Egyptian-Military-Intervention-in-Libya)> accessed 15 November 2020.

²²³ Gregory H. Fox, ‘Intervention by Invitation’ (2014) Wayne State University Law School Legal Studies Research Paper Series No. 2014-04, 4.

²²⁴ Erika de Wet, ‘The Modern Practice of Intervention by Invitation in Africa and Its Implications for the Prohibition of the Use of Force’ (2016) 26 *European Journal of International Law* 979, 982.

the government of a State, were also to be allowed at the request of the opposition’²²⁵. However, it has also been argued that a state’s incumbent Government, which has lost effective control over its territory and has been struggling to retain its power within the context of a civil war, cannot invite another state to intervene militarily, due to reasons of negative equality²²⁶.

Except for the aforementioned foreign interference, several violations of the UNSC-imposed arms embargo are attributed to foreign states, as well. In particular, the Panel received information on the presence of large military cargo planes at Benina and Misrata airports and used satellite imagery to verify the information, which suggested that the planes were C-17 aircraft operated by the United States Air Force²²⁷. In 2017 and 2018, the United States launched air strikes against Daesh targets, in what has been presented as coordinated action with the GNA, in accordance with international law. Similar UAE military airplanes were spotted in LNA-operated air bases²²⁸. Moreover, the Panel has received information that Egypt has conducted air strikes to support the recapture by LNA of a number of oil terminals, an act denied by the Egyptian Government²²⁹.

In addition, the Panel noted that infantry armoured fighting vehicles and protected patrol vehicles, as well as anti-rocket systems, manufactured in Jordan, were used by the LNA. Jordan did not respond to clarification questions raised by the Panel²³⁰. Armored vehicles manufactured by the UAE and Nigeria have also been used by LNA. Likewise, guided artillery projectiles and air defence systems used by LNA were transferred to Libya by the United Arab Emirates²³¹. Also, Turkey has delivered military materiel to Tripoli, in order to support the GNA.

In conclusion, both Governments rely heavily on foreign military support and troops, in order to maintain and increase their control over Libya. It remains doubtful if they could have continued to participate in this power struggle, without the substantial aid of external players. The two Governments’ operational independence and the control exercised over them by foreign states interfering in the conflict, is also a matter of concern.

iii. Popular support

²²⁵ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*; Merits, International Court of Justice (ICJ), 27 June 1986 [209].

²²⁶ Fox (n 223) 15-16.

²²⁷ UNPE (n 130) 22.

²²⁸ It has been reported that pilots of these airplanes are provided by Reflex Responses (R2), a security company established in Abu Dhabi and not directly by the UAE Air Force, as any captured Emirati pilot would prove the UAE’s involvement in the conflict, see Kharief (n 140).

²²⁹ UNPE (n 130) 26.

²³⁰ UNPE (n 75) 26-27.

²³¹ Ibid 28.

Effective control over a territory requires the support of the inhabitants or at least, their obedience and lack of resistance against the regime. Popular acceptance is linked to popular sovereignty, which bears the ‘pouvoir constituant’ in every change of regime and constitutes the necessary basis on which, each regime attempts to justify its emergence. Thus, the determination of popular support for a regime is another aspect of the ‘effective control through internal processes’ doctrine in recognition of governments²³². As ruled by the High Court of Lesotho in the case *Mokotso v. King Moshoeshoe II*, “Legality should be achieved, only if and when people accept and approve, for in them lies political sovereignty”²³³.

In the past, international law regarded de facto control over a given period as indicative of the general acquiescence of the people. The exact duration required in order general popular acquiescence to be deduced is determined ad hoc, by the circumstances of each case²³⁴. In particular, in *Mitchell v. Director of Public Prosecutors of Grenada*, the Grenadan Court of Appeal ruled that a revolutionary Government can be considered legitimate, only when apart from being successful and firmly established, it has also enjoyed general obedience based on consent and approval, and not on fear generated by the regime’s oppressive and undemocratic practices. In the case of Grenada, different members of the Court reached opposite conclusions with regard to the occupation of just one parliamentary seat by the pre-revolutionary governing party in the post-revolution elections; a member of the Court deduced the success of the revolutionary regime and the existence of popular support, while another argued that this fact depicted the population’s continued support for the previous regime²³⁵. In this framework, it can be derived that evidence concerning a regime’s popular support is rather difficult to be collected and even more difficult to be assessed. Nevertheless, what is more easily detected, is the people’s withdrawal of support towards its governing authority (if it is assumed that it has ever enjoyed it).

In the case of Libya, since the beginning of the governmental fragmentation and the formation of the two rival Governments, Libyan people had waited for the resolution of the conflict and the reintroduction of stability in their country. However, as the division deepened and the conflict escalated, various protests against both Governments started to take place, and resentment over

²³² Brad Roth, ‘The Honduran Crisis and the Turn to Constitutional Legitimism, Part I: The Place of Domestic Constitutional Orders in the International Legal Framework,’ (*EJIL:Talk!*, 23 September 2009) <<https://www.ejiltalk.org/the-honduran-crisis-and-the-turn-to-constitutional-legitimism-part-i-the-place-of-domestic-constitutional-orders-in-the-international-legal-framework/>> accessed 15 November 2020.

²³³ Cited in Roth (n 26) 139.

²³⁴ Charles G. Fenwick, ‘The Recognition of New Governments Instituted by Force’ (1944) 38 *The American Journal of International Law* 448, 449.

²³⁵ Cited in Aristodemou (n 179) 548.

their adopted policies was augmented. Women's rights activist, Rida Ahmed al Tubuly, stated to the UNSC, when she presented the harsh conditions experienced by Libyan women and depicted Libyans' impression towards their Government, that "[i]n the name of preventive diplomacy, state-building and peacebuilding, the international community supported troublemakers instead of peacebuilders. The international community gave power and legitimacy to a violent minority instead of empowering the peaceful majority"²³⁶.

Popular disagreement over the handling of Libyan affairs by the two Governments was escalated and was externalized through massive protests in August 2020. In particular, since 23 August 2020 and during September and October, massive protests with an impressive participation of the younger generations, had been taking place in Tripoli, in Misrata and in Zawiya against the policies of the GNA, and in Benghazi, Tobruk and Al-Marj against the Eastern Government. Financial instability, unemployment and the worsening conditions of living in Tripolitania and Cyrenaica, constituted the main reasons that provoked the eruption of these protests. Moreover, these demonstrations were connected to rivalries between high-profile officials of both Governments; Western protesters were divided between the supporters of GNA's Prime Minister Sarraj and those of Minister of Interior Bashaga, while the Eastern ones were split between those supporting General Haftar and the HoR Speaker Saleh²³⁷.

The GNA's response to these protests had been condemned by human rights NGOs. Specifically, Amnesty International reported that at least six peaceful protesters were abducted and several others were wounded after armed men fired live ammunition and used heavy machine-guns to disperse a demonstration in Tripoli on 23 August. The attack happened in an area of Tripoli controlled by the al-Nawasi militia, operating under the Ministry of Interior of the GNA²³⁸. These allegations and the armed group's link to the GNA are further referred by Human Rights Watch, which expressly accused the GNA of the use of lethal force against protesters and their subsequent arbitrary detention, torture and disappearance²³⁹. It has to be noted that in what could be regarded as a confirmation of the significance of popular support, the Prime Minister of the Eastern Government submitted his resignation after the escalation of the protests.

²³⁶ UNSC (n 149) 6.

²³⁷ Frédéric Bobin, 'En Libye, l'émergence d'une société civile protestataire rebat les cartes politiques' *Le Monde* (Paris, 16 September 2020) <https://www.lemonde.fr/afrique/article/2020/09/16/en-libye-l-emergence-d-une-societe-civile-protestataire-rebat-les-cartes-politiques_6052438_3212.html> accessed 15 November 2020 (in French).

²³⁸ Amnesty International, 'Libya: Heavy weaponry used to disperse peaceful protesters demanding economic rights' (*Amnesty International*, 26 August 2020) <<https://www.amnesty.org/en/latest/news/2020/08/libya-heavy-weaponry-used-to-disperse-peaceful-protesters-demanding-economic-rights/>> accessed 15 November 2020.

²³⁹ Human Rights Watch, 'Libya: Armed Groups Violently Quell Protests' (*Human Rights Watch*, 10 September 2020) <[Libya: Armed Groups Violently Quell Protests | Human Rights Watch \(hrw.org\)](https://www.hrw.org/news/2020/09/10/libya-armed-groups-violently-quell-protests)> accessed 15 November 2020.

Even though popular support for to a Government is not easily detected and evaluated, Libyans' recent protests against both entities and their subsequent violent suppression may indicate an ever growing divergence between Libya's two ruling apparatuses and their subjects. Nonetheless, the voluntary mitigation of these demonstrations or their further escalation will set the tone for any more secure deductions for the support enjoyed by both Governments.

b) Recognition according to the Legitimacy Doctrine

The legitimacy principle in recognition of governments is related to the question whether a government's emergence in accordance with the domestic processes is taken into consideration by other States for its recognition. In other words, if a government has to be formed according to the requirements of the domestic legal order in order to be considered as the State's legitimate Government in international law.

The formation of this principle dates back to the 19th century, when the US Secretary of State Jefferson, in the wake of the French Revolution, stated, that "[i]t accords with our principles to acknowledge any Government to be rightful which is formed by the will of the nation, substantially declared"²⁴⁰. At this time, the prerequisite of the will of the nation in recognition of governments was considered as a component of the effectiveness doctrine, since it galvanized the stability of the government and its control over the population. However in 1907, 5 American States (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) concluded a Treaty of Peace and Amity and agreed not to recognize any Government that had come to power by ways not prescribed by the State's domestic legal order, which had created constitutionally by the freely elected representatives of the people²⁴¹. This provision specified that the will of the nation was substantially declared only through its freely elected representatives. In accordance with this principle, Tobar, Foreign Minister of Ecuador proposed that de facto governments formed

²⁴⁰ Fenwick (n 165) 20. It has to be noted that during the same time as the Jefferson Statement and in the wake of the same Revolution, Austria and Prussia tried to take collective action in support of the restoration of the French Monarchy on the basis of dynastic legitimacy. The establishment of governmental succession on a dynasty's legitimate right (which at the time constituted State's legal order) depicts another side of the legitimacy principle, see Roth (n 26) 143. According to this approach, the ruling dynasty has a fundamental right to govern which can be either renounced voluntarily or cease to exist with the extinction of the dynasty, see Talmon (n 5) 54. Fox denied the status of dynastic and popular legitimacy' status as a rule of international law at the time, and highlighted instead the importance attributed to non-intervention in other states' domestic affairs promoted by Europe's leading forces, see Gregory H. Fox, 'The Right to Political Participation in International Law' (1992) 17 Yale Journal of International Law 540, 548.

²⁴¹ Murphy refers to Great Britain's non-recognition of the Confederacy as based partly on its lack of popular consent and disrespect of equal rights, and partly on other grounds, ie. the fear of war with the Union and public opinion's influence on the British Government, see Sean D. Murphy, 'Democratic Legitimacy and the Recognition of States and Governments' (1999) 48 International and Comparative Law Quarterly 545, 549-550.

contrary to a State's constitution should not be recognized. His opinion, which was adhered to by many Latin American States has been known as the "Tobar Doctrine".

Nevertheless, this constitutionality condition provoked problems in cases where governments created contrary to the domestic legal order, established a new Constitution and enabled their successors to claim legitimacy in accordance with the processes prescribed in its text, in what was called the "dynastic succession of dictators"²⁴². In order to prevent this phenomenon, the aforementioned Central American States which had already signed the 1907 Treaty, decided to conclude a new Peace and Amity Treaty, which established the principle of non-recognition of any Government coming to power by a coup d'etat or revolution, or which was legitimized by a subsequent reorganization of the State's domestic legal order. In the same wavelength and with regard to recognition of states, the US Secretary of State Stimson applied the "ex injuria jus non oritur" principle, in order to justify non-recognition of States created as a result of aggression.

The Central American legitimacy practice was followed by US President Wilson, who refused to recognize the Mexican revolutionary Government of General Huerta. He justified his decision by stating that he would withhold recognition from those "who seek to seize the power of government to advance their own personal interests"²⁴³. However, this approach was rejected by the other American States, which considered this policy of the US Government as the latter's concealed effort to intervene in the former's internal affairs and to manipulate the expression of the will of their people. At last, even the US Government abandoned this approach in 1930 and the Jeffersonian practice was resumed²⁴⁴.

Subsequently, Mexican Foreign Minister Estrada declared that Mexico would not thenceforth recognize foreign Governments, as the recognition practice was both insulting and offending to the sovereignty of other States, constituting an intervention in the latter's internal processes,. Estrada expressed the view that recognition inherently entailed a judgment of the recognized regime. Nonetheless, he highlighted that the authority over the formation and the form of Government laid solely on the ruled nation and fell outside of the scope of authority of the foreign Governments²⁴⁵. The Estrada Doctrine was widely adopted by the American States. As a

²⁴² Fenwick (n 165) 26.

²⁴³ Ibid 27.

²⁴⁴ Fenwick (n 165) 27. According to Roth, military coups d'etat overthrowing elected Governments in Latin American states, have been widely considered by the respective states' populations, as manifestations of the US intervention in the region even in the 21st century, see Brad Roth, 'The Honduran Crisis and the Turn to Constitutional Legitimism, Part II: The Pitfalls of Constitutional Legitimism' (*EJIL:Talk!*, 5 October 2009) <<https://www.ejiltalk.org/the-honduran-crisis-and-the-turn-to-constitutional-legitimism-part-ii-the-pitfalls-of-constitutional-legitimism/>> accessed 15 November 2020,

²⁴⁵ Roth (n 26) 138.

result, (formal) recognition declarations were abandoned. This practice was followed after the 1960s by many European states, as well.

Despite this development, the legitimacy principle played a prominent role during the Cold War period, when both the NATO and the Warsaw Pact alliances tried to establish an obligation to maintain the political regime of their members. Thus, they developed two ideological approaches known as the Reagan and the Brezhnev Doctrines, respectively. The former rejected the significance of the effective control criterion with regard to recognition of governments and highlighted the importance of the consent of the people and the respect of their rights, while the latter advocated the obligation of the socialist states not to damage the interests of socialism²⁴⁶. Nevertheless, it has to be noted that these approaches did not constitute legal doctrines, but political considerations formed by the Cold War sides in order to justify their attempts to intervene ideologically in the member states of their alliances.

After the end of the Cold War and the dissolution of the Soviet Union, legitimacy resurfaced, as some interesting criteria were added to the traditional requirements for recognition of states. The United States argued that democracy and respect for the rule of law should be taken into account when recognizing a State²⁴⁷, while the European Community in its 'Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' required from the prospective States to "have constituted themselves on a democratic basis", respecting inter alia, the UN Charter, the Helsinki Final Act and the Charter of Paris, in order to grant them recognition²⁴⁸.

In this framework, the first contemporary case indicating the significance of the legitimacy principle in recognition of Governments took place, when both the Organization of American States and the United Nations condemned the elected Haitian President Aristide's overthrow by a military coup in 1991. Also, they took measures against the newly imposed regime, stressing the fundamental need to respect the Constitution and human rights and to re-establish the democratically elected Government as the state's effective Government²⁴⁹. In 1994, the Security Council passed UNSC Resolution 940, which constitutes the first Resolution authorizing the use

²⁴⁶ Roth (n 26) 147. For an extensive analysis, see Michael Reisman, 'New Wine in Old Bottles: The Reagan and Brezhnev Doctrines in International Law and Practice' (1988) 13 *Yale Journal of International Law* 171.

²⁴⁷ 'Testimony by Ralph Johnson, Deputy Assistant Secretary of State for European and Canadian Affairs, 17 Oct. 1991' (1992) 2 *Foreign Policy Bulletin* 42.

²⁴⁸ 'Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union', 16 Dec. 1991' 4 *European Journal of International Law* (1993).

²⁴⁹ Thomas M. Franck, 'The emerging right to democratic governance' (1992) 86 *American Journal of International Law* 46, 47.

of force to restore democracy for a UN member nation²⁵⁰. The Resolution provided for the reinstatement of the Aristide government and created the United Nations Mission in Haiti, which would maintain order after the operation. Military action was assumed and an invasion called “Operation Uphold Democracy” took place. The operation ended with the transfer of power to the United Nations Mission command on March 31, 1995, and a peaceful election and transfer of power occurred on February 7, 1996²⁵¹.

This policy was repeated in Sierra Leone, where a coup ousted President Momoh in 1991 and initiated a civil war, which came to a halt with the election of President Kabbah in 1997. However, Kabbah was overthrown by the army shortly after his election. The Military Observer Group (ECOMOG) of the Economic Community of West African States (ECOWAS) managed to restore him in power, providing a strong example of the importance attributed to the legitimacy principle in the modern era²⁵². It is worth mentioning that in both cases, the UN Credentials Committee approved the credentials presented by the representatives of the elected Governments, despite their lack of effective control over their respective states’ territories²⁵³.

As far as the subsequent practice is concerned, the international community condemned coups that took place also in Sao Tome and Principe in 1995, of Niger in 1996 and of Paraguay in 1996, but that reaction did not result in the deployment of armed missions to restore democratic governance²⁵⁴. Nevertheless, in what was considered as a setback, the international community did not react strongly in the case of Zaire when the country’s Head Laurent Kabila refused to organize elections and to relinquish power.

All in all and in spite of the aforementioned cases, the Haitian and the Sierra Leonean examples highlight the growing effect of legitimacy in recognition of Governments, which is to be judged

²⁵⁰ According to Olivier Corten, ‘La resolution 940 du Conseil de securite autorisant une intervention militaire en Haiti: L’emergence d’un principe de legitimite democratique en droit international?’ (1995) 6 *European Journal of International Law* 116, 129, intervention in Haiti does not constitute an indication of the existence of an international rule, which enables states to restore democracy by force, but must be read within the specific regional context of the OAS.

²⁵¹ US Department of State, ‘Intervention in Haiti, 1994–1995’ (*history.state.gov*) <<https://history.state.gov/milestones/1993-2000/haiti>> accessed 15 November 2020.

²⁵² President Kabbah’s Government was considered by the British Foreign Secretary Cook as a “legitimate and democratic government”, see Stefan Talmon, ‘Who is a legitimate government in exile? Towards normative criteria for governmental legitimacy in international law’ in Guy Goodwin-Gill and Stefan Talmon (eds), *The Reality of International Law. Essays in Honour of Ian Brownlie* (Oxford University Press 1999) 499. However, according to Roth, both the examples of Haiti and Sierra Leone do not depict legitimacy’s influence in recognition, but constitute applications of the effective control doctrine, because intervention based on the electoral result complies with effectiveness’ requirement of “effective control through internal processes”, see Roth (n 12) 215.

²⁵³ Jean d’Aspremont, ‘Legitimacy of Governments in the Age of Democracy’ (2006) 38 *New York University Journal of International Law and Politics* 877, 906.

²⁵⁴ Murphy (n 241) 574.

by international rules and standards, including democracy²⁵⁵. The principle's link to the democratic structure and procedure has resulted in the contemporary perception of democratic legitimacy. Franck considered that the democratic entitlement, based partly on custom and partly on the collective interpretation of treaties, has evolved into a requirement of international law applicable to all²⁵⁶. In the same wavelength, d' Aspremont and De Brabandere suggest that the obligation to hold free and fair elections (which constitutes the procedural aspect of democracy) and in this way to adopt a democratic regime, is an obligation erga omnes²⁵⁷.

The legitimacy principle can be further divided in two categories; legitimacy of origin and legitimacy of exercise of power²⁵⁸. Both categories reflect the relationship between the government and its power. Nonetheless, they are measured from two different temporal and theoretical standpoints, as the former relates to the source of power, while the latter to the way that this power is exercised by the government. It could be said that legitimacy of origin is achieved through a government "by the people", while legitimacy of exercise by a government "for the people"²⁵⁹. In other words, while democracy and human rights form the common ground for both categories of legitimacy, each of them is developed in a different way. This dichotomy concerns the external legitimacy of governments, which relates to the considerations on the legitimacy of a regime by other governments. External legitimacy is distinguished from internal legitimacy which is formed by citizens' perceptions on the legitimacy of their Government²⁶⁰.

The next sub-chapters will examine the legitimacy of the rival Libyan Governments, from the aspect of the origin and the exercise of power.

i. Legitimacy of origin

Legitimacy of origin is related to the rise of a government to power and requires certain procedural conditions to be met. In particular, it is linked to the concept of popular sovereignty, where power is exercised by representatives of the "will of the people" as stated by Jefferson. However, in this context, the will of the people is not considered as proof and confirmation of a regime's effective control, but as the Government's constitutive element. Thus, the original expression of this will has to be guaranteed through certain procedural safety valves, mainly the

²⁵⁵ d' Aspremont (n 253) 889.

²⁵⁶ Franck (n 249) 47.

²⁵⁷ Jean d' Aspremont and Eric De Brabandere, 'The Complementary Faces of Legitimacy in International Law: The Legitimacy of Origin and the Legitimacy of Exercise' (2011) 34 Fordham International Law Journal 190, 199-200.

²⁵⁸ Ibid 192.

²⁵⁹ d' Aspremont (n 253) 884.

²⁶⁰ d' Aspremont and De Brabandere (n 257) 193.

organization of fair and free elections²⁶¹. Freedom of election concerns the pre-election period and the exercise of relevant political freedoms, while fairness is linked to the correctness of the electoral procedure and the avoidance of manipulation by the parties concerned²⁶².

The view that free, fair, genuine and periodic elections are contended as the primary tool of democratic legitimacy has been expressed in many international binding and non-binding instruments. For example, article 21 of the Universal Declaration of Human Rights, states that ‘the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures’²⁶³. According to Roth, reference to multi-party elections was deliberately omitted, while the vague requirement of genuineness could be met even in cases where an effective regime organized elections crafted in ways that suit it and where substantive democratic criteria were not met, as it could denote people’s obedience to the regime²⁶⁴.

This provision was repeated in the Declaration’s binding equivalent instrument, the International Convention on Civil and Political Rights, which provides in article 25 that every citizen shall have ‘the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives and to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors’²⁶⁵. The Human Rights Committee in General Comment 25 interpreted this provision as lying at the core of democratic governance and as requiring certain reasonable and objective criteria in order conditions to be imposed on its exercise. According to the Committee, the periodic organization of elections is linked to the accountability of governors, while the electoral process should be supervised by an independent electoral authority on the basis of rules established prior to the elections²⁶⁶. Moreover, in a groundbreaking decision in 1988, it found a violation of article 25 in the case of single-party regimes²⁶⁷.

²⁶¹ Jean d’Aspremont, ‘1989-2010: The Rise and Fall of Democratic Governance in International Law’ in James Crawford and Sarah Nouwen (eds), *Select Proceedings of the European Society of International Law*, vol. 3 (Hart Publishing 2012) 4.

²⁶² d’Aspremont (n 253) 897.

²⁶³ UNGA Res 217A: Universal Declaration of Human Rights (10 December 1948) art 21.

²⁶⁴ Roth (n 26) 164. The deliberate omission of reference to the existence of multiple parties can be justified by the political division of the post-war world in Western and Socialist States; Western States considered pluralism of political parties as fundamental in democratic societies, while Socialist States were based on single-party regimes. However, the Human Rights Committee has questioned the compliance of single party elections with the freedom and fairness of elections, see Fox (n 240) 556, 558.

²⁶⁵ UNGA Res 2200A: International Covenant on Civil and Political Rights (16 December 1966) art 25.

²⁶⁶ UNHR Committee ‘General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service’ (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7, 2, 4.

²⁶⁷ *Bwalya v. Zambia* (1988) UNHR Committee Commun. No. 314/1988.

It has to be noted that the need to hold free and fair elections has been repeated in many UNGA Resolutions²⁶⁸. Also, regional organizations like the Council of Europe, the African Union, the Organization of American States²⁶⁹ and the Council on Security and Cooperation in Europe have declared that democracy is the preferred form of government within their systems²⁷⁰ and that it can be achieved specifically, through the organization of free and fair elections²⁷¹.

The organization of free and fair elections is conceptually connected with the right of people to participate in them. This is the so-called human rights approach to the democratic entitlement, which advocates that participation in free and fair elections, through which a representative Government will be elected, constitutes a human right for all citizens²⁷². The significance of elections can be justified by reference to various reasons; they constitute the easier way in order the state's transition towards democracy to be deducted, they teach the fundamental value of public participation in governance to the people, they act as an indicator of a regime's willingness to proceed with democratic reforms and they attract international attention, shedding light on the promotion of human rights in the country²⁷³.

As noted above, the United Nations have supported the organization of elections and have got actively involved in many electoral procedures, in an attempt to ensure their freedom and fairness. Specifically, in April 1992 a Unit for Electoral Assistance was established within the

²⁶⁸ UNGA Res 43/157 (8 December 1988) UN Doc A/RES/43/157; UNGA Res 49/190 (23 December 1994) UN Doc A/RES/49/190 ; UNGA Res 56/159 (19 December 2001) UN Doc A/RES/56/159.

²⁶⁹ The 1965 OAS Resolution on Recognition of De Facto Governments recommended to member states that, immediately after the overthrow of a government and its replacement by a de facto government, they should take into consideration whether or not the overthrow of the government took place with the complicity and aid of one or more foreign governments, whether the de facto government proposes to hold elections within a reasonable period, giving its people the opportunity to participate freely in the consequent electoral process; and whether the de facto government agrees to fulfill the international obligations assumed previously by the State, to respect the human rights expressed in the American Declaration of the Rights and Duties of Man, and to comply with the commitments assumed by the signatories of the Declaration of the Peoples of the Americas and the general principles of the Charter of Punta del Este, see 'Organization of American States: Resolution on Recognition of De Facto Governments' 5 International Legal Materials (1966) 155-156.

²⁷⁰ Conference on Security and Cooperation in Europe 'Charter of Paris for a New Europe' (CSCE Paris 1990); African Commission on Human Rights 'Resolution on the Military, Eighth Annual Activity Report of the Commission on Human and Peoples' Rights' (ACHR Banjul 1994); Organization of American States 'Inter-American Democratic Charter' (OAS Lima 2001).

²⁷¹ First Protocol to the European Convention on Human Rights (adopted 20 March 1952, entered into force 18 May 1954) art 3; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) art 23; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 13.

²⁷² Gregory Fox, 'International Law and the Entitlement to Democracy After War' (2003) 9 Global Governance 179, 180.

²⁷³ Ibid 185.

Secretariat, and it was soon upgraded into a Department, as it received 52 requests for assistance by member states in the first two years of its operation²⁷⁴.

The UN's involvement and the subsequently formed practice in monitoring national electoral procedures have added further requirements to the conduct of the elections. First of all, the procedure ought to be supervised by an independent electoral commission. In addition, the freedom of organization, of assembly and of expression of political parties and the non-interference in their campaigns are considered as fundamental elements of the procedure. Finally, the need for equal access of all parties to the media and to the procedure, and the supervision of the elections by international organizations and NGOs have been highlighted²⁷⁵.

It has to be noted that legitimacy may be derived not solely through elections, but also through the formation of representative, inclusive, open, broad-based and permanent regimes²⁷⁶. In this context, President Obama considered the Syrian Opposition Coalition as “the legitimate representative of the Syrian people” after he decided that it was “inclusive enough, reflexive and representative enough of the Syrian population”²⁷⁷.

Nevertheless, the legitimacy principle and its status as an established (or even an emerging) rule of international law has been contested in literature. To begin with, Talmon rejects legitimacy of origin's standing as a fundamental criterion for recognition, while he accepts legitimacy of exercise's status, distinguishing between legitimacy and governmental status and establishing the latter only on effective control²⁷⁸. Furthermore, he considers it as a political term, which is not governed by international law²⁷⁹. Moreover, Murphy supports the view that democracy is an increasingly used policy element in recognition of governments, taken into account alongside other factors, like development and stability, but not being justified by state practice as the sole

²⁷⁴ Gregory H. Fox, ‘Multinational Election Monitoring: Advancing International Law on the High Wire’ (1994) 18 *Fordham International Law Journal* 1658, 1661. The EU has assisted electoral procedures in 44 countries between 1990-1995, see Gregory H. Fox and Brad R. Roth, ‘Democracy and International Law’ (2001) 27 *Review of International Studies* 327, 330.

²⁷⁵ Fox considers these criteria as constituting part of the customary rule of free and fair elections, see Fox (n 272) 186-187. One of the most highly publicized cases concerning blatant flaws of the electoral process was the organization of elections in Belarus in 2001, when incumbent President Lukashenko managed to be re-elected after a procedure that was marked by governmental interference and did not meet even basic objective electoral criteria, see Ethan S. Burger, ‘The Recognition of Governments under International Law: The Challenge of the Belarusian Presidential Election of September 9, 2001 for the United States’ (2003) 35 *George Washington International Law Review* 107, 126.

²⁷⁶ Talmon (n 13) 223, 240.

²⁷⁷ Davin Dwyer, ‘Obama Recognizes Syrian Opposition Group’ (*ABC News*, 11 December 2012) <[Obama Recognizes Syrian Opposition Group - ABC News \(go.com\)](http://www.abcnews.go.com/Politics/obama-recognizes-syrian-opposition-group/story?id=1944444)> accessed 15 November 2020.

²⁷⁸ Talmon (n 13) 238-239.

²⁷⁹ Stefan Talmon, ‘The Difference between Rhetoric and Reality: Why an Illegitimate Government may still be a Government in the Eyes of International Law’ (*EJIL:Talk!*, 3 March 2011) <[The Difference between Rhetoric and Reality: Why an Illegitimate Regime May Still be a Government in the Eyes of International Law – EJIL: Talk!](http://www.ejil.org/talk/2011/03/03/the-difference-between-rhetoric-and-reality-why-an-illegitimate-regime-may-still-be-a-government-in-the-eyes-of-international-law/)> accessed 15 November 2020.

decisive requirement in order a government to be recognized²⁸⁰. Even d’Aspremont has observed a decline in state practice regarding legitimacy of origin, whereas he contends that legitimacy of exercise gradually acquires a more important role in recognition of governments²⁸¹.

Recent practice may also shed light on the perceptions concerning the position of legitimacy of origin in assessing governmental changes and granting recognition. During the 1990s, apart from the cases of Haiti and Sierra Leone, state practice cannot not justify easily an unambiguous acceptance of the legitimacy principle. In particular, unconstitutional changes of government and coups in Myanmar in 1990, in Algeria in 1991, in Peru in 1992, in Cambodia in 1993, in Nigeria in 1993 and in Congo in 1997 resulted in the international community’s criticism of the aforementioned regimes, but did not affect governmental recognition or the status of diplomatic relations with other states²⁸².

In the specific African regional context, African Union, Africa’s primary regional organization has included in article 4p of its Constitutive Act, “the condemnation and rejection of unconstitutional changes of government” as one of the Union’s principles. In the Declaration of Lome, the Union identifies four types of unconstitutional change of government: “i) military coup d’etat against a democratically elected government, ii) intervention by mercenaries to replace a democratically elected government, iii) replacement of democratically elected governments by armed dissident groups and rebel movements and iv) the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections”²⁸³. The case of “Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government” was added with the African Charter on Democracy, Elections and Governance²⁸⁴.

Moreover, the Charter provides for the suspension of states experiencing unconstitutional changes of government and prescribes the adoption of an array of measures, including economic sanctions²⁸⁵. The Union adopted these measures in order to deal with unconstitutional changes of government in Togo in 2005, in the Comoros in 2007, in Guinea in 2009, in Madagascar in 2009, in Egypt in 2012, in the Central African Republic in 2013 and in Burkina Faso in 2015.

²⁸⁰ Murphy (n 241) 580.

²⁸¹ d’Aspremont (n 261) 8-9.

²⁸² Murphy (n 241) 575-578.

²⁸³ Organisation of African Unity ‘Lomé Declaration of July 2000 on the framework for an OAU response to unconstitutional changes of government’ (OAU Lome 2000) AHG/Decl.5 (XXXVI).

²⁸⁴ African Charter on Democracy, Elections and Governance (adopted 30 January 2007, entered into force 15 February 2012) art. 23 [5].

²⁸⁵ Ibid art. 25.

Two outstanding cases concerning African States, where democratic legitimacy became the yardstick for the recognition of the elected government, may be singled out. These cases were the cases of Cote d' Ivoire and the Gambia. In particular, elections were held in Cote d' Ivoire in 2010, which resulted in the election of Alassane Quattara. However, incumbent President Gbagbo refused to hand over power to new President-elect. As a result, the AU suspended Cote d' Ivoire from its gulfs, while the UN Security Council urged pursuant to Chapter VII of the UN Charter, all Ivorian parties to respect the outcome of the election of Alassane Quattara as "President-elect of Cote d' Ivoire and representative of the freely expressed voice of the Ivorian people as proclaimed by the Independent Electoral Commission"²⁸⁶.

In a similar move, when in 2016 incumbent President Jammeh of the Gambia refused to step down from the office in favor of President-elect Barrow, both the AU and the UN Security Council recognized the latter as the country's president. In this context, ECOWAS deployed troops in order to restore democracy and consolidate Barrow's position as the President of the Gambia. Both cases highlight the importance of democratic legitimacy and its consideration as a decisive criterion in recognition of governments, despite the lack of effective control over the state's territory and population²⁸⁷.

In spite of the aforementioned cases, de Wet rejects the formation of a consistent legitimacy practice in the AU context²⁸⁸. She contends that the response of the Union to unconstitutional changes of Government is not uniform, as for example it condemned the Sao Tome and Principe coup, but did not suspend the country from its activities. Furthermore, she mentions the recognition of the National Transitional Council of Libya as the country's legitimate government, despite its lack of democratic origin and on the basis of its effective control over portions of the territory²⁸⁹. Thus, she concludes that within the AU context, democracy constitutes a recognition

²⁸⁶ Jean d' Aspremont, 'Duality of government in Cote d' Ivoire' (*EJIL:Talk!*, 4 January 2011) <[Duality of government in Côte d'Ivoire – EJIL: Talk!](#)> accessed 15 November 2020.

²⁸⁷ For the intervention in the Gambia, see Antenor Hallo de Wolf, 'Rattling Sabers to Save Democracy in The Gambia' (*EJIL:Talk!*, 1 February 2017) <<https://www.ejiltalk.org/rattling-sabers-to-save-democracy-in-the-gambia/>> accessed 15 November 2020. According to Samuel Issacharoff, 'Fragile Democracies' (2007) 120 Harvard Law Review 1405, 1464, the real essence of democracy is the governmental re-formation, according to the will expressed by the majority. As a result, an incumbent government ought to comply with the electoral result and hand over power to the new government elected by the people.

²⁸⁸ It is argued that such practice is developed in the context of the Organization of American States, see Talmon (n 5) 12. In particular, the OAS recognizes a right to democracy through the Santiago Commitment to Democracy and the Renewal of the Inter-American System, the General Assembly's statement on Representative Democracy and the Inter-American Democratic Charter, see Patrick J. Glen, 'Institutionalizing Democracy in Africa: A comment on the African Charter on Democracy, Elections and Governance' (2012) 5 African Journal of Legal Studies 119.

²⁸⁹ Okafor considers that the recognition of a transitional regime, which has expressed its intention to restore democracy is reinforcing democratic legitimacy's status as a binding rule in recognition of governments. He argues that while a relevant international customary rule has not been emerged, in the African regional context the existence of such a rule could be supported, see Obiora Chinedu Okafor, 'Democratic Legitimacy as a Criterion for the Recognition of Governments: A Response to Professor Erika de Wet' (2015) *AJIL Unbound* 228, 231-232.

element considered mainly when President-elects are unable to take control of the state apparatus, but that effective control remains the primary requirement in recognition of Governments²⁹⁰.

The example of a recent recognition of government dispute, concerning the Government of Venezuela, perplexes rather than elucidates the matter of recognition in accordance with the State's internal legal order²⁹¹. On 20 May 2018, presidential elections were held in Venezuela. According to the National Electoral Council voter turnout reached 46,07%, a figure dismissed by the United Opposition, that places it to 25,8%. Incumbent President Nicolas Maduro was re-elected with a 67,8% percentage. However, the electoral process was rejected by the European Union, the Organization of American States, the United States and Australia, among others. The National Assembly considered the election illegitimate and refused to recognize Maduro as the Head of State. Assembly Leader, Juan Guaidó announced that he assumed the role of interim president, under article 233 of the Constitution of Venezuela, until free elections would be held, being backed by the Assembly.

The international community's response was mixed. First of all, the United States, the United Kingdom, France and other 51 countries have recognized him as the acting President of Venezuela. The United States and Costa Rica, among others, have recognized his appointees as Venezuela's diplomatic mission and have requested from Maduro's ambassadors to leave the country and hand over the embassies. Moreover, there are states like France, Germany and the UK that recognized his envoys as his appointees as his personal representatives, considering his recognition as a political one, not affecting Maduro's recognition, as he exerted effective control in Venezuela. Other peculiarities include Brazil, which has recognized Guaidó's envoy, without ordering Maduro's ambassadors to leave, and Chile that has recognized Guaidó's appointee as "representative of the Venezuelan National Assembly", while maintaining Maduro's ambassador, as well. As far as membership in the United Nations is concerned, Guaidó's representatives are not recognized by the Credentials Committee as the representatives of Venezuela.

²⁹⁰ Erika de Wet, 'The role of democratic legitimacy in recognition of governments in Africa since the end of the Cold War' (2019) 17 International Journal of Constitutional Law 470, 474-478. Marc Weller, 'Myanmar: Testing the Democratic Norm in International Law' (*EJIL:Talk!*, 30 March 2021) <<https://www.ejiltalk.org/myanmar-testing-the-democratic-norm-in-international-law/>> accessed 1 April 2021, contends that recognition of President elects and the respective withdrawal of recognition from the incumbent Government constitute a case where democratic legitimacy has been applied more extensively than the effective control doctrine at a universal level.

²⁹¹ See Federica Paddeu and Alonso Gurmendi Dunkelberg, 'Recognition of Governments: Legitimacy and Control Six Months after Guaidó' (*Opinio Juris*, 18 July 2019) <[Recognition of Governments: Legitimacy and Control Six Months after Guaidó - Opinio Juris](#)> accessed 15 November 2020.

After analyzing the relevant framework with reference both to doctrinal issues and the respective state practice, it has to be noted that from the aspect of legitimacy of origin, the case of the rival Libyan Governments could be described as complicated.

First of all, their claimed legitimacy bases should be presented. In particular, the Eastern Government incorporates the House of Representatives, which was elected through parliamentary elections on 25 June 2014. In parallel, its Prime Minister Abdullah al-Thinni was the caretaker Libyan Prime Minister, appointed in 2014. In addition, Khalifa Haftar was appointed as Head of the Libyan Armed Forces by the HoR in March 2015. As a consequence, his legitimacy is linked indissolubly with the legitimacy of the HoR. Nevertheless, the HoR's election was nullified by the Supreme Court of Libya in August 2014.

Furthermore, the GNA legitimacy basis is the Libyan Political Agreement, signed in December 2015. This agreement which was concluded after extensive talks between the majority of Libyan political stakeholders, intended to constitute Libya's new inclusive transitional political framework and introduced a institutional structure with a precise allocation of power between the State's executive (GNA) and legislative branch (HoR).

According to the Agreement, the Government was comprised by the Presidency Council of the Council of Ministers and by the Council of Ministers. The members of the GNA and its programme would be endorsed by the HoR, which would grant it a vote of confidence and adopt its program in accordance with the legally stated procedures, within a period that would not exceed 10 days of its submission to it by the Prime Minister²⁹².

Furthermore, the Agreement prescribed precise terms for the above mentioned bodies, in order any unjustifiable extension of the transitional regime to be avoided. In particular, the GNA's term would last for one year as of the date of acquiring a vote of confidence by the House of Representatives. In case the constitution was not finalized during its term, it would be renewed automatically for one additional year. In all cases, the term of the Government would end immediately after the formation of the executive authority as per the Libyan Constitution or the expiry of its specified duration, whichever was earlier²⁹³.

The above-mentioned legitimacy of origin bases can be examined in accordance with the two criteria; the organization of free and fair elections and the emergence through inclusive political

²⁹² LPA art 3.

²⁹³ LPA art 1 [4].

agreements. Regarding the rival Governments, only the Eastern one can claim legitimacy deriving from elections through the HoR. However, the specific electoral process was marked by various blatant flaws, which affect both the procedure and its results. First of all, the participation was significantly low, as only 18% of registered voters voted²⁹⁴. Specifically, approximately 630,000 people out of 1,500,000 registered voters took part in the process. The number of registered voters is significantly lower than that of the 2012 elections, where 2,800,000 had registered to vote²⁹⁵. As a consequence, the electoral result could not be considered as truly representative of a preponderant part of society's will.

Moreover, some polling stations were closed due to security reasons in cities in the East and in the South. The fear of militias and the unstable security and political situation resulted in the rejection of the procedure and subsequently, in very high abstention rates. In any case, it remains doubtful in what extent voters' original will could be expressed under these circumstances.

Furthermore, it has to be noted that the HoR's role was to act as Libya's interim legislative body, which would prepare the democratic transition of the country by holding presidential and parliamentary elections within a certain period of time after its election. Specifically, it had to decide on the method to elect an interim President within 45 days of its first session. Speaker Shaleh assumed that role and the HoR did not proceed to the organization of elections. That was the reason that the Supreme Court nullified its election. In addition, because of the fact that a new constitution draft was not presented by the relevant Assembly, the HoR did not issue a general elections law and did not announce elections for a new legislative body, which would replace it. To sum up, the HoR (which emerged through an electoral process, marked by extremely low turnout and security concerns) seems to have tried to go beyond its temporal mandate and its interim role, while it did assume executive powers.

In a second level, legitimacy of origin can be derived through inclusive agreements between all relevant political actors and factions of society, which can offer a representative element to the body created by the procedure and on the basis of these agreements. The Libyan Political Agreement did constitute an inclusive framework, agreed by members of both rival governments of the time, the GNC and the HoR, with the participation of various members of the Libyan civil society. In other words, it was concluded by the majority of political and social players of the

²⁹⁴ This percentage is much lower than the global average voters turnout percentage, which was 66% in 2016 and than Africa's percentage, which exceeded slightly 60%, see International Institute for Democracy and Electoral Assistance, 'Voter Turnout Trends around the World' (2016) 24-25.

²⁹⁵ Kareem Fahim and Suliman Ali Zway, 'Violence and Uncertainty Mar Libyan Election for a New Parliament' *The New York Times* (New York, 25 June 2014) <[Violence and Uncertainty Mar Libyan Election for a New Parliament - The New York Times \(nytimes.com\)](https://www.nytimes.com/2014/06/25/world/africa/libyan-election.html)> accessed 15 November 2020.

Libyan reality and its provisions could be considered as providing legitimacy for the concluded system of governance.

In particular, the Agreement defined precisely the GNA's role as the sole executive authority of the State and the HoR's character as its sole legislative body. In relation to these provisions, two problems arise; the HoR continuously insisted on the rejection of the proposed GNA cabinets, making the realization of the Agreement impossible, in what could be regarded as an abuse of its relevant authority and as a bid to encroach on the executive branch's authority. In parallel, the GNA had exceeded by far any temporal mandate prescribed by the Agreement, as in 2020, its mandate has been exceeded by 3 years. Nevertheless, the President of the UNSC stated that the GNA constituted Libya's Government for the entire transitional period and rejected any prescribed deadlines as incorrect²⁹⁶. As a result, both entities' legitimacy claims suffered certain flaws. Last but not least, even the validity of the LPA has been contested, as the Court of Appeal of Bayda ruled that the formation of the GNA was unconstitutional and that its acts were null and void, highlighting the non-compliance of the conclusion of the Libyan Political Agreement with the requirements prescribed by the Interim Constitutional Declaration.

From a different perspective, since both entities are included in the Agreement and certain powers and functions have been delegated to them, their conflict could be defined as a conflict between two official bodies. The international community has experienced similar situations in the past and possibly, their reaction at the time could provide us with a useful tool in order to sort out the best response to the problem.

First of all, in 1960 a constitutional crisis occurred in Congo-Leopoldville, when President Kasavubu dismissed Prime Minister Lumumba and authorized Army Head Joseph Mobutu to disperse the Parliament temporarily. Kasavubu justified his action on the basis of the interim Constitution, the 'loi fondamentale', which gave to him the power to dismiss the Prime Minister. On the other hand, Lumumba was supported by the Parliament that convened to vote full powers to him and to condemn Mobutu's action as a coup d'état

The difference was transferred to the UN Credentials Committee, as both sides wanted to appoint envoys of their choice as Congo-Leopoldville's delegates to the organization. Both the Credentials Committee and the General Assembly voted in favor of Kasavubu's delegation, stating that any other choice would constitute an intervention in the domestic affairs of the State. Although members of the General Assembly tried to interpret the loi fondamentale in order to

²⁹⁶ UNSC (n 145).

understand whether the appointment of delegates to international organizations was included in President's or Prime-Minister's powers, the decisive criterion was Kasavubu's even slight reference to constitutional justification of his actions and his de facto control of the capital²⁹⁷.

Another case, where two officials took part in an internal struggle for power was that of Grenada in 1983. In particular, Governor-General Scoon constituted the Head of State under the Constitution of 1973. However, the Constitution had been suspended after a coup, which established a socialist single-party regime. The authority of the Governor-General became dependent on the will of the government and he was placed under house arrest. In 1983 the United States and a coalition of Caribbean States invaded the country and deposed the government, after an invitation to intervention by the Governor-General. Nevertheless, the international community condemned the invasion and pressed for the restoration of the government and the organization of elections. It has to be mentioned that Roth contended in view of the Honduran case in 2009 and the Ukrainian one in 2014, that when an elected President is ousted by an elected Parliament, his authority is under "objectively evident" constitutional doubt²⁹⁸.

The above-mentioned examples highlight that in cases of conflict between two officials, who can claim a certain extent of legitimacy or popular support, the decisive criterion remains their even slight accordance with the domestic legal order and the actual effective control exercised by them in the state's territory. In this way, and taking into consideration that both entities could claim a certain degree of legitimacy of origin, we return to the basic question of control over the soil and the state apparatus.

All in all, various legitimacy of origin problems are presented in the case of Libya. While both Governments could claim that their emergence was conducted on the basis of legitimate procedures either through the 2014 elections or in accordance with the provisions of the Libyan Political Agreement, certain substantial flaws seem to render these foundations unstable.

ii. Legitimacy of exercise

While the assessment of the origin and the implementation of certain procedural steps is necessary in order to evaluate a regime's legitimacy, the exercise of its authority after the emergence to power constitutes the second dimension of the legitimacy test. Specifically, a

²⁹⁷ Roth (n 26) 268-274.

²⁹⁸ Roth (n 12) 216.

government's democratic origin does not necessarily mean that it will exert its power in a democratic manner, respecting human rights and the rule of law. This substantive requirement is opposed to the procedural character of the legitimacy of origin's conditions²⁹⁹. It could be added that compliance with these substantive criteria in fact enhances even the organization of elections, as it promotes the respect of basic political freedoms; mainly the freedom of assembly, thought, expression, which are fundamental in ensuring the freedom and fairness of the electoral process³⁰⁰.

Due to different ideological approaches during the Cold War, democracy and human rights have been described as discrete terms. However, the democratic structure of a state and its fair function are inherently interwoven with respect of human rights³⁰¹. They also seem to play an important role in recognition of governments.

In 1966, the Republican Government of Yemen committed mass atrocities against insurgents, with the help of Egyptian expeditionary forces. As a result, Jordan and Tunisia withdrew recognition of this regime³⁰². Nonetheless, this practice was not consistent, as when in 1977 the United Kingdom raised before the UN Commission on Human Rights the issue of blatant violations of human rights committed by the Khmer Rouge regime in Kampuchea, the Soviet Union reacted in what it characterized as an "interference in the internal jurisdiction of Kampuchea". It has to be noted that in 1979 the Soviet Union itself denied recognition of the Pol Pot regime after the Vietnamese invasion, due to lack of Khmer Rouges' effective control over the country and its brutal policies towards the Kampuchean people³⁰³.

Recently, the term 'illiberal democracies' has arisen and has been used extensively, in order to describe democratically elected regimes, which nonetheless do not exercise their powers in accordance with democratic values and the rule of law. In this case, in compliance with basic democratic principles leads to the disqualification of that entity as the legitimate government of the country³⁰⁴. The yardstick is set by the major international human rights conventions³⁰⁵. In the context of the African Union, a certain weakness can be traced; while great emphasis has been

²⁹⁹ Gregory Fox and Georg Nolte, 'Intolerant Democracies' (1995) 36 Harvard International Law Journal 1, 16.

³⁰⁰ d'Aspremont and De Brabandere (n 257) 206.

³⁰¹ Fox and Roth (n 274) 333.

³⁰² Talmon (n 184) 765.

³⁰³ Warbrick (n 209) 234-235.

³⁰⁴ d'Aspremont and De Brabandere (n 257) 212; d'Aspremont (n 247) 913.

³⁰⁵ Jean d'Aspremont, 'The Rise and Fall of Democracy Governance in International Law: A Reply to Susan Marks' (2011) 22 European Journal of International Law 549, 551.

given on the legitimacy of origin of a new government, the way it exercises its power has not been properly and thoroughly established as a de-legitimizing factor³⁰⁶.

In parallel, even long-term effective regimes have lost their legitimacy (often grounded on effective control, rather than elections), as a result of flagrant human rights violations. This effect was visible in the case of the Qaddafi regime of Libya and the Assad regime of Syria in 2011. In both cases, the excessive use of force against the respective countries' populations led to declarations by the UN, the League of Arab States, the G8 and the US, which stated that both Governments have lost their legitimacy as a result of these acts. Talmon observed the emerging formation of consensus on governments' de-legitimization due to excessive violence against their citizens³⁰⁷.

In the case of Libya, the UN Panel of Experts has reported various blatant violations of human rights committed by both sides, especially concerning the treatment of detainees by armed groups affiliated with both Governments, which de facto control detention centers and prisons. It has been reported that they have committed serious human rights violations, including unlawful deprivation of liberty and torture that in some cases led to death, due to political, financial or religious reasons³⁰⁸. The problem of arbitrary and unlawful detention was highlighted by the Berlin Conference, as well³⁰⁹.

In particular, testimonies indicated the existence of a secret section of the Qarnadah prison, where victims kidnapped by armed groups and handed over to the LNA were imprisoned. In this section, prisoners suffered from denial of access to sanitation, psychological torture and savage beating. According to the Report, other secret LNA detention centers exist in the rural areas of Benghazi, as well³¹⁰. For instance, an armed group called Awliya' al-Damm Abu Hudaymah, affiliated with the LNA, ran an illegal detention center, where several individuals are arbitrarily detained, kept in inhumane conditions and subjected to torture, while their houses were

³⁰⁶ Joseph Kazadi Mpiana, 'L'Union africaine face à la gestion des changements anticonstitutionnels de gouvernement' (2012) 25 *Revue Québécoise de droit international* 101, 113.

³⁰⁷ Talmon (n 13) 238. However, the loss of legitimacy does not amount to loss of governmental status, which can be achieved only by withdrawal of recognition, see Stefan Talmon, 'Has the United Kingdom De-Recognized Colonel Qaddafi as Head of State of Libya?' (*EJIL:Talk!*, 28 February 2011) <<https://www.ejiltalk.org/has-the-united-kingdom-de-recognized-colonel-qadhafi-as-head-of-state-of-libya/>> accessed 15 November 2020; Talmon (n 279).

³⁰⁸ In October 2017, 6,500 people were held in prisons under the nominal control of the judicial police.

³⁰⁹ UNSC 'Letter dated 22 January 2020 from the Permanent Representative of Germany to the United Nations addressed to the President of the Security Council' (2020) UN Doc S/2020/63, 10. According to the UNHR Committee, 'General Comment 35 on Article 9' (16 December 2014) UN Doc CCPR/C/GC/35, 3, the elements of inappropriateness, injustice, lack of predictability and due process of law, as well as the factors of reasonableness, necessity and proportionality are taken into consideration, when judging the 'arbitrariness' of detention. In parallel, detention may be considered 'unlawful', when it violates domestic law or is incompatible with the requirements of article 9, paragraph 1, or with any other relevant provision of the Covenant, see *ibid* 14.

³¹⁰ UNPE (n 189) 19.

confiscated. Some of them are still missing and cases of summary executions have been reported. In addition, members of LNA Brigade 152 were involved in two cases of torture and one case of death under torture in an illegal detention center held by the Brigade. The Panel reported the systematic arrests and disappearances of and threats against opponents of LNA in eastern Libya, especially in the context of the preparations for elections. Furthermore, local sources reported that 60 individuals were allegedly kidnapped in the weeks following the takeover by LNA of the oil crescent in September 2016.

Moreover, the Secretary-General in his report on the UN Support Mission in Libya, reported that 8,800 individuals (including 109 children) were held in prisons nominally under the control of the GNA Ministry of Justice³¹¹. In addition, the Panel received reports of torture and mistreatment of detainees suspected of affiliation with “terrorist organizations” in a detention center in Mitiga, run by the GNA Special Deterrence Force, but could not verify these allegations³¹². The Special Deterrence Force gave the Panel access to a register of sentenced prisoners held in the Tripoli rehabilitation and reform center, located in Mitiga. In October 2017, 2,600 detainees were held in that prison. Nevertheless, the Panel continued to receive testimonies from former detainees of severe violations of human rights (prolonged periods of solitary confinement, deaths in prison due to torture or deprivation of access to medical care, denial of family visits, torture methods used, notably during the interrogation period in the first days or weeks of detention) during their detention in Mitiga prison between 2015 and April 2018.

The Special Deterrence Force insisted that all arrest operations were conducted with the knowledge of the Attorney General, in accordance with legal procedures.³¹³ Nonetheless, the Panel reported that at least 29 detainees were not presented to the Office of the Attorney General since June 2016. According to testimonies, they were allegedly tortured in detention. In parallel, the Panel has collected testimonies and documentation relating to at least one case of death under torture at Kararim prison in Misrata. The Anti-Crime Committee, a Salafi-leaning armed group, runs the prison. Testimonies revealed beatings, psychological and physical torture and dire detention conditions.

It has to be noted that the legitimacy of exercise of power is evaluated on the basis of the relevant human rights treaties, signed and ratified by the State in question. As the above-mentioned cases concern arbitrary detention and deprivation of life, the relevant human rights instrument is the International Covenant on Civil and Political Rights, which was ratified by

³¹¹ UNSC (n 86) 6.

³¹² UNPE (n 189) 20.

³¹³ UNPE (n 130) 12.

Libya in 1970. The ICCPR prohibits arbitrary detention and deprivation of liberty in article 9, which recognizes and protects liberty and security of person³¹⁴. In parallel, Libya is bound by the African Charter on Human and Peoples' Rights, which establishes the right to personal liberty and the protection of arbitrary arrest in article 6.

Regarding the denial of access of detainees to the Office of the Attorney General, it has to be noted that article 9, par. 3, requires that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception. According to the Human Rights Committee, delays should not exceed a few days from the time of arrest. Specifically, it considers that 48 hours are ordinarily sufficient to transport the individual and to prepare for the judicial hearing, and that any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances³¹⁵. Both the GNA and the Eastern Government had not complied with this procedural requirement and had deprived the majority of detainees of the access to justice. While the Attorney General, who is a public prosecutor, cannot be regarded as a judge under paragraph 3, denial of access even to his office, leads to the conclusion a *minori ad maius* that trials before a court were far from reality in the territories of both entities.

It could be argued that the detention centers in both cases were not run by the GNA and the Eastern Government themselves, but by autonomous armed groups. As the extent of control exercised over these groups by the two entities cannot be evaluated adequately on the basis of the facts available, it should be noted that according to article 9, when private individuals or entities are empowered or authorized by a State party to exercise powers of arrest or detention, the State party remains responsible for ensuring adherence to article 9. It must rigorously limit those powers and must provide strict and effective control to ensure that those powers are not misused, and do not lead to arbitrary or unlawful arrest or detention. Nonetheless, even if it is assumed that these groups are not controlled by a State but act individually³¹⁶, it should be added that states have the duty to take appropriate measures to protect the right to liberty against

³¹⁴ Liberty of person concerns freedom from confinement of the body, while security concerns freedom from injury to the body and the mind, or bodily and mental integrity, see UNHR Committee (n 303) 1.

³¹⁵ Ibid 9-10.

³¹⁶ The extent of control exercised over a group in order this to be considered as a State's *de facto* organ under article 8 of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts, ranges from "effective control" as ruled by the International Court of Justice in the *Nicaragua* case, to "overall control", as judged by the International Criminal Tribunal for the Former Yugoslavia in *Tadic* case, see Olivier de Frouville, 'Attribution of Conduct to the State: Private Individuals' in James Crawford and others (eds), *The Law of International Responsibility* (Oxford University Press 2010) 268-269. In addition, for an analysis of the element of effective control for attribution of conduct to international organizations in the context of international military operations, see Berenice Boutin, 'Attribution of Conduct in International Military Operations: A Causal Analysis of Effective Control' (2017) 18 Melbourne Journal of International Law 154.

deprivation by third parties, like individual criminals, irregular groups, armed or terrorist groups, third states and even lawful organizations operating within their territory³¹⁷.

It should be mentioned that Libya has been condemned by the African Court on Human and People's Rights for violation of article 6 of the African Charter, in 2016. Specifically, the Court found that the detention of Saif Qaddafi, son of Muamar Qaddafi, in a secret prison by a revolutionary brigade, his trial before an extraordinary court and the denial of access to legal representation, rendered the State of Libya (then represented by the GNC Government) responsible either for the acts of these rebels or for the omission to confront them³¹⁸.

As for the allegations of torture by both sides, Libya is bound by article 7 of the ICCPR and by article 5 of the African Charter. According to the Human Rights Committee, torture may be physical or mental and the scope of the article covers every case of cruel, inhuman or degrading treatment or punishment³¹⁹. The UN Panel of Experts has reported cases of torture taking place by members of both entities.

In any case and whichever government may be considered as the de jure Government of Libya and as a consequence, bearing Libyan State's duties and responsibility, this exercise of its power violates article 9 of the Covenant. In particular, it shall be deemed responsible for the violations of human rights committed by groups affiliated to it and considered as operating under its control. It has to be noted that even if this government is considered as a de facto Government, the acts of its organs shall render it responsible.

Nonetheless, a government is not responsible for the acts of groups operating outside of its control and against it. Specifically, it is a general and well-established principle of international law that no government can be responsible for the action of rebellious and insurrectional groups violating its authority, unless it can be accused for acting against good faith or showing negligence to suppress it³²⁰. Also, according to article 10 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts, if an entity not initially considered as the government of Libya manages to become the ruling apparatus of the state, all the previous wrongful acts of its organs are attributed to the state. It should be mentioned that individual criminal

³¹⁷ UNHR Committee (n 309) 2.

³¹⁸ *African Commission on Human and People's Rights v. Libya: Application 002/2013* (3 June 2016) African Court on Human and People's Rights (2016).

³¹⁹ UNHR Committee 'General Comment 20 on Article 7' (10 March 1992) 1-2.

³²⁰ ILC 'Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries' (2001) 50.

responsibility of the members of these governments, who commit these violations of human rights, is a different matter³²¹.

However, detention conditions and torture do not constitute the only field of human rights violations in Libya. Specifically, the Panel investigated cases of indiscriminate shelling and summary executions allegedly conducted by LNA forces in Darnah, where the indiscriminate shelling of residential districts has had the greatest impact on civilians, as there are video footages of summary executions of men in civilian clothing, allegedly by LNA soldiers³²². The right to life is protected by both the ICCPR in article 6, and the African Charter in article 4. According to the last sentence of article 6 (2), the death penalty can only be carried out pursuant to a judgment of a competent court, established by law before the commission of the offence. The court should be independent from the executive and the legislative branches, and the death penalty can be carried out only pursuant to a final judgment³²³. In the case of summary executions in Darna, there are no indications for the accordance of the implementation of death penalty with the procedure described in the General Comment 36.

The extent of influence exerted by the LNA over the HoR and its impact on the governance of the eastern territory provoked further problems. Specifically, the HoR appointed a Military Governor in the Darnah-Bin Jawwad region. As a consequence, civil mayors were replaced with military staff. According to the Report of the UN Panel of Experts, decisions taken by the Military Governor, Abd al-Razzak al-Nadhuri, being also Chief of Staff of LNA, included significant restrictions on public liberties in eastern Libya, such as a decision to ban the holding of demonstrations in Benghazi without his written permission and also to ban unaccompanied women under the age of 60 from traveling. After protests against the discriminatory character of the measure, al-Nadhuri issued a new directive, imposing a security clearance permit for both women and men, willing to travel.³²⁴ Moreover, the LNA detained or intimidated dozens of activists, members of the House of Representatives and justice and security personnel in order to silence political opposition.³²⁵ In this way, serious doubts over the democratic governance of these regions were raised, in conjunction with fears of the usurpation of civil state functions by the army.

³²¹ The International Criminal Court investigates crimes against humanity and war crimes in Libya, and has issued two warrants of arrest for Mahmoud al-Werfalli, officer of the LNA. The warrants relate to allegations that al-Werfalli executed 43 people in Benghazi, during the operation “Flood of Dignity”, see ‘Twentieth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 (2011)’ (10 November 2020) <[201110-icc-prosecutor-report-unscc-libya-eng.pdf](https://www.icc-cpi.int/201110-icc-prosecutor-report-unscc-libya-eng.pdf) ([icc-cpi.int](https://www.icc-cpi.int/))> accessed 15 November 2020.

³²² UNPE (n 130) 11.

³²³ UNHR Committee ‘General Comment 36 on Article 6’ (3 September 2019) UN Doc CCPR/C/GC/36, 10.

³²⁴ Eaton and others (n 74) 26.

³²⁵ UNPE (n 189) 11.

Another major problem was both Governments' management of the ever-increasing number of migrants in their territories. According to the UN Secretary-General's Report on the Implementation of Resolution 2481, several violations of migrants' rights were reported in detention facilities managed by the Directorate for Combating Illegal Migration. Reported violations include child rights violations in detention centres run by pro-GNA armed groups. In addition, hundreds of migrants and refugees had been held in camps by traffickers and smugglers. Some of those camps, which were usually run by foreign nationals, were under the control of Libyan armed groups, including groups affiliated either with the LNA or with the GNA.³²⁶ While Libya is not a party to the 1951 Convention relating to the Status of Refugees, it has signed and ratified the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. However, Libya has not yet adopted asylum legislative provisions, nor has it established certain asylum procedures³²⁷.

It should be noted that according to the Human Rights Committee, detention for the control of immigration is not per se arbitrary, as long as it is reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time.³²⁸ Any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons, while children should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account various reasons, such as their best interests, the extreme vulnerability and the need for care of unaccompanied minors³²⁹. These requirements do not seem to have been followed by both Governments as far as the management of the migratory tides is concerned.

More blatant human rights violations took place in August 2020, when massive protests started in many Libyan cities, like Tripoli, Misrata, Benghazi and Tobruk, and both regimes tried to suppress them. Nevertheless, armed groups linked to the GNA have been accused of using lethal forces against the protesters, of arbitrarily detaining and torturing them³³⁰. This way of suppressing protests, reminds of the way Qaddafi acted against Libyans during the protests of February 2011, which eventually led to withdrawal of recognition of his regime by the international community. In addition, these actions violate article 21 of the ICCPR and article 11 of the African Charter, which protect the right of peaceful assembly.

³²⁶ UNSC (n 192) 6. Nonetheless, according to Minister of Interior of the GNA, Fathi Bashaga, less than 0,5 per cent of all migrants in Libya were held in detention centers, see UNPE 2021 (n 75) 12.

³²⁷ Ibid 5.

³²⁸ UNHR Committee (n 309) 5.

³²⁹ Ibid 6.

³³⁰ Amnesty International (n 238); Human Rights Watch (n 239).

In parallel, the Panel had reported various violations of international humanitarian law committed by both sides. In particular, the GNA fired medium-range surface-to-air missiles in an indirect fire role against civilian neighborhood in Tripoli on 13 June 2019. Moreover, it launched a mortar attack against Mitiga international airport during civilian air operations. In parallel, the LNA delivered explosive ordnance, from what was reportedly an aircraft under the group's direction and operational control, during an air strike against the Dhaman military compound in Tajura, which impacted on a detention center of the Department for Combating Illegal Migration on 2 July. Similarly, it launched four air strikes against Tebu civilian neighborhoods in Murzuq on 5 August. Last but not least, it delivered cluster munitions against Zuwarah airport and a rocket attack against Mitiga international airport. In these cases, the Panel found violations of rules 7 (the principle of distinction between civilian objects and military objectives), 11 (indiscriminate attacks), 14 (proportionality in attack) and 15 (the principle of precautions in attack) of customary international humanitarian law ³³¹.

To sum up, the blatant violations of human rights and humanitarian law committed by both Governments may be considered as having the necessary gravity, in order to result in their delegitimization in accordance with the legitimacy of exercise of power doctrine. Especially the violations of the international humanitarian law by the GNA and the Eastern Government, the summary executions by the Eastern Government and the violent suppression of peaceful protests with heavy arms by the GNA, may be regarded as approaching the threshold required by international law, in order a government to lose its legitimacy. Nonetheless, the fact that a Government may lose its legitimacy, only if it was deemed legitimate in the first place, should not be disregarded.

³³¹ UNPE (n 75) 14-15.

Conclusions

The case of Libya constitutes a typical example of the renewed significance of recognition of governments in international law. Specifically, the Libyan governmental fragmentation, brought on during the first years of the conflict and maintained in a different form after the conclusion of the Libyan Political Agreement in 2015, presents some complicated recognition questions. The problematic has been overlooked as the GNA was often regarded as ‘the internationally-recognized government of Libya’. This wide perception may justify the fact that the examination of the duality of governments in Libya in the specific time period by the literature, has been inadequate.

Nevertheless, recognition questions have always been rather difficult to be answered and the present case is not an exception. This difficulty is exacerbated, if one takes into account that it represents a dynamic and on-going situation, where facts are in a state of flux and the international community’s approaches are being constantly modified. In addition, its highly political nature poses further problems in any attempt to comprehend the legal parameters of the specific nature of each government. Thus, a thorough and timely analysis of all the available data had to be conducted.

In this framework, it has been evident through the examination of the relevant practice of states and international organizations, that the Libyan governmental crisis could not be described by reference solely to the ‘internationally-recognized Government’, as certain trends and recognition approaches have been extracted. In particular, it is true that the majority of states and organizations examined, had recognized either expressly or implicitly the GNA as the *de jure* Government of Libya in accordance with the Libyan Political Agreement. However, they perplexed things, by regarding the HoR as a rival body within the same Government. This approach can be described as being excessively founded on the legitimacy principle, considering the struggle between the GNA and the HoR as an intergovernmental dispute and disregarding the actual fragmentation and conflict between two distinct and fully formed Governments. In this way, recognition of government trends in Libya between 2015 and 2020 can be distinguished from previous practice, as important facts are not taken into account, in an effort to preserve the legitimacy and the integrity of the Agreement concluded between the rival parties. Nonetheless, there were several states that did not follow the above-mentioned approach, but took into account the effective control exercised by each Government. Thus, they recognized the GNA implicitly as the *de facto* Government of Tripoli and the Eastern Government as the *de facto* Government of Cyrenaica.

Concerning the recognition of General Haftar, it should be noted that the majority of states and international organizations considered him as the opponent of the GNA in the battlefield and did not include the eastern civilian authorities in the armed conflict. He seems to have been considered the head of an armed group, outside the official Libyan institutional context. Any recognition of his prominent role in the conflict was limited and could be described as a means of initiating and maintaining channels of communication with him.

In the second part, the examination of the case of Libya in accordance with the effective control doctrine leads to certain deductions. First of all, from the aspect of territorial control, neither the GNA nor the Eastern Government could claim control over the majority of Libyan soil. The latter controlled a larger part, but the GNA had regained much of its previously lost territory and controlled the capital. Furthermore, the GNA exercised more stable control over Libya's financial institutions and wealth-producing resources. Nevertheless, both Governments' heavy reliance on foreign aid and support, and the lack of popular support as denoted by large-scale protests, rendered their stability and permanence doubtful.

Furthermore, recognition of the rival Governments in accordance with the legitimacy principle presents certain problems, as well. Firstly, both the Eastern Government and the GNA could claim that the origin of their power is legitimate in principle, through the elections of 2014 and the inclusive Libyan Political Agreement accordingly. Nevertheless, both Governments suffered certain flaws, as they had exceeded the temporal limits set out for their operation and their emergence had been annulled before Libyan Courts. In parallel, both Governments had been accused of flagrant human rights violations, which could even provoke their de-legitimization.

All in all, recognition of governments is a highly complicated subject of international law, where facts, politics and law are combined indissolubly. This interrelation is more evident in the case of Libya. Due to the constant changes in the political landscape and the balance of power in the country, but also the unprincipled international reaction to these changes, it is difficult to extract any definite conclusions. In this context, and after applying the aforementioned legal criteria on the specific Libyan factual situation, it can be argued that as of November 2020, neither of the rival entities could be conclusively considered as the 'de jure Government of Libya'.

Table of Authorities

Cases:

African Commission on Human and People's Rights v. Libya: Application 002/2013; Judgment, African Court on Human and People's Rights ((3 June 2016)

Bwalya v. Zambia (1988) UNHR Committee Commun. No. 314/1988

Mahmoud v. Breish and Houssein [2020] EWCA Civ 637, [2020]

Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America); Merits, International Court of Justice (ICJ), 27 June 1986

Tinoco Arbitration (GB v Costa Rica) (1923) 1 RIAA 369

Tribunal pénal fédéral, Numéro de dossier: RR.2018.241, Arrêt du 12 novembre 2019, Cour des plaintes : Entraide judiciaire internationale en matière pénale à la Libye (2019)

Treaties:

African Charter on Democracy, Elections and Governance (adopted 30 January 2007, entered into force 15 February 2012)

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986)

American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978)

Conference on Security and Cooperation in Europe 'Charter of Paris for a New Europe' (CSCE Paris 1990)

First Protocol to the European Convention on Human Rights (adopted 20 March 1952, entered into force 18 May 1954)

Organization of American States 'Inter-American Democratic Charter' (OAS Lima 2001)

Documents:

African Commission on Human Rights:

African Commission on Human Rights 'Resolution on the Military, Eighth Annual Activity Report of the Commission on Human and Peoples' Rights' (ACHR Banjul 1994)

African Union:

African Union, 'Discours du Président de la Commission de l'Union africaine, S.E. Moussa Faki Mahamat à la réunion ministérielle sur la Libye' (au.int, 5 October 2020) <<https://au.int/fr/speeches/20201005/discours-du-president-de-la-commission-la-reunion-ministerielle-sur-la-libye>> accessed 15 November 2020

African Union, 'Remarks by the Chairperson of the African Union Commission Moussa Faki Mahamat, at the opening of the Fifth Meeting of the High Level Committee of the African Union on Libya' (au.int, 17 April 2018) <<https://au.int/en/speeches/20180417/remarks-chairperson-african-union-commission-moussa-faki-mahamat-opening-fifth>> accessed 15 November 2020

European Union:

EU External Action Service, 'Joint Communiqué of the Libyan Quartet' (eeas.europa.eu, 23 May 2017) <https://eeas.europa.eu/headquarters/headquarters-homepage_en/26764/Meeting%20of%20the%20Libya%20Quartet:%20Joint%20Communiqu%C3%A9> accessed 15 November 2020

EU External Action Service, 'José Sabadell becomes new EU Ambassador to Libya' (eeas.europa.eu, 21 October 2020) <https://eeas.europa.eu/delegations/libya_en/87297/Jos%C3%A9%20Sabadell%20becomes%20new%20EU%20Ambassador%20to%20Libya> accessed 15 November 2020

EU Parliament 'Resolution on Human Rights Situation in Myanmar, including the situation of religious and ethnic groups' (2021/2905/RSP)

ICC:

‘Twentieth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 (2011)’ (10 November 2020) <[201110-icc-prosecutor-report-unsc-libya-eng.pdf \(icc-cpi.int\)](https://www.icc-cpi.int/publications-and-documents/twentieth-report-prosecutor-unsc-libya-eng)> accessed 15 November 2020

IdI:

Institut de Droit International ‘La reconnaissance des nouveaux Etats et des nouveaux gouvernements, Session de Bruxelles’ (1936)

ILA:

ILA Committee on Recognition/ Non-Recognition in International Law, ‘Resolution 3/2018’ (78th Conference, Sydney 2018)

ILA Committee on Recognition/ Non-Recognition in International Law, ‘Fourth (Final) Report’ (2018)

ILA Committee on Recognition/Non-Recognition in International Law, ‘Third Report’ (Johannesburg 2016)

ILC:

International Law Commission ‘Sixth Report on unilateral acts of States’ (2003) UN Doc A/CN.4/534 (63)

International Law Commission ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries’ (2001)

League of Arab States:

League of Arab States, ‘The Outcome of the Council of the League of Arab States Meeting at the Ministerial Level in Its Extraordinary Session on the Implications of the Current Events in Libya and the Arab Position’ (2011) Resolution No. 7360/2011

Organization of African Unity:

Organisation of African Unity 'Lomé Declaration of July 2000 on the framework for an OAU response to unconstitutional changes of government' (OAU Lome 2000) AHG/Decl.5 (XXXVI)

UN:

UNPE 'Letter dated 8 March 2021 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council' (2021) UN Doc S/2021/229

UNSC 'Report of the Secretary-General: Implementation of Resolution 2491' (2 September 2020) UN Doc S/2020/876

UNSC 'Report of the Secretary-General on the UN Support Mission in Libya' (25 August 2020) UN Doc S/2020/832

OHCHR 'Libya: Violations related to mercenary activities must be investigated – UN experts' (17 June 2020) <[OHCHR | Libya: Violations related to mercenary activities must be investigated – UN experts](#)> accessed 15 November 2020

UNSC Res 2510 (12 February 2020) UN Doc S/RES/2510

UNSC Res 2509 (11 February 2020) UN Doc S/RES/2509

UNHRC 'Situation of human rights in Libya and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya: Report of the United Nations High Commissioner for Human Rights' (23 January 2020) UN Doc A/HRC/34/75

UNSC 'Letter dated 22 January 2020 from the Permanent Representative of Germany to the United Nations addressed to the President of the Security Council' (22 January 2020) UN Doc S/2020/63

UNPE 'Letter dated 29 November 2019 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council' (2019) UN Doc S/2019/914

UNSC 'Records of the 8667th meeting' (18 November 2019) UN Doc S/PV/866

UNHR Committee ‘General Comment 36 on Article 6’ (3 September 2019) UN Doc CCPR/C/GC/36

UNPE ‘Letter dated 5 September 2018 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council’ (2018) UN Doc S/2018/812

UNSC ‘Statement by the President of the Security Council’ (6 June 2018) UN Doc S/PRST/2018/11

UNHRC ‘Report of the Special Rapporteur on the human rights of internally displaced persons on her visit to Libya’ (10 May 2018) UN Doc A/HRC/38/39/Add.

UNSC ‘Statement by the President of the Security Council’ (14 December 2017) UN Doc S/PRST/2017/26)

UNSC ‘Statement by the President of the Security Council’ (7 December 2017) UN Doc S/PRST/2017/24

UNPE ‘Letter dated 1 June 2017 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council’ (2017) UN Doc S/2017/466

UNSC Res 2259 (2015) UN Doc S/RES/2259

‘UN welcomes ‘historic’ signing of Libyan Political Agreement’ (news.un.org, 17 December 2015) <<https://news.un.org/en/story/2015/12/518412-un-welcomes-historic-signing-libyan-political-agreement>> accessed 15 November 2020

UNHR Committee, ‘General Comment 35 on Article 9’ (16 December 2014) UN Doc CCPR/C/GC/35

UNSMIL ‘Briefing by Bernardino Leon SRSG for Libya’ (unmissions.org, 2014) <[Briefing by Bernardino León SRSG for Libya - Meeting of the Security Council 15 September 2014 | UNSMIL \(unmissions.org\)](#)> accessed 15 November 2020

UNGA Res 66/1 (16 September 2011) UN Doc A/RES/66/1

UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973

UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970

UNGA Res 56/159 (19 December 2001) UN Doc A/RES/56/159

UNHR Committee ‘General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service’ (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7

UNHR Committee ‘General Comment 20 on Article 7’ (10 March 1992)

UNGA Res 49/190 (23 December 1994) UN Doc A/RES/49/19

UNGA Res 43/157 (8 December 1988) UN Doc A/RES/43/157

UNGA Res 217A: Universal Declaration of Human Rights (10 December 1948)

Statements of States:

French Ministry for Europe and Foreign Affairs, ‘Press Release: Chair’s conclusions of the September 24, 2018, Meeting on Libya’ (*diplomatie.gouv.fr*, 25 September 2018) <[Press Release: Chair’s conclusions of the September 24, 2018, Meeting on Libya \(25.09.18\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Libya – Visit by Jean-Yves Le Drian’ (*diplomatie.gouv.fr*, 23 July 2018) <[Libya – Visit by Jean-Yves Le Drian \(23.07.18\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Libya - Joint Statement on Welcoming Libyan National Oil Corporation Resuming Production’ (*diplomatie.gouv.fr*, 12 July 2018) <[Libya - Joint Statement on Welcoming Libyan National Oil Corporation Resuming Production \(12.07.2018\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Security Council Press Statement on Libya’ (*diplomatie.gouv.fr*, 26 July 2017) <[UN - Libya - Security Council Press Statement on Libya \(26.07.17\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Libya - Joint Declaration’ (*diplomatie.gouv.fr*, 25 July 2017) <[Libya - Joint Declaration \(25.07.17\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Libya - Joint Statement by the Ambassadors of France, Germany, Italy, Spain, the United Kingdom, and the United States to Libya’ (*diplomatie.gouv.fr*, 25 February 2017) <[Libya - Joint Statement by the Ambassadors of France, Germany, Italy, Spain, the United Kingdom, and the United States to Libya \(25.02.17\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Libya – Occupation by force of the Libyan High Council of State’ (*diplomatie.gouv.fr*, 17 October 2016) <[Libya – Occupation by force of the Libyan High Council of State \(17.10.16\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Libya – Telephone conversation between Jean-Marc Ayrault and Fayeze Serraj’ (*diplomatie.gouv.fr*, 29 April 2016) <[Libya – Telephone conversation between Jean-Marc Ayrault and Fayeze Serraj \(29.04.16\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Libya – Visit by the ambassador of France to Libya’ (*diplomatie.gouv.fr*, 14 April 2016) <[Libya – Visit by the ambassador of France to Libya \(April 14.04.16\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Statement after the Ministerial Meeting in Paris on Libya’ (*diplomatie.gouv.fr*, 13 March 2016) <[statement on libya 13th march cle82f4c6.pdf \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Joint Communiqué of the Ministerial Meeting for Libya’ (*diplomatie.gouv.fr*, 13 December 2015) <[Ministerial Meeting for Libya - Joint Communiqué \(Rome, Italy - 13.12.15\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Libya Statement’ (*diplomatie.gouv.fr*, 27 November 2015) <[Libya Statement \(27.11.15\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Libya - Meeting between Laurent Fabius and Martin Kobler, the United Nations Secretary-General’s Special Representative for Libya’ (*diplomatie.gouv.fr*, 25 November 2015) <[Libya - Meeting between Laurent Fabius and Martin Kobler, the United Nations Secretary-General’s Special Representative for Libya \(25.11.15\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Ministry for Europe and Foreign Affairs, ‘Terrorist attack in Benghazi - Joint statement by the ambassadors and Special Envoys to Libya’ (*diplomatie.gouv.fr*, 27 October 2015) <[Terrorist attack in Benghazi - Joint statement by the ambassadors and Special Envoys to Libya \(27.10.15\) - Ministry for Europe and Foreign Affairs \(diplomatie.gouv.fr\)](#)> accessed 15 November 2020

French Senate, ‘Résolution portant sur la nécessité de reconnaître le Gouvernement d’unité nationale de Birmanie’ (*Senat*, 5 October 2021) <<http://www.senat.fr/leg/tas21-002.html>> accessed 20 October 2021

German Federal Foreign Office, ‘Libya and Germany: Bilateral relations’ (*auswaertiges-amt.de*, 1 June 2019) <[Libya and Germany: Bilateral relations - Federal Foreign Office \(auswaertiges-amt.de\)](#)> accessed 15 November 2020

German Federal Foreign Office, ‘Working together to help stabilise Libya’ (*auswaertiges-amt.de*, 13 November 2018) <[Working together to help stabilise Libya - Federal Foreign Office \(auswaertiges-amt.de\)](#)> accessed 15 November 2020

German Federal Foreign Office, ‘Foreign Minister Steinmeier after the foreign ministers meeting on Libya’ (*auswaertiges-amt.de*, 16 May 2016) <[Foreign Minister Steinmeier after the foreign](#)>

[ministers meeting on Libya - Federal Foreign Office \(auswaertiges-amt.de\)](https://www.auswaertiges-amt.de/en/press-releases/2020/02/24-foreign-minister-steinmeier-on-the-current-situation-in-libya)> accessed 15 November 2020

German Federal Foreign Office, 'Foreign Minister Steinmeier on the current situation in Libya - Press release' (*auswaertiges-amt.de*, 24 February 2016) <[Foreign Minister Steinmeier on the current situation in Libya - Federal Foreign Office \(auswaertiges-amt.de\)](https://www.auswaertiges-amt.de/en/press-releases/2020/02/24-foreign-minister-steinmeier-on-the-current-situation-in-libya)> accessed 15 November 2020

German Federal Foreign Office, 'Foreign Minister Steinmeier following the Foreign Ministers meeting on the situation in Libya - Press release' (*auswaertiges-amt.de*, 13 February 2016) <[Foreign Minister Steinmeier following the Foreign Ministers meeting on the situation in Libya - Federal Foreign Office \(auswaertiges-amt.de\)](https://www.auswaertiges-amt.de/en/press-releases/2020/02/13-foreign-minister-steinmeier-following-the-foreign-ministers-meeting-on-the-situation-in-libya)> accessed 15 November 2020

Greek Ministry of Foreign Affairs, 'Interview of the Minister of Foreign Affairs, Nikos Dendias, on MEGA TV's evening news, with journalist Dora Anagnostopoulou' (*mfa.gr*, 27 July 2020) <[Interview of the Minister of Foreign Affairs, Nikos Dendias, on MEGA TV's evening news, with journalist Dora Anagnostopoulou \(27 July 2020\) - Top Story \(mfa.gr\)](https://www.mfa.gr/en/press-releases/2020/07/27-interview-of-the-minister-of-foreign-affairs-nikos-dendias-on-mega-tv-s-evening-news-with-journalist-dora-anagnostopoulou-27-july-2020-top-story)> accessed 15 November 2020

Greek Ministry of Foreign Affairs, 'Statement of the Minister of Foreign Affairs, Nikos Dendias, following his meeting with the President of the Libyan House of Representatives, Aguila Saleh' (*mfa.gr*, 1 July 2020) <[Statement of the Minister of Foreign Affairs, Nikos Dendias, following his meeting with the President of the Libyan House of Representatives, Aguila Saleh \(Libya, 1 July 2020\) - Top Story \(mfa.gr\)](https://www.mfa.gr/en/press-releases/2020/07/01-statement-of-the-minister-of-foreign-affairs-nikos-dendias-following-his-meeting-with-the-president-of-the-libyan-house-of-representatives-aguila-saleh-libya-1-july-2020-top-story)> accessed 15 November 2020

Greek Ministry of Foreign Affairs, 'Minister of Foreign Affairs N. Dendias' interview with the newspaper 'Le Figaro' and journalist Alexia Kefalas' (*mfa.gr*, 14 June 2020) <[Minister of Foreign Affairs N. Dendias' interview with the newspaper 'Le Figaro' and journalist Alexia Kefalas \(14/06/2020\) - Top Story \(mfa.gr\)](https://www.mfa.gr/en/press-releases/2020/06/14-minister-of-foreign-affairs-n-dendias-interview-with-the-newspaper-le-figaro-and-journalist-alexia-kefalas-14-06-2020-top-story)> accessed 15 November 2020

Greek Ministry of Foreign Affairs, 'Joint Declaration adopted by the Ministers of Foreign Affairs of Cyprus, Egypt, France, Greece and the United Arab Emirates' (*mfa.gr*, 11 May 2020) <[Joint Declaration adopted by the Ministers of Foreign Affairs of Cyprus, Egypt, France, Greece and the United Arab Emirates \(11.05.2020\) - Announcements - Statements - Speeches \(mfa.gr\)](https://www.mfa.gr/en/press-releases/2020/05/11-joint-declaration-adopted-by-the-ministers-of-foreign-affairs-of-cyprus-egypt-france-greece-and-the-united-arab-emirates-11-05-2020-announcements-statements-speeches)> accessed 15 November 2020

Greek Ministry of Foreign Affairs, ‘Interview of the Minister of Foreign Affairs, Nikos Dendias, in the Athens daily Eleftheros Typos, with journalist Apostolis Chondropoulos’ (*mfa.gr*, 26 January 2020) <[Interview of the Minister of Foreign Affairs, Nikos Dendias, in the Athens daily Eleftheros Typos, with journalist Apostolis Chondropoulos \(26 January 2020\) - Top Story \(mfa.gr\)](#)> accessed 15 November 2020

Greek Ministry of Foreign Affairs, ‘Interview of the Minister of Foreign Affairs, Nikos Dendias, on ERT evening news, with journalist Antriana Paraskevopoulou’ (*mfa.gr*, 17 January 2020) <[Interview of the Minister of Foreign Affairs, Nikos Dendias, on ERT evening news, with journalist Antriana Paraskevopoulou \(17 January 2020\) - Top Story \(mfa.gr\)](#)> accessed 15 November 2020

Italian Ministry of Foreign Affairs, ‘Note from the Italian Ministry of Foreign Affairs’ (*esteri.it*, 3 February 2020) <[Note from the Italian Ministry of Foreign Affairs - Libya \(esteri.it\)](#)> accessed 15 November 2020

Italian Ministry of Foreign Affairs, ‘Di Maio: «On Libya we need realism. Italy does not take sides in this war» (la Repubblica)’ (*esteri.it*, 19 December 2019) <[Di Maio: «On Libya we need realism. Italy does not take sides in this war» \(la Repubblica\) \(esteri.it\)](#)> accessed 15 November 2020

Italian Ministry of Foreign Affairs, ‘Joint Communiqué on Libya by Algeria, Canada, Chad, China, Egypt, France, Germany, Jordan, Italy, Malta, Morocco, Niger, Qatar, Russia, Saudi Arabia, Spain, Sudan, Tunisia, Turkey, the United Arab Emirates, the United Kingdom, the United States, the European Union, United Nations, the League of Arab States, and the African Union’ (*esteri.it*, 22 September 2016) <[Joint Communiqué on Libya by Algeria, Canada, Chad, China, Egypt, France, Germany, Jordan, Italy, Malta, Morocco, Niger, Qatar, Russia, Saudi Arabia, Spain, Sudan, Tunisia, Turkey, the United Arab Emirates, the United Kingdom, the United States, the European Union, United Nations, the League of Arab States, and the African Union \(esteri.it\)](#)> accessed 15 November 2020

Maltese Ministry for Foreign and European Affairs, ‘Joint Statement by Foreign Ministers of Libya, Malta, and Turkey’ (*gov.mt*, 6 August 2020) <[Joint statement by the foreign ministers of Libya, Malta, and Turkey \(gov.mt\)](#)> accessed 15 November 2020

Russian Ministry of Foreign Affairs, 'International conference on Libya' (*mid.ru*, 13 November 2018) <[The Ministry of Foreign Affairs of the Russian Federation \(mid.ru\)](#)> accessed 15 November 2020

Russian Ministry of Foreign Affairs, 'Dmitry Medvedev's interview with Algerian news agency APS' (*mid.ru*, 9 October 2017) <[News - The Russian Government](#)> accessed 15 November 2020

Russian Ministry of Foreign Affairs, 'Russia-Algeria talks' (*mid.ru*, 27 April 2016) <[The Ministry of Foreign Affairs of the Russian Federation \(mid.ru\)](#)> accessed 15 November 2020

Turkish Ministry of Foreign Affairs, 'Bilateral Relations between Turkey and Libya' (*mfa.gov.tr*) <[Bilateral Relations between Turkey and Libya / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](#)> accessed 15 November 2020

Turkish Ministry of Foreign Affairs, 'No: 218, Press Release Regarding the Inclusion of a Turkish Maritime Transportation Company within the List of Sanctions in connection with Libya at the Meeting of the EU Foreign Affairs Council' (*mfa.gov.tr*, 21 September 2020) <[T.C. Dışişleri Bakanlığı Turkish Consulate General In Dubai \(mfa.gov.tr\)](#)> accessed 15 November 2020

Turkish Ministry of Foreign Affairs, 'No: 94, Press Release Regarding the Statements of Haftar, the Leader of the Illegitimate Militia Forces in Libya, on 27 April 2020' (*mfa.gov.tr*, 29 April 2020) <[No: 94, 29 April 2020, Press Release Regarding the Statements of Haftar, the Leader of the Illegitimate Militia Forces in Libya, on 27 April 2020 / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](#)> accessed 15 November 2020

Turkish Ministry of Foreign Affairs, 'QA-73, 1 December 2019, Statement of the Spokesperson of the Ministry of the Foreign Affairs, Mr. Hami Aksoy, in Response to a Question Regarding the Statements Made by Greece and Egypt on the Agreement Signed With Libya on the Maritime Jurisdiction Areas' (*mfa.gov.tr*, 1 December 2019) <[QA-73, 1 December 2019, Statement of the Spokesperson of the Ministry of the Foreign Affairs, Mr. Hami Aksoy, in Response to a Question Regarding the Statements Made by Greece and Egypt on the Agreement Signed With Libya on the Maritime Jurisdiction Areas / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](#)> accessed 15 November 2020

Turkish Ministry of Foreign Affairs, 'Foreign Minister Çavuşoğlu's visit to Libya' (*mfa.gov.tr*, 30 May 2016), <[No: 121, 30 May 2016, Press Release Regarding the Visit of Foreign Minister Çavuşoğlu to Libya / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](#)> accessed 15 November 2020

Turkish Ministry for Europe and Foreign Affairs, 'Joint Communiqué on Libya' (*mfa.gov.tr*, 16 May 2016) <[Ministerial Meeting for Libya Joint Communiqué, 16 May 2016, Vienna / Rep. of Turkey Ministry of Foreign Affairs \(mfa.gov.tr\)](#)> accessed 15 November 2020

UK Foreign Office, 'Statement by Ambassador Jonathan Allen, UK Deputy Permanent Representative to the UN, at the Security Council Briefing on Libya' (*gov.uk*, 21 May 2018) <[A peaceful, secure, prosperous Libya through credible elections - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 2020

UK Foreign Office, 'Statement by Ambassador Matthew Rycroft, UK Permanent Representative to the UN, at the Security Council Briefing on Libya' (*gov.uk*, 16 November 2017) <["It's clear that Libya now faces a simple choice: a future of stability and security or a return to a past of violence and uncertainty" - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 2020

UK Foreign Office, 'Foreign Secretary visits Tobruk' (*gov.uk*, 5 May 2017) <[Foreign Secretary visits Tobruk, Libya - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 202

UK Foreign Office, 'Statement by Ambassador Matthew Rycroft, UK Permanent Representative to the United Nations, at the Security Council meeting on Libya' (*gov.uk*, 19 April 2017) <["Libya needs urgent progress towards full political reconciliation now more than ever." - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 2020

UK Foreign Office, 'Foreign Office Minister urges support for UN process in Libya' (*gov.uk*, 13 December 2015) <[Foreign Office Minister urges support for UN process in Libya - GOV.UK \(www.gov.uk\)](#)> accessed 15 November 2020

US Department of State, 'U.S.-LNA Discussion on Militia Demobilization' (*state.gov*, 2 July 2020) <[U.S.-LNA Discussion on Militia Demobilization - United States Department of State](#)> accessed 15 November 2020

US Department of State, 'Seizure by Malta of \$1.1 Billion of Counterfeit Libyan Currency' (*state.gov*, 29 May 2020) <[Seizure by Malta of \\$1.1 Billion of Counterfeit Libyan Currency - United States Department of State](#)> accessed 15 November 2020

US Department of State, 'US call on LNA to observe cessation' (*state.gov*, 21 March 2020) <[The United States Calls on LNA To Observe Cessation of Hostilities in Libya - United States Department of State](#)> accessed 15 November 2020

US Department of State, 'Senior State Department Official on U.S. Engagement with Libya' (*state.gov*, 28 February 2020) <[Senior State Department Official on U.S. Engagement with Libya - United States Department of State](#)> accessed 15 November 2020

US Department of State, 'Bureau of International Narcotics and Law Enforcement Affairs: Libya Summary' (*state.gov*) <[Bureau of International Narcotics and Law Enforcement Affairs: Libya Summary - United States Department of State](#)> accessed 15 November 2020

US Department of State, 'U.S. Delegation Meets with General Khalifa Haftar' (*state.gov*, 25 November 2019) <[U.S. Delegation Meets with General Khalifa Haftar - United States Department of State](#)> accessed 15 November 2020

US Department of State, 'Situation in Southern Libya' (*state.gov*, 14 February 2019) <[Situation in Southern Libya - United States Department of State](#)> accessed 15 November 2020

US Department of State, 'United States and Libya Sign Cultural Property Protection Agreement' (*state.gov*, 20 February 2018) <[United States and Libya Sign Cultural Property Protection Agreement - United States Department of State](#)> accessed November 15, 2020

US Department of State, 'Press Statement on Recent Events in Tripoli' (*state.gov*, 10 February 2017) <[On Recent Events in Tripoli - United States Department of State](#)> accessed 15 November 2020

US Department of State, 'Intervention in Haiti, 1994–1995' (*history.state.gov*) <<https://history.state.gov/milestones/1993-2000/haiti>> accessed 15 November 2020

Bibliography

Books

Arechaga EJd, *Derecho Internacional Publico*, vol. II (Fundacion de Cultura Universitaria 1995)

Bassiouni MC (ed), *Libya from repression to revolution: a record of armed conflict and international law violations, 2011–2013* (Brill 2013)

Benadava S, *Derecho Internacional Publico* (LexisNexis 2001)

Crawford J, *The Creation of States in International Law* (2nd edn, Oxford University Press 2006)

Crawford J, *Brownlie's Principles of International Law* (8th edn, Oxford University Press 2012)

De Visscher C, *Les effectivites du droit international public* (Pedone, 1967)

Douma WT and others (eds), *The Evolving Nature of EU External Relations Law* (Asser Press 2021)

Dupuy PM, *Droit International Public* (Dalloz 2002)

Henckaerts JM and L Doswald-Beck, *Customary International Humanitarian Law* (Cambridge University Press 2009)

Henkin L (ed.), *Restatement (Third) of the Foreign Relations Law of the United States*, (American Law Institute Publishers 1987)

Herodotus, *Ἡροδότου Ἱστορίαι*, vol 3 (Ωκεανίδα 2000)

Jennings R and A Watts (eds), *Oppenheim's International Law*, vol. 1 (9th edn, Oxford University Press 2008)

Pictet J, *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC 1952)

Provost R, *Rebel Courts: The Administration of Justice by Armed Insurgents* (Oxford University Press 2021)

Roth BR, *Governmental Illegitimacy in International Law* (Oxford University Press 2000)

Roth B, *Sovereign Equality and Moral Disagreement* (Oxford University Press 2011)

Roucounas E, *Δημόσιο Διεθνές Δίκαιο* (Νομική Βιβλιοθήκη 2015)

Shaw MN, *International Law* (6th edn, Cambridge University Press 2008)

Talmon S, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* (Oxford University Press 1998)

Williams PR and M Sterio, *Research Handbook on Post-Conflict State Building* (Elgar 2020)

Book Chapters

d'Aspremont J, '1989-2010: The Rise and Fall of Democratic Governance in International Law' in J Crawford and S Nouwen (eds), *Select Proceedings of the European Society of International Law*, vol. 3 (Hart Publishing 2012)

de Frouville O, 'Attribution of Conduct to the State: Private Individuals' in James Crawford and others (eds), *The Law of International Responsibility* (Oxford University Press 2010)

Friedrich R and F Jannotti Pecci, 'Libya: unforeseen complexities' in PR Williams and M Sterio (eds), *Research Handbook on Post-Conflict State Building* (Elgar 2020)

Martel A, 'Le Royaume Sanusi de Libye (1951-1969)' in *États et pouvoirs en Méditerranée (XVIe-XXe siècles). Mélanges offerts à André Nouschi. Tome I* (Cahiers de la Méditerranée no 41 1990)

Talmon S, 'Who is a legitimate government in exile? Towards normative criteria for governmental legitimacy in international law' in G Goodwin-Gill and S Talmon (eds), *The Reality of International Law. Essays in Honour of Ian Brownlie* (Oxford University Press 1999)

Articles

Alexandrowicz-Alexander CH, 'The Quasi-Judicial Function in Recognition of States and Governments' (1952) 46 American Journal of International Law 631

Antonopoulos C, "'The Legitimacy to Legitimise": The Security Council Action in Libya under Resolution 1973 (2011)' (2012) 14 International Community Law Review 359

Aristodemou M, 'Choice and Evasion in Judicial Recognition of Governments: Lessons from Somalia' (1994) 5 European Journal of International Law 532

Boutin B, 'Attribution of Conduct in International Military Operations: A Causal Analysis of Effective Control' (2017) 18 Melbourne Journal of International Law 154

Briggs HW, 'Relations Officieuses and Intent to Recognize: British Recognition of Franco' (1940) 34 American Journal of International Law 47

Burger ES, 'The Recognition of Governments under International Law: The Challenge of the Belarusian Presidential Election of September 9, 2001 for the United States' (2003) 35 George Washington International Law Review 107

Charlesworth H, 'The new Australian recognition policy in comparative perspective' (1991) 18 Melbourne University Law Review 1

Cochran CL, 'De Facto and De Jure Recognition: Is there a Difference?' (1968) 62 The American Journal of International Law 457

Corten O, 'La resolution 940 du Conseil de securite autorisant une intervention militaire en Haiti: L'emergence d'un principe de legitime democratique en droit international?' (1995) 6 European Journal of International Law 116

Danic O, 'L'évolution de la pratique française en matière de reconnaissance de gouvernement' (2013) 59 Annuaire francais de droit international public 511

- d' Aspremont J, 'Legitimacy of Governments in the Age of Democracy' (2006) 38 New York University Journal of International Law and Politics 877
- d' Aspremont J, 'The Rise and Fall of Democracy Governance in International Law: A Reply to Susan Marks' (2011) 22 European Journal of International Law 549
- d' Aspremont J and E De Brabandere, 'The Complementary Faces of Legitimacy in International Law: The Legitimacy of Origin and the Legitimacy of Exercise' (2011) 34 Fordham International Law Journal 190
- de Wet E, 'The Modern Practice of Intervention by Invitation in Africa and Its Implications for the Prohibition of the Use of Force' (2016) 26 European Journal of International Law 979
- de Wet E, 'The role of democratic legitimacy in recognition of governments in Africa since the end of the Cold War' (2019) 17 International Journal of Constitutional Law 470
- Editors Law Review, 'Recognition in International Law: A Functional Reappraisal' (1967) 34 The University of Chicago Law Review 857
- Fenwick CG, 'The Recognition of New Governments Instituted by Force' (1944) 38 The American Journal of International Law 448
- Fenwick CG, 'The Problem of the Recognition of de Facto Governments' (1948) 1 Inter-american Juridical Yearbook 18
- Fenwick CG, 'The Recognition of De Facto Governments' (1968) 131 World Affairs 177
- Fox GH, 'The Right to Political Participation in International Law' (1992) 17 Yale Journal of International Law 540
- Fox GH, 'Multinational Election Monitoring: Advancing International Law on the High Wire' (1994) 18 Fordham International Law Journal 1658
- Fox G and G Nolte, 'Intolerant Democracies' (1995) 36 Harvard International Law Journal 1

Fox GH and BR Roth, 'Democracy and International Law' (2001) 27 *Review of International Studies* 327

Fox G, 'International Law and the Entitlement to Democracy After War' (2003) 9 *Global Governance* 179

Franck TM, 'The emerging right to democratic governance' (1992) 86 *American Journal of International Law* 46

Glen PJ, 'Institutionalizing Democracy in Africa: A comment on the African Charter on Democracy, Elections and Governance' (2012) 5 *African Journal of Legal Studies* 11

Issacharoff S, 'Fragile Democracies' (2007) 120 *Harvard Law Review* 1405

Johnson DEW, 'Conflict Constitution-Making in Libya and Yemen' (2017) 39 *University of Pennsylvania Journal of International Law* 293

Kelsen H, 'Recognition in International Law: Theoretical Observations' (1941) 35 *American Journal of International Law* 605

Lauterpacht H, 'Recognition of Insurgents as De Facto Government' (1939) 3 *The Modern Law Review* 1

Lauterpacht H, 'De facto Recognition, Withdrawal of Recognition and Conditional Recognition' (1945) 22 *British Yearbook of International Law* 164

Lauterpacht H, 'Recognition of Governments: I' (1945) 45 *Columbia Law Review* 815

Lauterpacht H, 'Recognition of Governments: II' (1946) 46 *Columbia Law Review* 37

Mpiana JK, 'L'Union africaine face à la gestion des changements anticonstitutionnels de gouvernement' (2012) 25 *Revue Québécoise de droit international* 101

Murphy SD, 'Democratic Legitimacy and the Recognition of States and Governments' (1999) 48 *International and Comparative Law Quarterly* 545

- Nedjati ZM, 'Acts of Unrecognized Governments' (1981) 30 *International and Comparative Law Quarterly* 388
- Okafor OC, 'Democratic Legitimacy as a Criterion for the Recognition of Governments: A Response to Professor Erika de Wet' (2015) *AJIL Unbound* 228
- Pazartzis P, 'La reconnaissance d' «une république yougoslave»: la question del' ancienne République yougoslave de Macédoine (ARYM)' (1995) 41 *Annuaire français de droit international* 281
- Peterson MJ, 'Political Use of Recognition: The Influence of the International System' (1982) 34 *World Affairs* 324
- Peterson MJ, 'Recognition of Governments Should Not Be Abolished' (1983) 77 *American Journal of International Law* 31
- Powell C, 'Libya: A Multilateral Constitutional Moment' (2012) 106 *American Journal of International Law* 298
- Reisman M, 'New Wine in Old Bottles: The Reagan and Brezhnev Doctrines in International Law and Practice' (1988) 13 *Yale Journal of International Law* 171
- Roth BR, 'Whither Democratic Legitimism: Contextualizing Recent Developments in the Recognition and Non-Recognition of Governments' (2014-2015) 108 *AJIL Unbound* 214
- Schuit A, 'Recognition of Governments in International Law and the Recent Conflict in Libya' (2012) 14 *International Community Law Review* 381
- Talmon S, 'Chypre: écueil pour la Turquie sur la voie de l'Europe' (2005) 51 *Annuaire français de droit international* 85
- Talmon S, 'De-Recognition of Colonel Qaddafi as Head of State of Libya' (2011) 60 *International and Comparative Law Quarterly* 759
- Talmon S, 'Recognition of Opposition Groups as the Legitimate Representative of a People' [2013] *Chinese Journal of International Law* 219

Terry PCR, 'The Libya intervention (2011): neither lawful, nor successful' (2015) 48 *The Comparative and International Law Journal of Southern Africa* 16

Tourme-Jouannet E, 'The International Law of Recognition' (2013) 24 *European Journal of International Law* 667

Verhoeven J, 'La reconnaissance internationale, déclin ou renouveau ?' (1993) 39 *Annuaire français de droit international* 7

Vidmar J, 'Explaining the legal effects of recognition' (2012) 61 *International and Comparatively Law Quarterly* 361

Warbrick C, 'The New British Policy on Recognition of Governments' (1981) 30 *International and Comparative Law Quarterly* 568

Warbrick C, 'Kampuchea: Representation and Recognition' (1981) 30 *International and Comparative Law Quarterly* 234

Warbrick C, 'Recognition of Governments' (1993) 56 *Modern Law Review* 92

Warbrick C, 'British Policy and the National Transitional Council of Libya' (2012) 61 *International and Comparative Law Quarterly* 247

West MB and SD Murphy, 'The Impact on U.S. Litigation on Non-Recognition of Foreign Governments' (1990) 26 *Stanford Journal of International Law* 435

Newspaper Articles

Bobin F, 'Guerre en Libye : le maréchal Haftar affaibli par l'implication croissante des Turcs' *Le Monde* (Paris, 17 April 2020) <[Guerre en Libye : le maréchal Haftar affaibli par l'implication croissante des Turcs \(lemonde.fr\)](https://www.lemonde.fr/afrique/article/2020/09/16/en-libye-guerre-en-libye-le-mar%C3%A9chal-haftar-affaibli-par-l-implication-croissante-des-turcs-lemonde.fr)> accessed 15 November 2020

Bobin F, 'En Libye, l'émergence d'une société civile protestataire rebat les cartes politiques' *Le Monde* (Paris, 16 September 2020) <[https://www.lemonde.fr/afrique/article/2020/09/16/en-libye-](https://www.lemonde.fr/afrique/article/2020/09/16/en-libye-l-emergence-d-une-societe-civile-protestataire-rebat-les-cartes-politiques-le-monde.fr)

[l-emergence-d-une-societe-civile-protestataire-rebat-les-cartes-politiques_6052438_3212.html](https://www.nytimes.com/2020/11/15/world/africa/libya-cease-fire.html)>

accessed 15 November 2020

Cumming-Brush N and D Walsh, 'Libya Cease-Fire Raises Hopes for Full Peace Deal' *The New York Times* (New York 23 October 2020) <[Libya's Two Main Factions Agree to a Cease-Fire - The New York Times \(nytimes.com\)](https://www.nytimes.com/2020/10/23/world/africa/libya-cease-fire.html)> accessed 15 November 2020

Debre I, 'Pentagon report: Turkey sent up to 3,800 fighters to Libya' *The Washington Post* (Washington, 17 June 2020) <[Pentagon report: Turkey sent up to 3,800 fighters to Libya - The Washington Post](https://www.washingtonpost.com/world/middle-east/pentagon-report-turkey-sent-up-to-3800-fighters-to-libya/2020/06/17/)> accessed 15 November 2020

Fahim K and SA Zway, 'Violence and Uncertainty Mar Libyan Election for a New Parliament' *The New York Times* (New York, 25 June 2014) <[Violence and Uncertainty Mar Libyan Election for a New Parliament - The New York Times \(nytimes.com\)](https://www.nytimes.com/2014/06/25/world/africa/libya-election.html)> accessed 15 November 2020

Haimzadeh P, 'Libya's uncertain new government' *Le Monde diplomatique* (Paris, March 2016) <<https://mondediplo.com/2016/03/05libya>> accessed 15 November 2020

Kharief A, 'Libya's proxy war' *Le Monde Diplomatique* (Paris, September 2020) <<https://mondediplo.com/2020/09/04libya>> accessed 15 November 2020

Kirkpatrick DD, Erlanger S and E Bumiller, 'Allies Open Air Assault on Qaddafi's Forces in Libya' *The New York Times* (New York, 19 March 2011) <<https://www.nytimes.com/2011/03/20/world/africa/20libya.html>> accessed 15 November 2020

Magdy S, 'Officials say east Libya government resigns amid protests' *The Washington Post* (Washington 14 September 2020) <[Officials say east Libya government resigns amid protests - The Washington Post](https://www.washingtonpost.com/middle-east/officials-say-east-libya-government-resigns-amid-protests/2020/09/14/)> accessed 15 November 2020

Saleh H, 'Egypt threatens military action in Libya if Turkish backed forces seize Sirte' *Financial Times* (London, 21 June 2020) <<https://www.ft.com/content/e6aa87b0-5e0b-477f-9b89-693f31c63919>> accessed 15 November 2020

Walsh D, 'In Stunning Reversal, Turkey Emerges as Libya Kingmaker' *The New York Times* (New York, 21 May 2020) <[In Stunning Reversal, Turkey Emerges as Libya Kingmaker - The New York Times \(nytimes.com\)](https://www.nytimes.com/2020/05/21/world/africa/libya-turkey.html)> accessed 15 November 2020

Online Encyclopaedias

Hagedorn C, 'Tinoco Arbitration Concessions' (*Max Planck Encyclopedias of International Law*, December 2006) <[Oxford Public International Law: Tinoco Concessions Arbitration \(ouplaw.com\)](#)> accessed 15 November 2020

ICRC, 'Armed groups' (How does law protect in war? - Online casebook) <[Armed groups | How does law protect in war? - Online casebook \(icrc.org\)](#)> accessed 15 November 2020

Magiera S, 'Governments' *Max Planck Encyclopedia of Public International Law* (2007) <[Oxford Public International Law: Governments \(ouplaw.com\)](#)> accessed 15 November 2020

Recueil des cours

Waldock H, 'General Course on Public International Law' (1962) Selected Courses of the Hague Academy of International Law

Research Papers

Fox GH, 'Intervention by Invitation' (2014) Wayne State University Law School Legal Studies Research Paper Series No. 2014-04

Sacerdoti G, 'Freezing sovereign wealth funds assets abroad under U.N. Security Council's Resolutions: The case of the implementation in Italy of asset freezes against Qadhafi's Libya' (ssrn, 20 May 2012) <[Freezing Sovereign Wealth Funds Assets Abroad Under U.N. Security Council's Resolutions: The Case of the Implementation in Italy of Assets Freezes Against Qadhafi's Libya by Giorgio Sacerdoti :: SSRN](#)> accessed 15 November 2020

Talmon S, 'New Zealand's Policy of Implied Recognition of States: One Step Ahead or Falling Behind?' (2010) University of Oxford Legal Research Paper No 70/2010

Talmon S, 'Recognition of the Libyan National Transitional Council' (2011) University of Oxford Legal Research Paper No 38/2011

Reports

Democracy Reporting International, *At a Glance: Libya's Transformation 2011-2018; Power, Legitimacy and the Economy* (2018)

Eaton T and others, *The Development of Libyan Armed Groups Since 2014; Community Dynamics and Economic Interests* (Chatham House 2020)

International Crisis Group, 'The Libyan Political Agreement: Time for a Reset? Middle East and North Africa Report No. 170' (2016)

International Institute for Democracy and Electoral Assistance, 'Voter Turnout Trends around the World' (2016)

Websites and Blogs

Akande D, 'Does SC Resolution 1973 Permit Coalition Military Support for the Libyan Rebels?' (*EJIL:Talk!*, 31 March 2011) <<https://www.ejiltalk.org/does-sc-resolution-1973-permit-coalition-military-support-for-the-libyan-rebels/>> accessed 15 November 2020

Akande D, 'Recognition of Libyan National Transitional Council as Government of Libya' (*EJIL:Talk!*, 23 July 2011) <<https://www.ejiltalk.org/recognition-of-libyan-national-transitional-council-as-government-of-libya/>> accessed 15 November 2020

Akande D, 'Palestine as a UN Observer State: Does this Make Palestine a State?' (*EJIL:Talk!*, 3 December 2012) <<https://www.ejiltalk.org/palestine-as-a-un-observer-state-does-this-make-palestine-a-state/>> accessed 15 November 2020

Amnesty International, 'Libya: Heavy weaponry used to disperse peaceful protesters demanding economic rights' (*Amnesty International*, 26 August 2020) <<https://www.amnesty.org/en/latest/news/2020/08/libya-heavy-weaponry-used-to-disperse-peaceful-protesters-demanding-economic-rights/>> accessed 15 November 2020

Barber R, 'Could the General Assembly Exclude Myanmar from the UN by Refusing To Recognise the Credentials of its Ruling Military Junta?' (*EJIL:Talk!*, 26 February 2021)

<<https://www.ejiltalk.org/could-the-general-assembly-exclude-myanmar-from-the-un-by-refusing-to-recognise-the-credentials-of-its-ruling-military-junta/>> accessed 1 March 2021

Barber R, ‘Will the Taliban Represent Afghanistan at the UN General Assembly?’ (*EJIL:Talk!*, 1 September 2021) <<https://www.ejiltalk.org/will-the-taliban-represent-afghanistan-at-the-un-general-assembly/>> accessed 2 September 2021

Barber R, ‘How Should Governments Decide Whether or not to Recognise other Governments, and can the General Assembly Help?’ (*EJIL:Talk!*, 6 December 2021) <<https://www.ejiltalk.org/how-should-governments-decide-whether-or-not-to-recognise-other-governments-and-can-the-general-assembly-help/>> accessed 7 December 2021

d’Aspremont J, ‘Duality of government in Cote d’Ivoire’ (*EJIL:Talk!*, 4 January 2011) <[Duality of government in Côte d’Ivoire – EJIL: Talk!](#)> accessed 15 November 2020

Dwyer D, ‘Obama Recognizes Syrian Opposition Group’ (*ABC News*, 11 December 2012) <[Obama Recognizes Syrian Opposition Group - ABC News \(go.com\)](#)> accessed 15 November 2020

Hallo de Wolf A, ‘Rattling Sabers to Save Democracy in The Gambia’ (*EJIL:Talk!*, 1 February 2017) <<https://www.ejiltalk.org/rattling-sabers-to-save-democracy-in-the-gambia/>> accessed 15 November 2020

Human Rights Watch, ‘Libya: Armed Groups Violently Quell Protests’ (*Human Rights Watch*, 10 September 2020) <[Libya: Armed Groups Violently Quell Protests | Human Rights Watch \(hrw.org\)](#)> accessed 15 November 2020

International Crisis Group, ‘Averting an Egyptian Military Intervention in Libya’ (*Crisis Group*, 27 July 2020) <[Averting an Egyptian Military Intervention in Libya | Crisis Group](#)> accessed 15 November 2020

Johnson LD, ‘What’s wrong with this picture? The UN Human Rights Council hears the military Junta as the legitimate government of Myanmar’ (*EJIL:Talk!*, 31 March 2021) <<https://www.ejiltalk.org/whats-wrong-with-this-picture-the-un-human-rights-council-hears-the-military-junta-as-the-legitimate-government-of-myanmar/>> accessed 1 April 2021

Kohen M, 'Rien dans le droit international n' empêche la reconnaissance du Gouvernement des Talibans' (*Graduate Institute*, 2 September 2021) <<https://www.graduateinstitute.ch/communications/news/rien-dans-le-droit-international-nempêche-la-reconnaissance-du-gouvernement-des>> accessed 10 September 2021

Liu J and T Chau, 'China Warms Up to Myanmar's Generals' (*Foreign Policy*, 17 November 2021) <<https://foreignpolicy.com/2021/11/17/china-myanmar-military-regime-recognition-investment/>> accessed 20 November 2021

Milanovic M, 'How to Qualify the Armed Conflict in Libya?' (*EJIL:Talk!*, 1 September 2011) <[How to Qualify the Armed Conflict in Libya? – EJIL: Talk!](#)> accessed 15 November 2020

Paddeu F and A Gurmendi Dunkelberg, 'Recognition of Governments: Legitimacy and Control Six Months after Guaidó' (*Opinio Juris*, 18 July 2019) <[Recognition of Governments: Legitimacy and Control Six Months after Guaidó - Opinio Juris](#)> accessed 15 November 2020

Paddeu F and N Pavlopoulos, 'Between Legitimacy and Control: The Taliban's Pursuit of Governmental Status' (*Just Security*, 7 September 2021) <<https://www.justsecurity.org/78051/between-legitimacy-and-control-the-talibans-pursuit-of-governmental-status/>> accessed 10 September 2021

Pavlopoulos N, 'Contested Governments and State Representation before International Courts and Tribunals' (*EJIL:Talk!*, 29 September 2021) <<https://www.ejiltalk.org/contested-governments-and-state-representation-before-international-courts-and-tribunals/>> accessed 1 October 2021

Roth B, 'The Honduran Crisis and the Turn to Constitutional Legitimism, Part I: The Place of Domestic Constitutional Orders in the International Legal Framework,' (*EJIL:Talk!*, 23 September 2009) <<https://www.ejiltalk.org/the-honduran-crisis-and-the-turn-to-constitutional-legitimism-part-i-the-place-of-domestic-constitutional-orders-in-the-international-legal-framework/>> accessed 15 November 2020

Roth B, 'The Honduran Crisis and the Turn to Constitutional Legitimism, Part II: The Pitfalls of Constitutional Legitimism' (*EJIL:Talk!*, 5 October 2009) <<https://www.ejiltalk.org/the-honduran-crisis-and-the-turn-to-constitutional-legitimism-part-ii-the-pitfalls-of-constitutional-legitimism/>> accessed 15 November 2020

Strangio S, 'EU Parliament Voices Support for Myanmar's Opposition Government' (*The Diplomat*, 11 October 2021) <<https://thediplomat.com/2021/10/eu-parliament-voices-support-for-myanmars-opposition-government/>> accessed 20 October 2021

Talmon S, 'Could the International Court of Justice Indicate a 'No-Fly Zone' over Libya?' (*EJIL:Talk!*, 25 February 2011) <<https://www.ejiltalk.org/could-the-international-court-of-justice-indicate-a-%e2%80%98no-fly-zone%e2%80%99-over-libya/>> accessed 15 November 2020

Talmon S, 'Has the United Kingdom De-Recognized Colonel Qaddafi as Head of State of Libya?' (*EJIL:Talk!*, 28 February 2011) <<https://www.ejiltalk.org/has-the-united-kingdom-de-recognized-colonel-qadhafi-as-head-of-state-of-libya/>> accessed 15 November 2020

Talmon S, 'The Difference between Rhetoric and Reality: Why an Illegitimate Government may still be a Government in the Eyes of International Law' (*EJIL:Talk!*, 3 March 2011) <[The Difference between Rhetoric and Reality: Why an Illegitimate Regime May Still be a Government in the Eyes of International Law – EJIL: Talk!](https://www.ejiltalk.org/the-difference-between-rhetoric-and-reality-why-an-illegitimate-regime-may-still-be-a-government-in-the-eyes-of-international-law-ejil-talk/)> accessed 15 November 2020

Weller M, 'Myanmar: Testing the Democratic Norm in International Law' (*EJIL:Talk!*, 30 March 2021) <<https://www.ejiltalk.org/myanmar-testing-the-democratic-norm-in-international-law/>> accessed 1 April 2021

Weller M, 'Is the ICJ at Risk of Providing Cover for the Alleged Genocide in Myanmar?' (*EJIL:Talk!*, 11 February 2022) <<https://www.ejiltalk.org/is-the-icj-at-risk-of-providing-cover-for-the-alleged-genocide-in-myanmar/>> accessed 11 February 2022