**An Introduction to the National Transitional Council of Libya**

**Abstract:** National Transitional Council of Libya (NTC) emerged on the political scene of Libya after the eruption of intra-state war in that country and played a great role in state building and transition. Under international law there is a direct connection between the nature of the de facto authorities and their rights and responsibilities. In this article we are about to discern the nature of Libyan NTC as national liberation movements, rebels or as a government.

**Keywords:** Transitional Governments, Libya, De Facto Regimes

**INTRODUCTION**

**National Transitional Council of Libya: Establishment and Dissolution**

On 16th of February 2011, peaceful demonstration broke out following the arrest of an opposition lawyer in Benghazi. On 19th of February a range of other demonstrations started in eastern Libya and specific cities of Benghazi, Zayiwa, Ajdabiya and Derna. [[1]](#footnote-1) The security forces repressed demonstrations violently and killed hundreds of them and within a week the demonstrations turned into an internal war.[[2]](#footnote-2)

The rebels quickly increased their firepower and took control of east and most of the oil reserves of Libya.[[3]](#footnote-3) Local councils emerged in the rebel stronghold of cities and towns[[4]](#footnote-4) decided to establish a broader group that “would represent anti-Gadhafi rebellion”.[[5]](#footnote-5) On 27th of February 2011, rebels combined of opposition forces, exile groups and defectors organized themselves as National Transitional Council[[6]](#footnote-6) (NTC) under the leadership of Mostafa abdeljalil \_who was a former justice minister that had defecated on 21th of February because of protesting over the use of guns against people by Gadhafi security forces.[[7]](#footnote-7)

According to the NTC`s website its official establishment was on the 5th of March.[[8]](#footnote-8) On this date the first meeting of NTC was held[[9]](#footnote-9) and it declared itself in a letter to General Assembly of UN as the “sole representative of all Libya”.[[10]](#footnote-10) On the 3th of August 2011, NTC released its roadmap transition to democracy through its “Interim Constitutional Declaration”.[[11]](#footnote-11) On 16th September of 2011, the General Assembly of the UN, at its 66th session recognized NTC as representative of Libya.[[12]](#footnote-12)

On 7th of July 2012, as a phase of transition from authoritarian to democratic rule, national elections held in Libya and self-appointed NTC handed over power to General National Congress (GNC) and dissolved.[[13]](#footnote-13)

**Results and Discussion**

**Determining NTC’s Legal Status**

After providing a brief history of Libyan NTC, it is time to discern what type of TG was it. The scholars and official documents used variant literature about the “nature” of Libyan NTC. Sometimes NTC is introduced as “Rebels”[[14]](#footnote-14), sometimes it was called “Authority”[[15]](#footnote-15) and some texts refer to it as “Interim Government”[[16]](#footnote-16) regarding the fact that NTC on its early days announced that it is not an “Interim Government”[[17]](#footnote-17) but after a while it declared itself as an interim government with full executive and legislative powers.[[18]](#footnote-18)

Before we discerning what type of TG was NTC one has to ask what the nature of NTC was? Was it a group of rebels or a *de facto* government? Is it necessary for “Transitional Governments” to be “governments”? i.e. Is it possible for other authorities and entities such as rebel groups to lead the transition in a country?

**NTC of Libya as a National Liberation Movement (NLM)?**

On the question of the nature of NTC as a recognized National Liberation Movement (NLM) we need to refer to the definition and constitutive elements of NLMs and then compare it with NTC.

International Law Dictionary defines NLMs as organizations ruled by armed forces struggling “for independence of peoples under colonial, alien or racist domination, as reaffirmed by the numerous General Assembly (GA) resolutions pertaining to the right of self-determination of peoples. Sometimes NLMs are classified as insurgents or belligerents.” [[19]](#footnote-19)

Libyan NTC was consisted of a group of lawyers and representatives of various factions from different parts of Libya.[[20]](#footnote-20) In spite of that fact that Libyan NTC formed an army[[21]](#footnote-21) but it never claimed to be a military council. In the early stages of its formation NTC declared itself as the “sole legitimate representative of the Libyan people”[[22]](#footnote-22) and acted as a legislative body and formed an interim government.[[23]](#footnote-23)

NTC fought against the seated government under Gadhafi that was *de jure* government of Libya more than 40 years and entitled itself as Libyan Arab Jumhuriah. Thus, NTC was not fighting against any alien occupation or racist domination. The struggle of NTC was not for implementation of the right of self-determination[[24]](#footnote-24) but for the right to democracy.[[25]](#footnote-25)

Regarding the facts that Libyan NTC lacked fundamental elements of NLMs but the literature used by recognizing States was dubious. France recognized NTC as “the legitimate representative of the Libyan people”.[[26]](#footnote-26) Talmon says the expression of “the legitimate representative of the respective people of… ” is the same as used for NLM of Palestine and reminiscent of the recognition of NLMs in 70s.[[27]](#footnote-27)

**NTC of Libya as Rebels?**

ILC categorizes the parties of a war as State and non-State actors.[[28]](#footnote-28) A non-State actor is an armed group who takes up arms to control territory and overthrow the established government of a country. They are called in different expressions such as terrorists[[29]](#footnote-29), guerillas, rebels, insurgents and belligerents. According to the fact that there is no unit literature used by different authors, under international law the title of a non-State actor has distinct legal consequences.[[30]](#footnote-30)

If one wants to become familiar with the terminology of armed groups acting within a country, it is inevitable to introduce the process of formation of them. The basis of a public revolution begins from “demonstrations”. When demonstrations turn into violence it is called “popular commotion”. If the demonstrations go on and turns into formal disobedience, it is called “sedition”. If sedition and violations spread from city to city and from province to province in a manner that endangers the sovereignty of government it is called “insurrection”. The next phase is the formation of factions. The nation will be divided into two opposite armed groups (pro-government and dissidents) and at last the republic turns into a civil war.[[31]](#footnote-31)

International law and relations use the common expression of “rebel groups”[[32]](#footnote-32) for all sorts of opposition armed groups which fight against the established government of a country. [[33]](#footnote-33) The rebels are not organized sufficiently and don’t have the capacity to engage in regular and considerable operations. Rebels are called “insurgents” when there is unorganized civil disorder in the country but it is not still a full scale war.[[34]](#footnote-34) Rebels have no status and protection under international law. Internationally recognized rebels are called “belligerents” [[35]](#footnote-35) and this recognition attaches them limited international capacity.[[36]](#footnote-36) The status of insurgents in content and scope is more limited than belligerents.[[37]](#footnote-37)

In order to determine whether Libyan NTC was belligerents, we shall examine the constitutive elements of belligerents and then make a comparison with the Libyan NTC. An additional protocol to the Geneva Conventions 1997 defines belligerents as “… organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”.[[38]](#footnote-38)

It is evident that from the above mentioned definition three necessary elements of belligerency are:

**Existence of a Responsible Command[[39]](#footnote-39)**

It is logic for any organized group to be under the rule of an authority. Even terrorists and hoodlums have commanders. Obviously, without the existence of a central authority it is impossible for an armed group to occupy and control parts of the national territory. So what is the difference between terrorists and belligerents? It is true that every group has a leader but the belligerent gain international personality and are bound by International Humanitarian Law (IHL). Responsibility comes to personality. There must be an authority to conduct hostilities in accordance with the rules of war and be responsible for the violations of IHL. The responsibility for violations of IHL such as war crimes rests upon individuals.

There is no doubt that Libyan rebels acted under NTC[[40]](#footnote-40) and NTC was recognized as the responsible authority and representative of the Libyan people. Moreover, the Libyan rebels, themselves, recognized NTC as their leader.[[41]](#footnote-41)

Evidence that Libyan NTC was the responsible authority of Libyan rebels is reflected in the declarations made by States. For example on 6th of April, Ahmet Davutoglu, Turkish foreign minister described Turkey`s strategy “to encourage the TNC and the Gaddafi regime to agree to a cease-fire”.[[42]](#footnote-42) Germany recognized Libyan rebels and announced that was just an expression of approval of the NTC`s actions.[[43]](#footnote-43)

**Exercise Control over part of Territory**

The territorial control must be effective that rebel group shall be able to implement military operation.[[44]](#footnote-44) The importance of “effective control” is that the recognized rebel group must prove its ability of implementation of international law rules on a specific territory. International community considers “control” as a fundamental clause in recognition of rebel groups. In lack of effective control there is no guarantee that the rules of IHL and human rights are implemented correctly and nobody will be responsible for those violations. We shall bear in mind that responsibility comes with power. Effective control is a sign of the existence of a unique *de facto* power in a particular territory.

In the 66th session of General Assembly Bolivia`s delegate confessed the fact that NTC was controlling parts of Libya.[[45]](#footnote-45) The Council of European Union at its meeting on 20th of June 2011 expressly referred to the effective control of NTC on vast parts of Libya.[[46]](#footnote-46) Effective control of NTC on early days of eruption of war on eastern and Libyan oil reserves was reported by the media.[[47]](#footnote-47)

**Ability to Shoulder International Obligations**

This element is interconnected with effective territorial control. As mentioned earlier, responsibility comes with power. A rebel group is responsible under IHL when it controls the territory and rules the militia groups and people. A rebel group without educated and knowledgeable elites who know the language of international community i.e. international law has no chance of recognition.

In this regards, NTC during the violence in Libya declared a statement in which emphasized the importance of principles of democratic rule, independence and sovereignty of other nations, international peace and security. It also declared its respect for IHL and IHRL declarations and denounced racism, discrimination and terrorism.[[48]](#footnote-48)

This declaration signaled that Libyan NTC members were aware of the responsibilities and obligations[[49]](#footnote-49) of recognized belligerents and announced that NTC was bound by IHL rules specifically the Geneva Conventions provisions “relative to the treatment of prisoners of war”.[[50]](#footnote-50)

We can also examine the nature of NTC by studying the advantages of its recognition. Generally, a recognized rebel group gets some privileges as follows:[[51]](#footnote-51) firstly, The struggle of the group against the seated government becomes legitimate and the rebel group will be accepted by the international community.

The African Union (AU) at its meeting at 26th August 2011 recognized Libyan NTC as a rebel group and rendered its recognition as a government to creation “of an all-inclusive transitional government”.[[52]](#footnote-52) The NTC was also recognized by the European Union (EU) subsequently as an authority which represented the “aspirations of the Libyan people”. The EU`s support for Libyan NTC was announced in a declaration.[[53]](#footnote-53) NTC on its early days was recognized as “the legitimate representative of the Libyan people” by a dozen of States such as France[[54]](#footnote-54), Italy, Britain, Turkey, Jordan, and Qatar. [[55]](#footnote-55)

Secondly, the group will be allowed to speak for the people in international organizations and opens “representative offices” in other States. Recognition of a rebel group confers them limited international personality but it does not give right to maintain diplomatic relations with foreign States.[[56]](#footnote-56)

In the case of the Libyan NTC the recognizing States sent “special representative”, “diplomatic envoys” or “special ambassadors” to Benghazi. These representatives had diplomatic functions but didn`t have formal diplomatic status.[[57]](#footnote-57) For example, foreign minister of France on the 29th of March 2011 told reporters that “the French diplomat sent to the NTC was not an ambassador” because they hadn`t recognized NTC formally yet.[[58]](#footnote-58) US, Britain and Germany[[59]](#footnote-59) also sent envoys to Benghazi but did not offer recognition. The EU also opened diplomatic office in Benghazi but refrained offering formal recognition to the NTC.[[60]](#footnote-60)

Thirdly, NTC received financial aid from different sources such as the Libyan Contact Group (consisted of Italy and France)[[61]](#footnote-61), EU[[62]](#footnote-62) , the Security Council of UN[[63]](#footnote-63), US and UK[[64]](#footnote-64).

Finally, NTC also gained legal capacity to conclude agreements with the representatives of other States.[[65]](#footnote-65)

This factor is a controversial issue. Nasu says recognized belligerents have the capacity to conclude agreements with foreign States but it does not confer them international personality.[[66]](#footnote-66) On the other hand Wolfrum and Philipp believe that recognized rebels gain limited international personality but they don`t have the capacity to conclude contracts with other nations.[[67]](#footnote-67)

If we accept the viewpoint of Nasu there raises a question; if recognized belligerent doesn’t have any personality under international law, how they have the capacity to conclude agreements with other States? In every legal system a minimum legal capacity is required for a person to enter contracts.

Libyan NTC signed agreements and memorandum understanding with Italy[[68]](#footnote-68), it established a new contract for exporting oil[[69]](#footnote-69) and emphasized the continuity of contracts.[[70]](#footnote-70)

Generally, from the analysis we can conclude that Libyan NTC emerged as a rebel group on the political face of Libya and then was recognized as belligerents at the early stages of transition. Libyan NTC was an entity that entitled all the circumstances of recognized rebel groups under the classic international law. In order to avoid misunderstandings on the nature of NTC we wish to emphasize that the formation and recognition of Libyan NTC could be divided into two periods: i. Early stages; that NTC was recognized as belligerents and (ii) later stage; increase of its capacity and turning into a “government”.

**NTC of Libya as a Government**

Successful rebels which during hostilities became more organized, may represent the de facto government of the state.

*De facto regimes* (DFRs) are entities which exercise at least some effective authority over a territory within a State.[[71]](#footnote-71) Kelsen adds the subjective element of “the goal of being recognized by international community” as the official government of the State.[[72]](#footnote-72) Essen highlights that a DFR is an entity which is not recognized as “the official government of the State” by the international community yet.[[73]](#footnote-73) Curtis refers the objective element of DFRs and that is non-electoral basis of them. In his definition *de facto governments are unauthorized forces which are constituted without the expressed consent of the governed people.*[[74]](#footnote-74)

One can conclude that DFRs are unauthorized organized forces which control some or all parts of the territory of a State with the goal of being recognized as the official government of that State, yet not recognized by the international community.

**First element DFRs: Organized Armed Forces**

A rebel group in order to be recognized as the *de facto* government of a State shall be organized[[75]](#footnote-75) because every armed group such as clans, sub-clans, factions and other unlawful combatants are not organized forces under IHL. Even if unlawful combatants occupy and control some parts of the land, they don’t have a chance to be recognized as de facto government of the State unless they are organized.[[76]](#footnote-76)

It is evident that any social group, official or non-official\_ has some kind of organization and division of responsibilities among members. So exactly what is the meaning of “organized armed group” under IHL? Article 43 of the Protocol Additional I to the Geneva Conventions of 12 August 1949, refers to “organized armed group” as to be “under responsible command”.[[77]](#footnote-77) According to ICRC “the existence of a responsible command implies some degree of organization”[[78]](#footnote-78) … it means that the organization is capable of carrying out concerted military operations and “imposing discipline in the name of a de facto authority”.[[79]](#footnote-79) There is a point that this criterion cannot separate insurgents from terrorists because terrorist groups are sometimes highly organized.

Article 4 of the Third Geneva Convention adds three criteria to the elements which distinguish organized groups of terrorists and other unlawful combatant. According to Article 4 an organized group shall:

i. Be under the command of a person responsible for his subordinates

ii. Carry arms openly

iii. Have a fixed distinctive sign recognizable at a distance

iv. To conduct their operations in accordance with the laws and customs of war.

In the case of Libya the rebel forces become organized in early stages of the conflict[[80]](#footnote-80). The former army officers who joined the revolution by 27th of February 2011 [[81]](#footnote-81) played a great role in organizing the insurgents.[[82]](#footnote-82) Actually Libyan NTC itself is the symbol of organized armed forces and its formation provided a strong proof of the existence of ranking and discipline among Libyan insurgents.

**Second element: Effective Control**

An organized military group in order to be recognized as the *de facto* government shall control the territory effectively. An exercise of “effective control” is the primary criterion for a de facto government.[[83]](#footnote-83) It is a fact that “recognition” is a political act and the recognizing authority itself assesses “effective control” but it does not mean there is no criterion for distinguishing it.

Effective control requires permanent military or physical presence of insurgents in the territory. Wolfrum and Philipp reiterate that the physical presence shall not be “of a temporary nature”.[[84]](#footnote-84) In other words insurgents cannot claim their effective control over the areas which war is still going on.

The level of control is different from case to case. In international law , the Strasbourg Court has defined “effective control” as “ultimate authority and control”.[[85]](#footnote-85) The highest degree of control is the one which is conjugated with popular support. Malcom Shaw says the mere control over the territory is not enough for effective control and the rebels shall administer the people and properties within the land.[[86]](#footnote-86) Taft says effective control is not just having a permanent military presence in the territory but “popular support” is also a fundamental element.[[87]](#footnote-87) Here arises a question; concerning the fact that *de facto* governments have no electoral mandate, how can one discern the existence of popular support?

In an intra-State war, two main armed groups are fighting each other[[88]](#footnote-88). It is evident that the abuse of civilians by one side will increase the legitimacy of the other side[[89]](#footnote-89) because people have a natural tendency to avoid pain and suffering.

In our opinion, the “popular support” is not an integral part of effective control. Of course the popular support of a rebel group increases the level of control but it is not a must. The sole permanent indisputable presence of insurgents in territory provides the bedrock of a de facto authority and it brings the rebels limited international personality and therefore international responsibility under IHL and IHRL.

If we regard the element of “popular support” as a fundamental ingredient of “effective control” we have inadvertently excluded the majority of rebels from responsibility and allowed them to do whatever they want to do with the people under their control. As a principle of law, penal code shall be interpreted strictly based on the rule of “legality of crimes and punishments”. The strict interpretation of penal code shall not cause a gap in law in such a way that criminals find an opportunity to exclude themselves from legal jurisdiction.

Military occupation of land accompanies control and power. With power comes responsibility. More power means more responsibilities. Occupation of land increases the power of rebel groups so their responsibility will also increase in parallel disregarding the existence of popular support. According to additional protocol of the Geneva Conventions 1977, IHL rule is applicable to intra-State wars but about the applicability of International Human Rights Law (IHRL) there are disputes. Occupation of land plus “exercising governmental functions”[[90]](#footnote-90), turns the armed group into “Governor”. The relationship between government and people is covered by human rights.

Back to the Libyan NTC, it never tried to exclude itself from responsibility and interestingly issued a statement and reiterated its obligations under IHL and IHRL rules[[91]](#footnote-91). Libyan NTC by declaring such a statement paved the way towards acquiring recognition as a *de facto* government (at the first resort) and then de jure government of Libya.

Anyhow, in the case of Libyan NTC, insurgents got limited control to the eastern parts of Libya at the early stages of the conflict.[[92]](#footnote-92) Thus, NTC had the primary condition of being recognized as a local *de facto* government and it extended its control over all parts of the territory of Libya within eight months.[[93]](#footnote-93) NTC was formed by opposition forces which organized themselves after public demonstrations in February of 2011. Moreover, the Gadhafi forces abused the people of Libya so brutally that the League of Arab asked Security Council to create no fly zone areas in Libya.[[94]](#footnote-94) In conclusion, the NTC was highly supported by Libyan people and had a high level of “effective control” in Libya.

Besides the above mentioned constitutive elements of *de facto* governments there are some emblems of the formation and existence of *de facto* governments. In Dix case, US-Venezuela Commission[[95]](#footnote-95) highlighted that the success of a revolution provides certain proof of the formation of a *de facto* government and international responsibility is attributable to it. Another factor for distinguishing *de facto* governments is exercising functions of governments such as legislating and maintaining courts and judicial system[[96]](#footnote-96).

Further, the Libyan NTC exercised executive authority before the formation of its interim government[[97]](#footnote-97) and reformed justice and security sector.

According to the provided facts there is no doubt that NTC entitled all constitutive and emblems of *de facto* governments as it was recognized by more than 40 countries as *de facto* government of Libya.[[98]](#footnote-98) International organizations such as NATO, European Union, and the Organization of the Islamic Cooperation, the League of Arab States, and Gulf Cooperation Council[[99]](#footnote-99) also recognized NTC as the sole representative of the Libyan people which is a proof of external support for NTC and recognition as *de facto* government.

*De jure* recognition usually succeeds *de facto* recognition.[[100]](#footnote-100) The capacity of recognition of NTC increased by the League of Arab states members when on 27th of August 2011 NTC delegates filled the seats of Libya at the organization.[[101]](#footnote-101) At 20th of September 2011[[102]](#footnote-102), the General Assembly of the United Nations officially recognized NTC as the representative of Libya and voted to accept the credentials of delegates[[103]](#footnote-103) and since then NTC was recognized as a *de jure* government of Libya.[[104]](#footnote-104)

**Conclusion**

From the above analysis we can now conclude that NTC started as an organized rebel group, increased its control on parts of Libya got capacity from belligerents and *de facto* government[[105]](#footnote-105) to *de jure* government of Libya. On 7th of July 2012 elections held in Libya and the NTC handed over power to Libyan General National Congress (GNC).[[106]](#footnote-106) Analogically, NTC is like a living creature; it born, lived and died.

The transition in Libya started from the early days of the revolution. NTC in transition acted as a *de facto* legislative authority and its interim government that was formed on 23th of November[[107]](#footnote-107) exercised executive authority. NTC drew a clear timetable for the rest of transition in Libya in its declaration of liberation.[[108]](#footnote-108) In the declaration the point of transition was towards a “democratic Libya”[[109]](#footnote-109)and the establishment of an interim government was the first step. Within 90 days of declaration an electoral commission was set up and the elections were held within 240 days, and a national congress established which gave democratic legitimacy to the government. The government drafted the new constitution and put it to popular referendum.[[110]](#footnote-110) NTC followed the transition roadmap at different levels. It formed the police forces, trained and rebuilt army[[111]](#footnote-111) to consolidate security and bring stability to the country, tried to recover Libyan assets frozen abroad, deal with transitional justice issues and revived oil production.[[112]](#footnote-112)

Thus, NTC started its role as the leader of rebel groups, increased its capacity and turned into a “government”. The NTC leaders declined a clear plan for the future of Libya. They intended to create fundamental changes in the political and social system of Libya. NTC was formed around two weeks of popular eruption as one can suspect its formation even before the eruption of demonstrations. Movement of a rebel group to a de facto and the de jure government is a long journey with its perils. Not every rebel group has the chance to be recognized as the only representative of the people. Taliban controlled most parts of the territory of Afghanistan but certain mistakes such as hijacking Indian Airlines airplane[[113]](#footnote-113), playing a great role on 11th of September attacks and refusing to extradite Bin Laden to US changed its position from a rebel group to terrorists . On the other hand, NTC in its statement declared its respect for IHL and IHRL. There is no doubt that NTC formed a government which its interim government exercised executive power and itself acted as a legislative authority. [[114]](#footnote-114) NTC was successful in both phases of transition i.e. peacemaking and peacekeeping.

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9. . Atlantic Council, *Note 6*. [↑](#footnote-ref-9)
10. . Emily O Brien and Andrew Sinclair, *Note6*, p5. [↑](#footnote-ref-10)
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12. . General Assembly of the United Nations, sixty-sixth session, A/66/PV.2 Zoe Howe, *Note 3*, P423. [↑](#footnote-ref-12)
13. . Security Council, Resolution 1546 (2004), 8 June 2004., Kenneth Katzman and Jennifer Elsea, “Iraq: Transition to Sovereignty ,” *CRS Report for Congress*, *The Library of Congress,* July 21, 2004 ,P10 and Security Council, Report of the Secretary-General on the United Nations Support Mission in Libya, 30 August 2012. [↑](#footnote-ref-13)
14. . Talmon argues that its recognition somehow seemed same as the recognition of National Liberation Movements (NLM), Stefan Talmon, “Recognition of the Libyan National Transitional Council,” *American Society of International Law (ASIL)*, Volume 15, Issue 16, June 16, 2011, ISSN*:* 0272-5037,P2. [↑](#footnote-ref-14)
15. . Alice Alunni and Karim Mezran, “Post-Gadhafi Libya: the electoral dilemma,” *Instituto per gli Studi di Politica Internazionale (ISPI),* No. 114 – JUNE 2012, P1. Amnesty International, *Note 6*, P18. Council of the European Union, Council conclusions on Libya, 3117th Foreign Affairs Council meeting .Luxembourg, 10 October 2011. [↑](#footnote-ref-15)
16. . Human Rights Watch, *Note 2,* P23. [↑](#footnote-ref-16)
17. . North Africa, Civil - Military Fusion Center, November 13, 2012, P5 ,[https://www.cimicweb.org]. [↑](#footnote-ref-17)
18. . Atlantic Council, *Note 6,* P2. [↑](#footnote-ref-18)
19. . Veronique Dudouet, “From War to Politics: Resistance/Liberation Movements in Transition,” Bergof Report, 2009, No 17, P36 and Steven Mets, et al, “Insurgency and Counterinsurgency in the 21th Century: Reconceptualising Threat and Response”, *Strategic Studies Institute*, 2004, P3. [↑](#footnote-ref-19)
20. . Maria Cristina Paciello, *Note 8,* P3. [↑](#footnote-ref-20)
21. . Red Cross, “Understanding armed groups and the applicable law,” *International Review of the Red Cross*, Volume 93 Number 882, June 2011, P497. [↑](#footnote-ref-21)
22. . Amnesty International, *Note 6*, P17. [↑](#footnote-ref-22)
23. ## . **Wolfram Lacher, “Libya’s Transition: Towards Collapse,” *German Institute for International and Security Affairs*, 2014, P2.**

    [↑](#footnote-ref-23)
24. . The right of self-determination is mentioned articles 1 and 55 of the Charter of the United Nations and resolutions of General Assembly such as Resolution 1514. Right of Self-determination is also mentioned in Article 1 of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly in 1966. Edre U. Olalia , *Note 33*, P8. [↑](#footnote-ref-24)
25. .Here again raises the question of if there is a right to democracy or not. Olalia refers to the” Right to Revolution” and defines it as “a right to change or overthrow a particular government”. Historically, this right comes from the perception of Abraham Lincoln who believed that authority shall come from the people of the United States and people have a right to overthrow a non-responsive government. Sometimes “Right to Revolution” is called “Right of National Self-determination”. *Note 33*, P4. Anyway, because right to revolution is not precisely referred to in any international document, one cannot claim the existence of this suspicious sub-division of right to self-determination and that NTC was fighting for this certain interpretation of “right to self-determination”. In classic international law “right of self-determination” is always tied with decolonization and getting rid of alien governments (in cases of internal right of self-determination). [↑](#footnote-ref-25)
26. . Statements Made by the Ministry of Foreign and European Spokesperson, Mar. 10, 2011,

    [<http://www.ambafrance-us.org/spip.php?article989#5>]. Also Gambia, Turkey, Senegal, Qatar, Japan, Spain and Germany recognized NTC with same literature.( Stefan Talmon, *Note 14* ,P2. [↑](#footnote-ref-26)
27. . *Note 26.* [↑](#footnote-ref-27)
28. . Jean d Aspremont , “Rebellion and State Responsibility: Wrongdoing by Democratically Elected Insurgents,” *International and Comparative Law Quarterly*, ISSN 0020-5893 , ,2009, P18. [↑](#footnote-ref-28)
29. .Usually governments accuse their opposition armed forces as terrorists because illegitimacy is the common character of terrorism and insurgency, Note 28, P13. [↑](#footnote-ref-29)
30. . Hitoshi Nasu, “Status of Rebels in Non-International Armed Conflict,” *The Australian National University*, Louise Dowsald-Beck and Azizur Rahman Chowdhury, International Humanitarian Law – An Anthology, LexisNexis Butterworths, India, 2009, P3,[Online]Available from: <http://ssrn.com/abstract=1663477/> (retrieved: 2013). [↑](#footnote-ref-30)
31. . Andrew Clapham, “The Rights and Responsibilities of Armed Non-State Actors: The Legal Landscape & Issues Surrounding Engagement,” *Geneva Academy of International Humanitarian Law and Human Rights*, February 2010, PP16\_18. [Online] Available from: http://ssrn.com/abstract=1569636/ (retrieved: 2013). This was exactly what happened in Libya; hundreds of armed groups organized in towns, cities and religious institutions and civil war of Libya in 2012 took place. Refer to Human Rights Watch, *Note 2,* .P18 And Statement of the chairperson of the African Union Commission, Dr. Jean Ping, at the meeting of the international contact group on Libya,   Rome, Italy, 5 MAY 2011. [↑](#footnote-ref-31)
32. . for example refer to Malkom N. Shaw, “*International law*," Cambridge: Cambridge University Press, Sixth Edition,2008, P1317. [↑](#footnote-ref-32)
33. . Edre U. Olalia, “The Status of International Law of National Liberation Movements and Their Use of Armed Force”, *International Association of People`s Lawyers*, 2002, P2. [ Online] Available from: <http://www.iadllaw.org/> (retrieved: April 2016). [↑](#footnote-ref-33)
34. .*Note 33.* [↑](#footnote-ref-34)
35. . Hitoshi Nasu, *Note 30*, P4. [↑](#footnote-ref-35)
36. . *Note 36.* [↑](#footnote-ref-36)
37. . Edre U. Olalia, *Note 33***,** P20. [↑](#footnote-ref-37)
38. . 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relative to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609 (hereinafter Additional Protocol II). [↑](#footnote-ref-38)
39. . For more info please refer to Hitoshi Nasu, Note 30. Malcom Shaw instead of “responsible command” prefers to use “responsible authority” refer to Malkom N. Shaw, *Note 32*, and P1317. [↑](#footnote-ref-39)
40. . For example African Union during its meeting on 26 August 2011 made the recognition of NTC as “Government” conditional to creation of a TG but affirmed that NTC toppled Gadhafi. Anyway Sithole, *Note 2*, P123. [↑](#footnote-ref-40)
41. . Emily O’Brien and Andrew Sinclair, *Note 6*, p5. [↑](#footnote-ref-41)
42. . Juan Garrigues, “Libya, From Positive Precedent to Collective Frustration,” *CIDOB*, ISSN 2013-4428, 2011, P4. [↑](#footnote-ref-42)
43. . Jonte van Essen, *Note 6*, P42. , for more information on recognition of NTC as responsible authority please refer to Zoe Howe, Note 3, PP422\_423. [↑](#footnote-ref-43)
44. . Hitoshi Nasu, Note 30, P3. [↑](#footnote-ref-44)
45. . General Assembly, GA/11137, Sixty-sixth General Assembly Plenary 2nd Meeting. [↑](#footnote-ref-45)
46. . Council conclusions on Libya, *Note 15*, P2. [↑](#footnote-ref-46)
47. . David D. Kirkpatrick & Mona El-Naggar, *Qaddafi’s Grip Falters as His Forces Take On*

    *Protestors*, N.Y. TIMESFeb. 21, 2011, [Online] Available from: [Http://www.nytimes.com/2011/02/22/world/Africa/ (retrieved](Http://www.nytimes.com/2011/02/22/world/Africa/%20(retrived): 2013). [↑](#footnote-ref-47)
48. . *“Understanding armed groups and the applicable law, International Review of the Red Cross,”* Volume 93 June 2011, P468. On the legal effect of unilateral acts of states and government please refer to Hosein Miri, “The Authentication of Countries’ Unilateral Acts as a Source in International Law,” *Journal of Basic and Applied Scientific Research*, 2012, P7. [↑](#footnote-ref-48)
49. . The difference between obligation and responsibility is that obligations mandate the subjects of a legal system according to the related norms but when obligations are violated responsibility arises. In other words, there is no responsibility where there is no breach of law. But authors use these two expressions alternatively. [↑](#footnote-ref-49)
50. . *Note 49.* [↑](#footnote-ref-50)
51. . Stefan Talmon, Note 14, P2. [↑](#footnote-ref-51)
52. . Anyway Sithole, *Note 2*, P123. [↑](#footnote-ref-52)
53. . Council conclusions on Libya, *Note 15*, P2. The statement of “recognition as the legitimate representative of people” or “representative of aspirations of people” is an evidence that the authority is recognizing the armed group as rebels but not a “Government”. [↑](#footnote-ref-53)
54. . Patrick Dumberry, “New State Responsibility for Internationally Wrongful Acts by an Insurrectional Movement,” *The European Journal of International Law (EJIL*), Vol. 17, No.3, 2006, P310. [↑](#footnote-ref-54)
55. . Zoe Howe, *Note 3*, PP421-423. [↑](#footnote-ref-55)
56. . Rudiger Wolfrum and Christiane E. Philipp, *The Status of the Taliban: Their Obligations and Rights Under International Law*, Max Plank Yearbook of United Nations Law, Volume 6, 2002*,* ISSN*:* 1389-4633, P580. [↑](#footnote-ref-56)
57. . Stefan Talmon, *Note 14*, PP4-5. [↑](#footnote-ref-57)
58. . Note 58. [↑](#footnote-ref-58)
59. . Jonte van Essen, *Note 6*, P42. [↑](#footnote-ref-59)
60. . Emily O’Brien and Andrew Sinclair, *Note 6*, p18. [↑](#footnote-ref-60)
61. . Emily O’Brien and Andrew Sinclair, *Note 6*, P17. [↑](#footnote-ref-61)
62. . EU support to the Libyan ,National General Congress: induction program to the benefit of the 200 newly elected members started in Tripoli on 7 ,November 2012, European Union, A 498/12, [Online] Available from: <http://www.eeas.europa.eu/> (retrieved: 2013). [↑](#footnote-ref-62)
63. . Report of the Secretary-General on the United Nations Support Mission in Libya, Security Council, S/2012/129, 1 March 2012. [↑](#footnote-ref-63)
64. . Herbert Smith, *Libya Update*, Japan dispute avoidance newsletter, number 110, November 2011. [↑](#footnote-ref-64)
65. . Hitoshi Nasu, Norte 30, P19. [↑](#footnote-ref-65)
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67. . Rudiger Wolfrum and Christiane E. Philipp, *Note 56*, P580. [↑](#footnote-ref-67)
68. . Arturo Varvelli, “Italy and new Libya between continuity and change,” *ISPI*, No. 219 - June 2012, P4. [↑](#footnote-ref-68)
69. . Julian Lindley-French, “Libya the Transition Clock,” *PRISM* 3, no. 2, P6. [↑](#footnote-ref-69)
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74. . Mr. Vincent J. Curtis, “The Three Block War: Its Causes and the Shape of the Peace,” *The Canadian Army Journal*, Vol. 10.2, summer 2007 P54. [↑](#footnote-ref-74)
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76. . Lindsey Cameron, et al., *Privatizing War: Private Military and Security Companies under Public International Law*, Cambridge: Cambridge University Press, 2013, 314 and Sandesh Sivakumaran, *The Law of Non-International Armed Conflict*, OUP Oxford, 2012, P182. [↑](#footnote-ref-76)
77. .The text of the protocol is reachable at [http://treaties.un.org/doc]. [↑](#footnote-ref-77)
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81. . *Libya: A European War?* , European Union Center of Excellence, July 2011, P1. [Online] Available from: <http://www.unc.edu/> (retrieved: 2013). [↑](#footnote-ref-81)
82. . The ICRC commentary to the article 4 explains that the organization in an armed group may not necessarily be the same as hierarchical as regular armed forces. Refer to Sandesh Sivakumaran, *Note 76*, P174. [↑](#footnote-ref-82)
83. . M Peterson, *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995*, England: Palgrave Macmillan, 1997, P36. [↑](#footnote-ref-83)
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89. . This is exactly what happened in Chechnya. The Russian troops oppressed local people and turned the population against their presence and resulted to increase of the legitimacy of the Chechen fighters. Please refer to: Yury Scherbich, “What Law Applies to the Conflict in Chechnya: THE Legal Gap of Contemporary International Humanitarian Law of Non-International Armed Conflicts,” *Free Law Journal*, Special Issue,- Volume 1, Number 1 , August 2005 , P63. [↑](#footnote-ref-89)
90. . Such as handling security of civilians and managing police force, public financial management, health and education. Media reform and …. Responding to the Challenge of Stabilization in post-conflict Libya. [↑](#footnote-ref-90)
91. . Red Cross, “Understanding armed groups and the applicable law,” *International Review of the Red Cross*, Volume 93, Number 882, June 2011, P214. [↑](#footnote-ref-91)
92. . On 25 August 2011 Media reported that forces supporting the National Transitional Council (NTC) have taken control of most of the country. [Online] Available from: [http://www.un.org/apps/news/story.asp?NewsID=39383&Cr=libya&Cr1][date](http://www.un.org/apps/news/story.asp?NewsID=39383&Cr=libya&Cr1%5d%5bdate) of access 4 Nov 2012/ (retrieved: 2013). [↑](#footnote-ref-92)
93. . Stefan Talmon, *Note 14*, P7, and Council of the European Union, *Note 15*. [↑](#footnote-ref-93)
94. . Kieran Morris, “The Arab Spring: The Rise of Human Security and the fall of Dictatorship,” Internet *Journal of Criminology*, ISSN 2045-6743 (Online), P19. [Online] Available from: <http://www.internetjournalofcriminology.com/Morris_The_Arab_Spring_IJC_July_2012.pdf/> (retrieved: 2013). [↑](#footnote-ref-94)
95. . Mr. Dix was an American national who involved business in Venezuela at the time of Venezuelan revolution in 1903. The revolutionaries stole Mr.Dix`s cattle and the tribunal decided compensation for his stolen cattle. Dix case, US–Venezuela Commission, Award of 1903, at9 UNRIAA 119, at 120, Patrick Dumberry, *Note 54*, P609. [↑](#footnote-ref-95)
96. . James Crawford, *The International Law Commissions Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge: Cambridge University Press, 2002, P115. [↑](#footnote-ref-96)
97. . Country Reports on Human Rights Practices for 2011, United States Department of State.[Online] Available From: [www.state.gov/](http://www.state.gov/) (retrieved: 2013) [↑](#footnote-ref-97)
98. . Amnesty International, Note 6, P23 and Stefan Talmon, *Note 14*, P2. [↑](#footnote-ref-98)
99. . [Online] Available from: <http://www.un.org/apps/news/story.asp?NewsID=39383&Cr=libya&Cr1>][date of access 4.Nov.2012/ (retrieved: 2013). [↑](#footnote-ref-99)
100. . Malcom Shaw, Note 32, P460 [↑](#footnote-ref-100)
101. . [Online] Available from: [http://www.un.org/apps/news/infocus/sgspeeches/statments\_full.asp?statID=1277/ (](http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1277/%20()Retrieved: 2013). [↑](#footnote-ref-101)
102. . [online] Available from: <http://www.un.org/sg/statements/index.asp?nid=5529/> (retrieved: Nov.2012). [↑](#footnote-ref-102)
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104. . Council of the European Union, Note 15. [↑](#footnote-ref-104)
105. . Stefan Talmon, *Note 14*, P3. [↑](#footnote-ref-105)
106. . Report of the Secretary-General on the United Nations Support Mission in Libya to Security Council, 30 August 2012, S/2012/675. And Christopher S. Chivvis, Keith Crane, Peter Mandaville, Jeffrey Martini, *Libya’s Post-Qaddafi Transition The Nation-Building Challenge,* National Security Research Division,P10. [↑](#footnote-ref-106)
107. . Country Reports on Human Rights Practices for 2011 United States Department of State.[Online] Available from: <http://www.state.gov/> (retrived:2013). [↑](#footnote-ref-107)
108. . Kristina Kausch, “Constitutional Reform in Young Arab Democracies,” *Policy Brief*, Number 101 - October 2011, and ISSN: 1989-2667, P3. [↑](#footnote-ref-108)
109. . Council of the European Union, 3082nd Foreign Affairs, meeting Luxembourg, 12 April 2011, and Paul Salem and Amanda Kadlec, *Note 5*, P3. [↑](#footnote-ref-109)
110. . A Report of the Secretary-General on the United Nations Support Mission in Libya to Security Council, 22 November 2011, S/2011/727. [↑](#footnote-ref-110)
111. . Libya Working Group Report: MENA Programme, “Libya: Challenges after Liberation”, November 2011, P9. [↑](#footnote-ref-111)
112. . Paul Salem and Amanda Kadlec, *Note 5*,P5. [↑](#footnote-ref-112)
113. . Raja Pingua, “Role of the United Nations in India-Kazakhstan Cooperation on Afghanistan: Challenges and Opportunities,” *The International Journal of Humanities & Social Studies*, Vol.4, Issue 3, 2016, P 248. [↑](#footnote-ref-113)
114. . The resolution of Security Council reiterated the role of NTC in transition SC Resolution 2040. NTC also established judicial committees refer to Ali Abdullatif Ahmida, “The Libyan National Transitional Council: Social Bases, Membership and Political Trends”, *Al Jazeera Centre for Studies*, October 2011, Al Jazeera Centre for Studies, P5. [↑](#footnote-ref-114)