THE

NATIONAL SECURITY LAW QUARTERLY

CENTER FOR LAW AND MILITARY OPERATIONS

Apr. 2025 PB 31-25-2

Syria's Roadmap to Recovery: Government Recognition, Lifting Sanctions and Transitional Governance

By John Balouziyeh[1] and Olivia Wang[2]

Introduction

On December 8, 2024, the Russian Foreign Ministry announced that Bashar al-Assad had resigned as President of Syria and he had been offered asylum in Russia.[3] In a public statement, the Ministry added that following talks with "a range of participants of the conflict on the territory of the Syrian Arab Republic, he took the decision to resign from his presidential post and leave the country, giving instructions to proceed with the peaceful transfer of power."[4] The announcement followed the rapid collapse of the government's military forces in Syria in the wake of an offensive from Hay'at Tahrir al-Sham (HTS) and other opposition groups, including the Turkish-backed Syrian National Army (SNA), that culminated in the capture of Damascus.[5]

HTS leader Ahmed Al-Sharaa (also known as Abu Muhammad Al-Julani) stated that Syrian public institutions would temporarily be held by Syrian Prime Minister Mohammad Ghazi al-Jalali until the political transition was completed.[6] On December 10, 2024, Al-Jalali was replaced by Mohammed al-Bashir as Interim Prime Minister.[7] On January 29, 2025, during the Syrian Revolution Victory Conference in Damascus, the Syrian General Command appointed Ahmed Al-Sharaa as president for the transitional period,[8] slated to last until March 1, 2025.

The transitional government's next steps in Syria will impact a range of international legal issues in Syria, including whether states confer recognition to the transitional government as the legitimate government of Syria, whether the U.S. and E.U. ease and ultimately lift sanctions on Syria, and the extent of humanitarian aid and foreign investment in Syria. If the transitional government takes concrete steps towards applying international law in Syria, protecting fundamental rights, including minority rights, fighting terrorism and committing to democratic institutions, free elections and constitutional governance, the new government will attract recognition by third party states, inflows of foreign direct investment and the lifting of sanctions.

[1] John Balouziyeh, a Major in the USAR Judge Advocate General's Corps (JAG), serves as Chief of National Security Law for Task Force Spartan and as a Partner in the Public International Law, International Sanctions, Business and Human Rights, and National Security Law groups of Curtis, Mallet-Prevost, Colt & Mosle LLP.
[2] Olivia Wang, a May 2024 graduate of Duke Law School, Olivia Wang serves as a Law Clerk in the Litigation and Economic Sanctions departments of Curtis, Mallet-Prevost, Colt & Mosle LLP in New York.
[3] David Gritten, *Bashar al-Assad and family given asylum in Moscow, Russian media say*, BBC (Dec. 8, 2024), available at https://www.bbc.com/news/articles/cqx89reeevgo.
[4] *World reacts to Bashar al-Assad's fall, capture of Syria's Damascus*, AL JAZEERA (Dec. 8, 2024), available at https://www.aljazeera.com/news/2024/12/8/world-reacts-to-bashar-al-assads-fall-capture-of-damascus.
[5] Antoinette Radford, *The Assad regime ruled Syria for 50 years. Here's how it fell in less than two weeks*, CNN (Dec. 9 , 2024), available at https://www.cnn.com/2024/12/09/middleeast/timeline-syria-assad-regime-toppled-intl/index.html.
[6] *What happened in Syria? How did al-Assad fall?*, AL JAZEERA (Dec. 8, 2024), available at https://www.aljazeera.com/news/2024/12/8/what-happened-in-syria-has-al-assad-really-fallen.
[7] Mohammed al-Bashir, *Who is Syria's new interim prime minister?*, MIDDLE EAST EYE (Dec. 10, 2024), available at https://www.middleeasteye.net/news/mohammed-al-bashir-who-syria-new-interim-prime-minister.
[8] Timour Azhari & Tom Perry, *Syria's Sharaa declared president for transition, consolidating his power*, REUTERS (Jan. 30, 2025), available at https://www.reuters.com/world/middle-east/syrias-leader-sharaa-named-president-transitional-period-state-news-agency-says-2025-01-29/.

Government Recognition within the Context of Regime Change in Syria

Overview

Three legal doctrines are used to inform whether states confer recognition to new governments: the traditional doctrine, the Tobar doctrine and the Estrada doctrine. In determining whether a new government should be accorded recognition, two of these doctrines—the traditional and Tobar doctrines—look to a series of factors, including whether the new governments have the consent of their people, indicate a willingness to comply with treaty obligations and international law and respect democratic and constitutional governance and free elections. The third approach—the Estrada Doctrine—does not consider any of these factors. Rather, this doctrine confers automatic recognition to all governments in all circumstances, even those that ascended to power by extra-constitutional means, without regard to human rights or constitutional governance. Because the majority approach to government recognition—the traditional doctrine—looks to whether new governments have indicated a willingness to comply with treaty obligations and international law, the Syrian transitional government's next steps will shape the ability of the government to achieve recognition from and enter into relations with other governments.

Government Recognition Doctrines

Traditional Approach (Effective Control Doctrine)

Under the traditional doctrine, the most well-known and "dominant candidate for a legal rule of recognition,"[9] a state recognizes a new foreign government when the government is in de facto control of territory, has the consent of its people, and indicates a willingness to comply with international law. Some scholars equate the traditional doctrine with the effective control doctrine. Although the elements of the traditional approach may vary according to different scholars, the common thread is that effective control is a necessary, but on its own an insufficient, element to accord recognition. The traditional approach also considers factors such as whether recognition is in the best interest of the recognizing government, which render the approach flexible and pragmatic.[10]

The traditional approach requires states to determine "(1) whether the government is in de facto control of the territory and in possession of the machinery of the state; (2) whether the government has the consent of the people, without substantial resistance to its administration, that is, whether there is public acquiescence in the authority of the government; and (3) whether the new government has indicated its willingness to comply with its obligations under treaties and international law."[11] De facto control of the territory, or "effective control of the territory and the machinery of the state,"[12] is "a necessary condition for government recognition."[13]

Additionally, in deciding whether to recognize a new government, the state: must make a political judgment [on] whether recognition would be in its best interest…[and] it usually will consider 'the existence of non-existence of evidence of foreign intervention in the establishment of the new regime; the political orientation of the government and its leaders; evidence of intention to observe democratic principles, particularly the holding of elections; the

[9] Justin Cole & Oona A. Hathaway, *Recognition Rules: The Case for a New International Law of Government Recognition*, NYU L. Rev. (forthcoming 2025) (manuscript at 32).
[10] L. Thomas Galloway, Recognizing Foreign Governments: the Practice of the United States 8 (1978), quoting Marjorie Millace Whiteman, Digest of International Law 73 (1963).
[11] *Id.* at 5–6.
[12] *Id.* at 6.
[13] *Cole & Hathaway, supra note 9 (manuscript at 31).*

attitude of the new government toward private investment and economic improvement. Importantly, also, the interest of peoples, as distinguished from governments, is of concern. These, and other criteria, depending upon the international situation at the time, have been considered, with varying weight.[14]
Thus, "[o]ne might fairly characterize the traditional approach to recognition as flexible and pragmatic. Each decision to recognize is somewhat ad hoc, with the political interests of the recognizing state the major consideration."[15] Of the three approaches, the traditional approach is the most robust and flexible in recognizing new foreign governments, which is likely why it is the majority approach.

Tobar Doctrine (Doctrine of Legitimacy)

The Tobar or Betancourt Doctrine calls on states to refuse to recognize new governments unless free and fair elections are held to elect new leaders. It "attempts to encourage democratic and constitutional government by refusing to recognize any government that comes to power through extraconstitutional means until a free election is held and new leaders elected."[16] This approach, emphasizing democratic legitimacy, disincentivizes "individuals or armed groups from using force to gain control of the governmental apparatus."[17] The Tobar approach treats legitimacy as a "necessary criterion in addition to effective control,"[18] although effective control, while "also essential, is insufficient."[19]

Due in part to the rigidity of the doctrine, the Tobar Doctrine has never enjoyed widespread acceptance outside of Central and South America.[20] Critics have noted that the doctrine has interfered with domestic political processes of sovereign states and is intolerable of revolutionary change. It is often criticized for its "substantial interference with the domestic political processes of sovereign states, and because it bars revolutionary change as a method to overthrow even corrupt and despotic governments."[21] Nonetheless, "this view of recognition has attracted substantial support from a number of states as well as regional and international organizations."[22]

Estrada Doctrine (Automatic Recognition of All Governments)

In stark contrast with the Tobar Doctrine, the Estrada Doctrine purports not to interfere in the domestic affairs of sovereign states and automatically recognizes all governments in all circumstances, even those that came into power by extra-constitutional means. Put forward by Estrada, the Mexican Secretary of Foreign Relations,[23] the Estrada Doctrine refrains from making determinations as to the legitimacy of new governments. In this way, the doctrine prevents states from passing judgment on the internal affairs of other states or embarrassing states that recognize governments with abusive human rights records. It permits governments to avoid the perception that they approve or condone the acts of the governments being recognized. The Estrada Doctrine thus advocates the exact opposite of the Tobar Doctrine, and confers the automatic recognition to new governments.

"The Estrada Doctrine embraces the principle of unfettered national sovereignty

[14] GALLOWAY, *supra* note 10, at 8, quoting WHITEMAN, *supra* note 10, at 73.
[15] *Id.* at 8.
[16] *Id.*at 10.
[17] Cole & Hathaway, supra note 9 (manuscript at 36).
[18] *Id.* (manuscript at 32).
[19] *Id.* (manuscript at 36).
[20] GALLOWAY, *supra* note 10, at 10.
[21] *Id.*
[22] Cole & Hathaway, supra note 9 (manuscript at 36).
[23] MALCOLM N. SHAW, INTERNATIONAL LAW 380(5th ed. 2003).

and rejects interference with the domestic affairs of one state by another through the granting or withholding of recognition."[24] Estrada believed that such interference constituted an unwarranted assessment of the internal affairs of other states, which he believed had an unrestricted right "to accept, maintain or replace their governments or authorities."[25] "States that have adopted the Estrada Doctrine often say they recognize states, not governments; however, as a practical matter, many states depart from the doctrine whenever they perceive a major political advantage in using the recognition instrument."[26] Legitimacy plays no role in the Estrada Doctrine, and "any change in government is regarded as an internal matter, reserved for the black box of a state's domestic politics."[27] But unlike the traditional approach, the Estrada approach thus purports to "abolish formal government recognition altogether."[28]

The Estrada Doctrine has several shortcomings. It does not resolve questions of government recognition whenever there are competing governments. It has also been criticized as "minimizing the distinction between recognition and maintenance of diplomatic relations."[29]

Analysis

Under the majority traditional approach to government recognition, states do not automatically confer recognition to new governments that take power by force. Rather, states recognize new foreign governments that have the consent of their people and indicate a willingness to comply with international law. Because of this requirement that a new government indicates a willingness to comply with international law, the new Syrian government's compliance with Syria's treaty obligations and international law more broadly will play an important role in the conference of recognition. For those states that adopt the Tobar Doctrine, recognition will be predicated on satisfaction that the new government was confirmed through free, fair and legitimate elections.

Lifting of Sanctions

The Syrian transitional government's next steps will also impact international sanctions on Syria and whether the international community ultimately decides to lift them. The U.S. and E.U. have already begun the gradual process of easing their respective Syria sanctions programs.

U.S. Sanctions

In an effort to facilitate the provision of public services, the continuity of governance, and humanitarian assistance in Syria, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued General License 24 (GL 24) on January 6, 2025. GL 24 expands authorizations for activities and transactions in Syria following the end of Bashar Al-Assad's rule on December 8, 2024. It authorizes a range of transactions with the transitional Syrian government, eases restrictions on transactions in support of the sale, supply, storage, or donation of energy to or within Syria, and permits transactions that are ordinarily incident and necessary to processing the transfer of personal remittances. Deputy Secretary of the Treasury Wally Adeyemo announced that during this period of transition, the U.S. Treasury will "continue to support

[24] GALLOWAY, *supra* note 10, at 9.
[25] Cole & Hathaway, *supra* note 9 (manuscript at 40), quoting Press Statement of Sept. 27, 1930, translated in 25 AM. J. INT'L L. 203 (Supp. 1931).
[26] GALLOWAY, *supra note 10, at* 9.
[27] Cole & Hathaway, *supra* note 9 (manuscript at 40).
[28] *Id.*
[29] SHAW, *supra* note 23, at 380..

humanitarian assistance and responsible governance in Syria."[30]

GL 24, which is currently set to expire on July 7, 2025, may be extended as the U.S. government continues to monitor the evolving situation on the ground in Syria. OFAC's announcement highlights that "Syria is one of OFAC's most comprehensively sanctioned jurisdictions" as a result of human rights abuses committed by the former regime as well as the former regime's "support for terrorism, and destabilizing actions across the region."[31] If the new regime commits to upholding international law, including Syria's obligations under the Chemical Weapons Convention, while combatting terrorism and working towards the stabilization of Syria and the wider regime, it is likely that the duration of GL 24 will be extended, and further U.S. sanctions imposed on Syria will be eased. As the U.S. Treasury continues to monitor the situation on the ground in Syria, additional sanctions exemptions may also be issued.

E.U. Sanctions

Similarly, in Europe, the E.U. has been closely monitoring the on-the-ground situation in Syria and assessing whether the country's new rulers will demonstrate a commitment to human rights and the rule of law. On January 27, 2025, E.U. foreign ministers agreed to a roadmap to begin lifting sanctions on Syria, while "insisting that the measures should be reimposed if they see any abuses by the country's new rulers."[32] E.U. foreign policy chief Kaja Kallas announced that while the E.U. aims to move quickly, "we also are ready to reverse the course if the situation worsens," favoring a "snap back" mechanism to reimpose sanctions if Syria's new leaders fail to uphold their obligations under international law.[33]

Foreign Investment

Since the beginning of the Syrian conflict in March 2011, Syria's annual exports have dropped from USD 8.8 billion to USD 1 billion, shrinking Syria's economy by 54%.[34] Foreign investment can contribute substantially to rebuilding Syria's war-torn economy, but multinational companies will naturally be cautious about investing in a post-conflict country whose leadership remains unknown and untested.[35] Should Syria's leadership demonstrate a concrete commitment to strengthening the rule of law and property rights, a stable environment ripe for foreign investment will emerge, shepherding in much-needed capital that will rebuild Syria's infrastructure, reduce poverty and create jobs in Syria's war-torn economy.

This investment will depend on the ability of Syria's transitional government to convince investors that Syria is a safe destination for their capital. Recognizing this premise, Syria's new leaders have already begun a campaign to draw in foreign investment. At the World Economic Forum meeting in Davos, Switzerland on January 22, 2025, Syrian Foreign Minister Asaad Hassan al-Shibani announced that Syria will open its economy to foreign investment while working on energy and electricity partnerships with the Gulf Cooperation Council (GCC) states, including with Qatar to supply Syria with 200 megawatts of

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[30] *U.S. Treasury Issues Additional Sanctions Relief for Syrian People*, U.S. DEPT. OF TREASURY (Jan. 6, 2025), available at https://home.treasury.gov/news/press-releases/jy2770.
[31] *Id.*
[32] Lorne Cook, *EU cautiously agrees roadmap to ease sanctions on Syria in wake of Assad's downfall*, ASSOCIATED PRESS (Jan. 27, 2025), available at https://apnews.com/article/eu-syria-sanctions-easing-lifted-hts-875dc2a6dec5d54b459f580baa1426eb.
[33] *Id*.
[34] Ana Carolina Garriga & Brian J. Phillips, *Will multinational companies flock to Syria? Maybe, if foreign aid arrives first*, THE CONVERSATION (Feb. 3, 2025), available at https://theconversation.com/will-multinational-companies-flock-to-syria-maybe-if-foreign-aid-arrives-first-248406.
[35] *Id.*

electricity and gradually increase the amount.[36]

Key Takeaways

Whether Syria's new leaders adopt a governance model that upholds human rights and the rule of law will have far-ranging implications in government recognition, the lifting of sanctions, and, ultimately, attracting the foreign investment necessary to rebuild Syria's war-torn economy. The U.S. has already issued a general license to facilitate transactions with Syria's transitional governing institutions, ease restrictions on transactions in support of the sale and supply of energy to Syria, and permit transactions that are ordinarily incident to processing the transfer of personal remittances. The E.U. has announced a roadmap to begin lifting sanctions on Syria, while insisting on a "snapback" mechanism as Europe's leaders continue to monitor the on-the-ground situation in Syria. States have already begun recognizing Syria's new leaders as the legitimate government of Syria, and more are likely to follow suit if the new leaders take concrete steps toward applying international law, including the Chemical Weapons Convention, protecting human rights, combatting terrorism and committing to democratic institutions and constitutional governance. These steps toward building a governance environment will do more than attract government recognition; they will also attract the foreign investment that is necessary to shepherd in much-needed capital, reduce poverty, create jobs, and rebuild Syria's war-torn economy.

[36] *Davos-Syria's economy will be open for foreign investment, foreign minister says*, REUTERS (Jan. 22, 2025), available at https://www.reuters.com/world/middle-east/davos-syrias-economy-will-be-open-foreign-investment-foreign-minister-says-2025-01-22/.