

Syrian Diplomatic Recognition in International Law

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JURIST Contributing Editor [Chibli Mallat](#) of the University of Utah SJ Quinney College of Law says that countries seeking to promote peace and democracy can invoke Article 9 of the 1961 Vienna Convention on Diplomatic Relations by declaring Syrian consular staff *personae non gratae*...

The failure of the UN Security Council resolution on Syria last week may be a blessing in disguise for the Syrian people. Had it passed, it would have changed little. The resolution's only meaningful clause was the call for the Security Council to meet 21 days after the government of Syria fails to implement the hackneyed call in the draft for President Bashar al-Assad to stop killing his people. It would have then met the Russian veto in any case. Such admonition has become banal, and the logic of political survival has long drowned announced deadlines for Syria's government killing machine to cease and desist. Nobody expects Assad's repression to stop. He is trapped in a spiral of death that he can no longer escape.

A different type of action is needed to sustain the nonviolent movement in Syria. A choice target should be Syrian embassies abroad. Several embassies were stormed by angry Syrians in the past few days. However upset people may be, this is not useful. Under international law, embassies must be protected by the host government, which is responsible for their safety under customary law and a host of conventions. The one measure that a host government may take, under Article 9 of the 1961 [Vienna Convention on Diplomatic Relations](#) [PDF], is to sever official relations, close its embassy and send the other country's ambassador and/or his staff home:

The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable.

This is usually met with a retaliatory measure. If a Syrian embassy is closed, and/or diplomatic relations are severed, that country's embassy in Damascus would soon incur the same fate.

A more creative, staggered strategy of de-recognition should be devised on the basis of the novelty of the Syrian revolution in its dominantly nonviolent course, the growth of the responsibility to protect

doctrine, and the real change in international law with regard to the democratic right to governance advocated by the late Professor Thomas Franck as early as 1991.

A creative and effective strategy combines the measures adumbrated by the elected government of Tunisia in its prime minister's call for severing relations with Assad, and by the US Secretary of State putting in motion a coalition of states committed to ending the dictatorship in Damascus. This strategy needs to remain within the bounds of international law, which involves a gradation of diplomatic (de)recognition.

Take the case of the US ambassador in Damascus. In Syria's extraordinary 10-month long revolution, Ambassador Robert Ford has already gained the status of hero amongst ordinary Syrians. His support for nonviolence, his walk in Hama four months ago on the side of the massive majority of peaceful residents in the city's center, his almost naive expression of basic humanity standards against a Kafkaesque and relentless repression, are a novelty in international diplomacy. His presence in Damascus, constrained as it is, has operated as a safety valve for the leaders of Syria's underground opposition, and for the Syrian public at large. His departure is not as helpful as his soothing presence for the bereaved families to whom he expresses his sympathy by just being there. Now that the government of Damascus has made it intolerable for the embassy's security, Washington was forced to remove him and close its mission. It makes sense for it to apply Article 9 for the Syrian embassy in Washington.

Far more can be done. In work on international law with my students at Harvard Law School, and in discussion with leaders of the Syrian opposition, an argument has developed that builds on the doctrine of government recognition in times of crisis. While international law doctrines continue to conflict on the measure of recognition to opposition movements, nothing prevents governments from recognizing such movements and lending them support, especially when they are and remain nonviolent. The growing de-recognition of the dictatorial government in Damascus, underlined by President Obama in his last speech and by William Hague, can be translated into tangible support to the people of Syria by a concerted international recognition of Syria's democratic, nonviolent activists in and around the Syrian National Council.

Some diplomatic relations should remain until the diplomatic staff is no longer safe or useful for the Syrian people inside. This was so far the case of France and the US, whose ambassadors have become symbols of empathy and courage inside Syria. Now that the US Embassy was forced to shut down and the UK Ambassador recalled, Syrian ambassadors and the top staff in the corresponding

capitals must be declared persona non grata. More meaningfully, a tier of Syrian embassies abroad should be surrendered to the democratic, nonviolent provisional opposition, best represented by the Syrian National Council, on condition that the message and practise of nonviolence is kept alive in their words and actions. Additionally, where Syrian embassies are left in place to keep foreign ambassadors in Damascus, liaison offices for the democratic opposition can be funded openly by democratic governments.

These measures do not need the UN Security Council's endorsement, and they ensure that nonviolent demonstrators in Syria cheer an international community immobilised by the dictators in Moscow and Beijing: the 100-plus countries in the world who want to help nonviolence and democracy in Syria can individually apply Article 9, in part or in full. In a concerted, studied collective move, the international isolation of the dictator would be transformed into a great success for the nonviolent people of Syria. Neither Putin nor Assad can prevent such a concerted diplomatic, nonviolent, perfectly legal action.

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