

# **Nigeria's Recognition of The Transitional National Council of Libya: Exploration and Critical Assessment**

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## **Abstract**

This paper conducts an exploration and critical assessment of Nigeria's recognition of the Transitional National Council (TNC) as the legitimate representatives of Libyan people in 2011, attempting a conceptual elucidation of recognition and highlighting the approaches, doctrines as well as criteria that must be fulfilled before recognition of government is granted. The study adopted ex-post facto and historical methods and generated data largely from books, journal articles, magazines/newspapers and internet. The study argues that Nigeria's recognition of the TNC was not in accord with any of the known approaches, doctrines and criteria for recognition of new governments. States must persevere to abide by the traditional diplomatic and customary international law standard stipulations in their bid to grant recognition to new government.

**Keywords:** Recognition, Government, Transitional National Council, Libya, Nigeria.

## 1. Introduction

In recent past, North African countries of Tunisia and Egypt have been plagued by protests and demonstrations as well as factionalization among different groups in these countries. The uprising codenamed “Arab Spring” (Ashley, 2011), later spread across the Middle East countries like Bahrain, Syria, Yemen etc. This had resulted in the ousting of sit-tight leaders who only some years before seemed destined to rule for life as well as overthrown repressive regimes, plunged another into a fratricidal civil war and placed even long-established monarchies under renewed political and economic stress (Gvosdov, 2012). Okeke and Aniche (2012) opined that “African leaders prefer to sit-tight in power or die in office or even to have themselves declared life-Presidents even at the discontent of their people”. In African continent, as States became enemies of their citizens, repressive governments and dictatorship became the norms, with dismal tyrannies wanting to hold onto power, and even democratically elected leaders exhibiting dictatorial tendencies (Dickson, 2008). Udombana (2003) lamented the situation in Africa when he observed that “post-colonial” African states have remained colonial in their adherence to generally anti-democratic and repressive measures and attitudes. Therefore, Africa’s greatest problem is not natural or human resources, but leadership across the board.

As part of the Arab Uprisings to topple powerful and seemingly indestructible age-old dictatorships and political structures, on February 15, 2011 protests erupted in Libya against the 42-years rule of Col. Muammar Gaddafi. It is important to recall that Gaddafi came to power in 1969, and at 42 years at the country’s helm was the longest-serving leader in Arab world and North Africa. The demonstrations began near the Police headquarters in Benghazi with the protesters demanding for the release of Fathi Terbil – a Libyan Lawyer, human rights activists and member of the National Transitional Council (NTC) sometimes known as the Transitional National Council (TNC) representing the youth. According to Abdurrahman (2013), Terbil had represented a group of families whose sons were massacred by the Libyan authorities in 1996 in Tripolis’ infamous Abu Salim Prison, where an estimated 1,200 prisoners mostly opponents of the regime, were rounded up and gunned down in the span of a few hour. Thus, Terbil had instituted a lawsuit against the government on behalf of the relatives of the slain men. Obviously, Terbil had been working closely with the victims’ families who in recent years have asked the authorities to make public the circumstances surrounding the killings, as well as the location of the victims’ graves. Aside from reasons given above, Mammadova (2011) has suggested that the repressive and authoritarian political system with decades of long ruling that was similar to the other Arab states of MENA, and ridiculous ideology of Gaddafi could be considered as the causes of the discontent with the regime.

As a result, protests, uprising, unrest and confrontation in Libya which later spread across major towns in the country including al-Baida, Aldabiya, Misratak and Tripoli with between 500 and 600 demonstrators protesting, thousands of people were killed (Lee, 2011; Ehsan, 2012). As Okeke and Aniche (2012) observes, “the protests escalated into an uprising that spread across the country with the forces opposing Gaddafi establishes a government based in Benghazi named Transitional National Council whose goals was to overthrow the Gaddafi-led government and hold democratic elections. Aside from conducting democratic elections, the TNC say:

*The aim of the Transitional National Council is to steer Libya during the interim period that will come after its complete liberation and the destruction of Gaddafi’s oppressive regime. It will guide the country to free elections and the establishment of a constitution for Libya . . . The Council notes that it is the only legitimate body representing the people of Libya and the Libyan state and calls on all the countries of the world to*

*recognize it and deal with it on the basis of international legitimacy. The Council also notes that it will honour and respect all international and regional agreements signed by the former Libyan government, emphasizing its aspirations in seeing Libya play a significant role in the establishing international peace and security (ntclibya.org/english/).*

Selfa (2011) explain the situation in Libya graphically thus:

*By early March, two key poles started to emerge in the heterogeneous Libyan opposition: one centered on the Youth of February 17, the popular committees, and other forces who had formed the core of the early mass demonstrations; and a second one, convening generals, ex-members of Gaddafi's government and other longtime elite opposition figures. The second group forms the core of the National Transitional Council (NTC), announced March 5. The thirty-one member Council, chaired by Mustafa Abdul Jalil, the Libyan Justice Minister until only a few months ago, has declared itself the "sole legitimate body representing the Libyan people and the Libyan state"...*

This implies that the country was divided into two groups – the government forces which were losing both international and national supports and the anti-government forces, which acted as an interim governing body in the rebel-controlled area.

On August 20, 2011 President Gaddafi was ousted from power, and following his death the TNC officially declared Libya liberated, and subsequently moved from Benghazi to Tripoli and formed a Transitional Government. Shortly, on August 23, 2011 Nigerian government accorded TNC recognition as the new legitimate government and representative of Libyan people, a position which was adopted at variance with the wait-and-see posture adopted by South Africa and other African countries. The recognition of TNC by Nigerian government as the legitimate Libyan government has generated resentment among Nigerians and members of the international community.

## **2. Conceptual and Theoretical Explications**

### **Conceptual Discourse**

Generally, recognition is a very important but highly controversial, contentious and divisive subject in international relations as well as international law. Talmon (1998) argued that "the confusion which characterizes the subject of recognition of government is due not so much to the unsettled state of the principles involved as to the nebulousness of the term "recognition". The lack of any clear or generally accepted definition of the term has sometimes led even government or its departments responsible for foreign policy formulation, decision-making and implementation to argue whether they have accorded recognition to a certain government. Thus, recognition is "...political judgment...clothed in legal terminology" (Shaw, 2008). As an act, it is political in nature, and as such, is in the hands of the executive. Grant (1999) defines recognition as "a procedure whereby the governments of existing States respond to certain changes in the world community". This implies that recognition is an activity of States, and State is a "legal" person in international law.

However, the definition of recognition as given by Shaw (1998:296) is all-encompassing:

*Recognition is a statement by an internationally legal person as to the state in international law of another real or alleged international person*

*(with) consequences both on the international plane and within municipal law. If an entity is recognized as a state...it will entail the consideration of rights and duties that would not otherwise be relevant. There are privileges permitted to a foreign state before the municipal courts that would not be allowed to other institutions or persons.*

Shaw (2003:377) explained further:

*Recognition constitutes acceptance of a particular situation by the recognizing state both in terms of the relevant factual criteria and in terms of the consequential legal repercussions, so that, for example, recognition of an entity as the government of a state implies not only that this government is deemed to have satisfied the required conditions, but also that the recognizing states will deal with the government as the governing authority of the State and accept the usual legal consequences of such status in terms of privileges and immunities within the domestic legal order.*

According to Talmon (2011), the term “recognition” when used in the context of recognition of States and governments in international law, may have several meanings. It may indicate the recognizing State’s willingness to enter into official relations with a new State or government, or manifest its opinion on the legal status of the group, or both. Alternatively, recognition may simply be a means of expressing political support or approval. Thus, when a State recognizes a new “government” it usually acknowledges a person or group of persons as competent to act as the organ of the State and to represent it in its international relations.

As Brownlie (1979:90) has correctly observed, “in international relations, it is the recognition of States, governments, belligerency and insurgency which has been the most prominent aspect of the general category...” Agwu (2011) identifies insurrection, insurgency and belligerency as the dynamics of non-international armed conflict and stated that an armed conflict not of an international character is that which exists within state’s frontiers between it and its own citizens. According to him, this type of armed conflict is classically exemplified by civil war and that every civil war has the character of emanating first as a rebellion, then transforms into an insurgency, and finally or ultimately into a belligerency. In the view of Nwodo (cited in Agwu, 2011), a rebellion refers to the sporadic, short-lived and ephemeral challenges to the authority of the lawful government; but insurgency and belligerency refer to grave and sustained challenges to the lawful or incumbent government over a considerable period of time, and all two of them involve a sizeable proportion of the population and national territory. Agwu quoting Oppenheim says that belligerency involves the assumption of some quasi or *de facto* sovereign characteristics, like control of a sizeable territory, establishment of a *de facto* government, command of the obedience of the populace of the territory under control, and possession of the capacity to exercise belligerent rights... Therefore, as Schwarzenberger (1976) suggests, if internally generated crises is prolonged and revolutionaries or other rebels are effectively in control of a considerable areas of the state, the result is the nullification of the prohibition of intervention by foreign states. In other words, third states may recognize such revolutionaries as belligerents and treat them as if they are the authorities of an independent state.

Jennings and Watt (1992) put it thus, “since the international community is composed primarily of states, any change in composition of the international community may be of concern to existing states, whether those changes involve members of that community or

authorities (in particular governments) through which they act". Therefore, the decision of states to take notice of these changed circumstances, in particular, to grant recognition of belligerency or insurgency involves, in a broad sense, the acceptance by a state of any act occurring in its relations with such entity (Wolfrum and Phillip 2000). This is simply because, it is not the physical status of the respective entity (State or government) which is at stake, but its legal status in respect to the recognizing entity or State. Though recognition of a government is different from recognition of a State, recognition of the government implies recognition of the state, but it does not work the other way. According to Malone (2007), recognition of government is an acknowledgement that it is in effective control of a State. Therefore, under international law, recognition is not dependent upon the constitutionality of a government or its legitimacy under its own domestic laws, but solely on its effectiveness. Therefore, the main function of recognition is to acknowledge the existence of an entity as a subject of international law with whom another state can maintain diplomatic relations.

Eminue (2004: 46-7) has, however, identified seven modes of recognition to include *De facto* and *de jure* recognition, premature recognition, implied recognition and conditional recognition. Others are collective recognition, withdrawal of recognition as well as non-recognition. Let us discuss the mode *seriatim*:

(i) *De facto* and *De jure* Recognition: Recognition *de facto* which does not attract mutual diplomatic exchange may be granted when there is some doubt about the long-term viability of a government, while recognition *de jure* is granted when the doubt has been cleared, since recognition *de facto* and *de jure* illustrate the difference between factual sovereignty and legal sovereignty respectively. Malanczuk and Akehurst (1997:88) argue that the distinction between *de facto* and *de jure* recognition is one of the most confused circumstances of recognition. They objected to the expressions, *de facto* and *de jure* recognition and see them as technically incorrect, since the words *de jure* or *de facto* describe the government not the act of recognition. Arguing similarly, Aust (2005) defined the *de facto* and *de jure* recognition by relying on the legal status of the government: "Recognition *de jure* means that the entity fully satisfies the applicable legal criteria; recognition *de facto* is only of the current position of the entity, and is therefore usually provisional". It has also been argued by Brownlie (2008: 71) that the assessments or the definitions of the both concepts can be change in different situations but it is the fact that everything is relevant to the intention of the government concerned and the general context of fact and law.

(ii) Premature Recognition: This is recognition granted an entity at a time such an entity is still-born and therefore does not fully meet the conditions for the recognition. This was the case when the five states viz; Tanzania, Zambia, Ivory Coast, Gabon and Haiti recognized the "Republic of Biafra" and was tantamount to premature or precipitate recognition (Eminue, 2004). As Brownlie (2008) perceptively pointed out, "since it is a political decision of States, in some circumstances, the recognition occurs before the criteria of statehood have been fulfilled by the new State. In such cases, the problem is to determine the premature recognition is an intervention in the internal affairs of another state or is an admissible recognition of a new state that has emerged or is emerging as a result of secession...".

(iii) Implied Recognition: Recognition is about intention and may be expressed or implied. The facility of an implied or indirect recognition may be to resort to by way of sending a message of congratulations to a new state, through formal establishment of diplomatic relations with it and by signing a bilateral (though not a multilateral) treaty which might imply recognition. This implies that sending a congratulatory message to a new State for obtaining sovereignty will bear recognition of that State. On the other hand, it does not mean recognition when two states both signed a multilateral treaty such as the United Nations

Charter. For instance, Israel and many Arab countries are members of the United Nations at the present, but it does not change non-recognition of the Israel State.

(iv) **Conditional Recognition:** This mode of recognition states that an entity is only granted recognition as a State when it fulfills or has fulfilled some conditions. These, as Eminue (2004) has pointed out include conditions such as granting of the most-favoured-nation treatment or status to the recognizing State, compliance with the Helsinki Acts by states of the former Soviet Union, or Soviet commitment to avoid acts prejudicial to the internal security, and settlement of various financial claims of the United States. This kind of recognition was first seen in Berlin Congress of 1878, when Great Britain, France, Italy and Germany marked the recognition of Bulgaria, Serbia, Romania and Montenegro with the condition that these countries would not impose any religious disabilities on any of their subjects. It is important to state that this mode of recognition may cause some problems but the non-observance of the condition would not invalidate the recognition. Since the law does not attach value to any condition unless it depend upon agreements made by the particular parties (Shaw, 2004).

(v) **Collective Recognition:** According to the International Law Commission (1971), collective recognition “means that States act collectively during the process of receiving information of the situation, evaluating that information and reaching a decision, and communicating that decision”. Thus, it may be seen as a result of increased corporation between the States. According to Eminue (2004), an expediency which is tantamount to recognition by means of an international decision, collective recognition signalizes the importance of its collective assertion of control over membership of the international community, whether an international organization is involved or not. This mode of recognition has been a subject of debate and contestation since the formation of the League of Nations and the UN. Thus, States preferred to act unilaterally when recognizing new States or governments.

(vi) **Withdrawal of Recognition:** In certain circumstances, it is possible to withdrawn recognition already granted, especially, where the recognition was granted *de facto*. Where the *de facto* government loses the effective control it once exercised (over a territory), the reason for recognition disappears and it may be revoked (Shaw, 1998: 314). *De facto* recognition is easier to withdraw, while *de jure* recognition is more difficult to withdraw because the latter once granted is stronger than the former.

(vii) **Non-Recognition:** The doctrine of non-recognition, also known as the Stimson Doctrine of non-recognition, means to not grant recognition to the new entities or the some factual positions which are the result of any illegal actions such as using force (Verma, 2004). Put differently, non-recognition is an acknowledgement or enforcement and it supported the principles that legal rights cannot be obtained from an illegal situation (*ex injuria jus non oritur*) (Shaw, 2008). As Eminue (2003) has revealed, the United States refused to recognize Soviet Union’s acquisition of the 1940 of the Baltic States on the grounds that no territorial acquisition resulting from the threat or use of force shall be recognized as legal.

## **Theoretical Framework**

The recognition of government has produced at least three influential schools of thought - the Traditional approach, the Estrada and the Tobar Doctrines.

### **(A) The Traditional approach**

From the standpoint of Malone (2007:45), traditional approach allows recognition of a government when:

- 1) it is in effective control of the State *without the assistance of foreign intervention*. Revolutionary governments are not recognized until they have clearly established

control over most part of the state, having reduced the prior government to control of only negligible areas;

- 2) it has the consent, or at least the acquiescence of the people; and
- 3) it shows its willingness to comply with the States' obligations under the international law.

Arguing similarly, Galloway (1978); Carter and Trimble (1999) have proposed that, a state which seeks to accord external recognition to the government of another State will first seek to determine, firstly, whether the government seeking recognition is in *de facto* control of the territory of the State and in possession of the machinery of that State. Secondly, whether the government has the consent of its people, without substantial resistance to its administration; that is, whether there is public acquiescence to its authority or rule. Thirdly, whether the government has indicated its willingness to comply with its international obligations as provided for under international relations.

It is important to state that the second prerequisite of the traditional approach – *the consent of the people*, is very controversial. Even though most of the states interpret such prerequisite to mean the peoples acquiescence to the new government, policy makers have argued that the concept of actual consent is meaningless. Thus, the approach emphasizes the *doctrine of effective control* of a new government over the territory of the state before recognition could be accorded, provided such control appears well established and was likely to continue. This implies that, if the military, belligerent or rebel group that overthrows a government is in effective control, it becomes a valid government regardless of the fact of its non-recognition.

### **(B) The Estrada Doctrine**

Under the Estrada doctrine, the practice of recognizing government is eliminated altogether with the focus being on recognition States (Malone. 2007). Puts differently, States only recognize new States and not new governments, since “when a new government comes to power either through constitutional means or otherwise, its recognition is automatic” and its relations with outside states remains unchanged (Shaw, 2003). Estrada Doctrine makes no distinction between a government of bullets and a government of ballots. It embraced the principles of unfettered national sovereignty and rejects interferences with the domestic affairs of one State by another through the granting or withholding of recognition. The doctrine advocates the right of nations to accept, retain or replace their governments and rejects the use of recognition for political purposes. Under most circumstances, a government that maintains the “habitual obedience” of the bulk of the populace is automatically acknowledges to possess the legal capacity to assert rights, incur obligations and authorize acts on behalf of the State. Such a government can be said to represent the State in question and is, as such, deserving of recognition (Jennings and Watt, 1992). Estrada doctrine suffers from the same disadvantage as the legitimacy doctrine. It attempts to lay down a clear test for recognition in all instances excluding political consideration and exigencies of State and is thus unrealistic, particularly where there are competing governments (Warbrick, 1981). It has also been criticized as minimizing the distinction between recognition and maintenance of diplomatic relations (Rousseau (1989).

### **C The Tobar Doctrine**

Under the Tobar doctrine (sometimes known as doctrine of legitimacy), only democratic and constitutional governments were (and are to be) extended recognition (Malone, 2007). Therefore, governments which came into power by extra-constitutional means should be recognized, at least until the change had been accepted by the people. As Shaw (2003) has indicated, this policy was applied particularly by the United States in

relation to Central America and was designed to protect stability in that delicate area adjacent to the Panama Canal. As Shaw further explain the concept amounts to the promotion of non-recognition in all revolutionary situations and it is, and was, difficult to reconcile with reality and political consideration. Thus, from the American perspective, it became transmitted into the Wilson policy of democratic legitimacy. That is, where the revolution was supported by the people, it would be recognized. Where it was not, there would be no grant of recognition.

### **3. Method and Materials**

The method adopted for this study is essentially *ex-post facto* and *historical*. It is “after the fact” or “retrospectively”. Therefore, it is a form of research which investigates possible cause-and-effect relationships by observing an existing condition and searching back in time for plausible causal factor (Cohen and Manion, 1980). Data for the study were drawn from books, journal articles, magazines and newspapers, periodicals and archival records as well as other library materials such as microfilms related to the subject matter of the study. Other sources include information from internet (electronic) and data bases where different analyses were found to be used as data. The data were analyzed qualitatively using literature-assessing technique for detailed description and interpretation of observed historical forces, events and interactions.

### **4. Nigeria’s Recognition of TNC: Reactions and Significance**

As mentioned earlier, on August 23, 2011 Nigeria recognized the TNC as the new legitimate government of Libya. A statement issued by Nigeria’s Foreign Affairs Ministry, (cited in Ogala, 2011) read:

*It is my honour and privilege this morning to inform you that the Federal government has formally recognized the Transitional National Council (TNC) of Libya as the legitimate representative of the Libyan people. You all would have been watching closely the unfolding situation in Libya. This is a matter which the international community and the African union have been seized with right from the very beginning. Nigeria, through the African Union and the United Nations, has been engaged with various processes seeking a peaceful resolution of the conflict. Indeed, as a member of the UN Security Council, Nigeria supported UN Security resolution 1973 aimed at providing humanitarian protection to the innocent Libyans in the last 48 hours, the situation in the country has moved inexorably closer to its denouement. The Federal Government is understandably anxious to prevent further loss of lives in Libya and therefore urges Muammar Gaddafi to take the part of honour and relinquish power immediately and allow the people of Libya to decide the future of their country. Now that the TNC is on the verge of taking full control of the affairs of Libya, the Federal Government urges the new leaders to be magnanimous in victory and to pursue a policy of “no victor, no vanquished”, a uniquely Nigerian model for post-conflict reconciliation and nation-building. When the dust finally settles, the Federal Government hopes that the new leaders in Libya would also establish an all-inclusive and broad-based administration whose urgent task should be to establish a credible democratic transition to civil rule, as soon as possible.*

Also, in a joint statement issued on August 24, 2011 by the Nigeria’s Foreign Minister, Ambassador Olugbenga Ashiru and his Ethiopian counterpart, His Excellency, Ato Hailemariam Desalegn, who is also the Deputy Prime Minister, called “upon all peace loving

countries in general and African Union, in particular to contribute to peace and stability in Libya by recognizing the authority of and legitimacy of the TNC”. Nigeria’s recognition of the TNC had attracted several reactions from within and outside the country. For instance, South African government, through the Secretary-General of the African National Congress (ANC), Mr. Gwede Mantashe, said at the press conference in Johannesburg that Nigeria “was jumping the gun in recognizing the rebels as representatives of Libya”. It is worthy of note that South Africa, one of the continent’s most economically powerful countries and contender of superpower status alongside Nigeria had long preferred to avoid direct recognition of the TNC and preferring to engage in “quiet diplomacy” and multilateral engagement instead of using its regional status and power to force action. Reason for this according to International Relations and Cooperation Minister Maite Nkoana-Mashabane being that South Africa did not want “a state within a state” (Child, 2011).

Arguing similarly, Abidde (2011) regretted:

*That the Nigerian government has formally recognized the National Transitional Council (in Libya) is not only disappointing, it is appalling. This move shows that President Goodluck Jonathan and his foreign policy team are weak and incapable of complex analysis; and perhaps, do not truly understand international politics. Frankly, Nigeria’s position on this matter should be roundly condemned, not just by ECOWAS and the African Union, but by all those who value good governance, truth and accountability and the sovereignty of nation-states.*

Abidde opined that by hurriedly recognizing the rebel government in Libya, President Jonathan’ has shown that he has an inadequate understanding of African politics and ethos. By succumbing to the dictates of NATO/USA, he has shown that his backbone is not made of steel. And violating the stated and unstated understanding reached during the various deliberations of the AU, he (the President) has shown that he is not a man to be trusted or a man who understands the meaning of trust in domestic and foreign politics.

Baba-Ahmed (2011) argued that Nigeria’s almost unilateral and hasty recognition of the TNC merely highlights the absence of strategic thinking and poor quality of our (Nigeria’s) foreign policy. As at the time of recognition, it was no means clear that the TNC will be able to form and lead the nation which will go through many challenges. The African Renaissance Party (ARP), one of the registered political parties in Nigeria through its National Chairman, Alhaji Yahaya Ndu, told the News Agency of Nigeria in Lagos that it was improper to recognize TNC – a group whose aim was to murder Nigerian citizens in Libya. The party observed that in spite of the recognition Nigeria accorded the TNC as the legitimate representatives of the Libyans, this has not avail Nigerians in the conflict-torn country a safe haven. The ARP then urged Federal Government to withdraw recognition for Libya’s TNC.

The views expressed above have been countered by scholars and protagonists of Nigeria’s decision. For example, Akinterinwa (2011) opined that Nigeria’s recognition of TNC was a very welcome development. It was... but also an expression of a new diplomatic finesse that is increasingly becoming a new feature of Nigeria’s foreign policy under the Goodluck Jonathan’s administration. Diplomatic finesses, because Nigeria did not only recognize the TNC, but also promptly began to enlist the support of others for it. Drawing from the Murtala/Obasanjo regime when Nigeria led the whole of Africa to recognize the Augustino Neto-led MPLA government in Angola, Akinterinwa argued that it was because of Nigeria’s policy of “No Compromise” with Apartheid that informed the policy decision of the government of Murtala/Obasanjo to recognize the MPLA government and thus straining relationships with the liberation movement of Jonas Savimbi and Holden Roberto. According

to Akinterinwa, the major dynamic of Nigeria's decision was the discovery of the support given by then to Jonas Savimbi by apartheid South Africa. Nigeria found it shameful to be on the side of any person associated with apartheid South Africa. In the case of Libya, Akinterinwa argued that Nigeria's decision again, to give due recognition to the TNC in Libya, thus putting an end to the official relationship with (dictatorial) administration of Gaddafi is very commendable and prompt. It is in Nigeria's and Africa's larger interest. It shows that Nigeria can always provides leadership in African as well as be a source of inspiration to the entire black race. That by criticizing Nigeria's stance, South Africa was simply trying to demonstrates a sort of higher moral ground than Nigeria.

Kalu (2011) argues that Nigeria's recognition of the Libya's NTC as the "legitimate representative of the Libyan people" did not just surprise many Nigerians, it has been seen as a threat to South Africa and shock to the African Union. This is because the fall of Gaddafi would make Nigeria a stronger player in African Affairs and that through the Economic Community of West African States (ECOWAS), headed then by President Goodkuck Johnathan, Nigeria could take advantage of Gaddafi's fall and the resulting power vacuum to push its goals of increased political stability in West Africa and beyond. Kalu therefore, reasoned that if Nigeria and South Africa are indeed the two "African Superpower", South Africa may feel threatened by Nigeria's initiatives.

The Economy Magazine (Online) argues that Nigeria's prompt recognition of the Libya's TNC was commendable. It tallies with the call for the establishment of an all-inclusive and broad-based government, as well as for Muammar Gaddafi to relinquished power immediately. This is an example that Abuja has the capacity to pursue a pro- Nigeria foreign policy. Explaining further, the Magazine reveal that this was the first time Nigeria has openly towed a line different from the timid position of the African Union. This new posture, recognizes the changing dynamics of the new global geo-politics which necessitate a shift aimed at identifying how every position we (Nigerians) take as a country benefit us first, before any other in this new order. It has been argued from the onset that from independence, Nigeria's foreign policy has been Afro-centric (suggesting a preoccupation with African issues). As a pattern of foreign policy, the African-centredness paradigm proved, to be highly dysfunctional both to the country's economic as well as political growth. Hence, there is need for a shift towards a new reality of the globalized world.

According to Gbooza (2011), Nigeria recognized TNC for a number of reasons, strategic and security. The Sudden discovery of an Al-Qaeda and bombing training ground in Muttabi in Libya accounted for why world leaders, including President Goodluck Jonathan support Libyan rebels who have formed the TNC to oust Gaddafi. The discovery indicated that Gaddafi had been operating a training ground in Muttabi where many insurgents, including members of the Boko Haram in Nigeria, are being trained in the art of making bombs and suicide bombing. Gbooza quoting a top Presidency source said that Gaddafi has never hidden his disdain for the continued survival of this nation as one. Last year (that is in 2010), he said openly that Nigeria should split, and he has been working towards that since 1997. He has been undermining our (Nigeria's) internal security. For instance, when a former Chief of General Staff, Lt. Gen. Oladipo Diya narrowly cheated death through bomb explosion in 1997, intelligence report showed that Gaddafi had a hand in it. Therefore, President Goodluck Jonathan's moves against the Libyan Leader, Muammar Gaddafi and subsequent recognition of TNC stemmed from the uncompromising stance of the administration.

## 5. Analysis

From legal and theoretical perspectives, as far as the recognition of government is concerned, at least four criteria must be fulfilled before recognition is granted. The first criterion is effectiveness. That is, the affected government must be in control of, at least, the larger part of the territory as well as its administration and that such control is not just of a temporary nature but of a consolidated one. Arguing from the context of British practice on the recognition of governments, Harris (1983:129) explains that:

*It is international law which defines the conditions under which a government should be recognized de jure, or de facto and it is a matter of judgment in which particular case whether a regime fulfils the conditions. The conditions under international law for the recognition of a new regime as the de facto Government or a State are that the new regime has in fact effective control over most of the State's territory and that this control seems likely to continue. The conditions for the recognition of a new regime as the de jure Government of a State are that the new regime should not merely have effective control over most of the State's territory, but that it should, in fact, be firmly established.*

Furthermore, clarifying the fundamental changes in the British recognition policy, the Foreign Secretary (cited in Warbrick, 1993) posit that while the Government would continue to recognize States in accordance with common international doctrine, it would henceforth “no longer accord recognition to Government”. Instead: “in future cases where a new regime comes to power unconstitutionally, our (British) attitude on the question whether it qualifies to be treated as a Government will be left to be inferred from the nature of the dealings, if any, which we have with it, and in particular on whether we are dealing with it on a normal Government to Government basis”.

From the above, it is clear that among the factors that would influence recognition and the quality of the relationship with the new authority, would be the assessment of whether they are able of themselves to exercise effective control of the State concerned - control which is firmly established, likely to continue and over most part of the state's territory. Aristodemou (1994) opined that in the area of recognition of government, the test of effectiveness was chosen over alternative contenders such as justice, constitutionality, and willingness to honour obligations or self-determination. Effectiveness shares the same attributes and assumption as legal theory, that is, it is meant to be based on observable factual criteria, rather than value judgment. This implies that the effectiveness of a government is, of course, a *sine qua non* of recognition of an entity. Short of this, recognition is “premature” and amounted to intervention in a state's affairs contrary to international law.

At this juncture, pertinent question to ask is, at the material time Nigeria announced its recognition, could it be said that the TNC was in effective control of the larger part of Libya? Was the control firmly established or seem likely to continue? From the forgone discussion, the answer is simple. As at the time Nigerian government accorded TNC recognition, the rebel group was not in effective control of the most part of Libya and the regime was not firmly established. Fighting was still on with both sides attacking each other. This could be gleaned from the statement of recognition by the Foreign Affairs Ministry which reads, “the Federal Government is understandably anxious to prevent further loss of lives in Libya... Now that the TNC is on the verge of taking full control of the affairs of Libya, the Federal Government urges the new leaders to be magnanimous in victory and to pursue a policy of “no victor, no vanquished”... When the dust finally settles, the Federal Government hopes that the new leaders in Libya would also establish an all-inclusive and broad-based administration”.

In the words of Baba-Ahmed (2011):

*As soon as it became obvious that the combined assault of Libyans who took up arms against the intransigence and arrogance of their leader, Muammar Gaddafi, as well as the intense bombing campaign of NATO forces appeared to be tipping the balance of the war against Gaddafi, the Nigerian government announced that it was recognizing the TNC as the legitimate government in Libya. The Nigerian government therefore broke ranks with the African Union and key African countries whose opinions and views are vital on all matters relating to development in Africa. The Nigerian government must have thought that it was charting a course for the rest of Africa in the manner it rushed to take a position. It must also have assumed that Gaddafi would fall much earlier than now (then), but he is still fighting. Finally, Nigeria must have assumed that its earlier recognition will earn it some credit points with NATO countries and the US. Nigeria has been wrong on all three assumptions.*

The views above remain an epitome of indictment and criticism against Nigeria's recognition of TNC, indicating that the act of recognition was unilateral, premature and amounting to intervening in the internal affairs of Libya.

The second criterion for the recognition of government is that, it has to be habitually obeyed by the bulk of the population. Put differently, when a new government, which comes into power through revolutionary means, enjoys a reasonable prospect of permanency, the habitual obedience of the bulk of the population, other states are under a legal duty to recognize it. In Libyan case, as at the time Nigeria accorded TNC recognition, fighting was still on, as such, there was no clear-cut obedience by the bulk of the population to the TNC. Third, revolutionary upheavals in the form of civil wars and competing assertions of power often prompt the question of which of the contesting parties that may be regarded as the authentic government of the State concerned. Or while the hostilities are ongoing, or after hostilities have ceased, it has to be decided of which of the opponents has to be recognized as the legitimate government. As Roth (1999) has noted, occasionally, states have refused to recognize governments on the ground of their revolutionary origin and the degree of violence accompanying the changes. But as Lauterpacht (1945) has pointed out, international law does not prohibit revolutions as a means of constitutional or purely governmental changes within a state. Therefore, there is generally no difference between a constitutional and revolutionary change of government. But, in the case of Somalia in 1991, when President Siad Barre was overthrown, after a mounting opposition to his harsh regime within the country became strong enough to compel his departure, the UK refused to recognize the "Interim Government of Somalia" headed by Ali Mahdi Mohammed as the provisional president. The reason for this was that there was no regime which had control, let alone any administrative control which has the requisite element of stability. Under this, UK believed that Somalia as at then had no government. This implies that stability within the territory is one of the conditions for recognition. Thus, as at the time Nigeria's accorded TNC recognition, there was no stability in Libya.

The fourth question is whether the new government, as at the time of recognition had dedicated its willingness to comply with its obligations under international law. For instance, a resolution adopted in 1965 by the Second Special Inter-American Conference had recommended that recognizing a *de facto* government's readiness to fulfill the State's international obligations should be one of the factors to be given due considerations. However, it has been argued among scholars, that the reliance on the willingness to fulfill

international obligations as the precondition for recognizing a new government has been considered problematic. This is because those obligations are those of States rather than those of governments. However, the study unraveled that as at the time Nigerian government accorded TNC recognition, the willingness of TNC to comply with obligations under the international law was not ascertained. It was after the liberation declaration that the TNC had worked closely with the international community on coordinating efforts to assist Libya in building democratic institutions. As Bureau of Near Eastern Affairs (2012) had indicated, it was after the recognition that the Libyan Government had strengthened its relations with the European Union, the United Nations and the United States. The new Libyan Government took steps to increase cooperation with its African neighbours.

In a related development, according to Harris (1983:131), the United States practice on the recognition of governments show that throughout most of the 19<sup>th</sup> century, the United States recognized stable governments without thereby attempting to confer approval. The US recognition grew more complex as various administrations applied differing criteria for recognition and expressed differently the reasons for their decisions. For example, Secretary of State William Seward (1861-1869) added as a criterion the government's ability to honour its international obligations; President Rutherford Hayes (1877-1881) required a demonstration of popular support for a new government; and President Woodrow Wilson (1913-1921) favoured using recognition to spread democracy around the world by demanding free elections.

## 6. Conclusion

Under diplomatic and customary international law, every state has the right to grant diplomatic recognition to a new government, a national liberation movement fighting for independence from the colonial power or national liberation movement fighting to overthrow a dictatorial regime or a bad government. Although traditional diplomatic law frowns at encouraged rebellion, recent events in the Middle East and North Africa have thrown up new justifications for assisting people in rebellion against long-serving and non-performing dictatorial regimes. However, the fact that the President is the chief foreign policy maker of the nation and the Ministry of Foreign Affairs, one of the major structures that play significance role in the foreign policy decision-making and implementation is indisputable (Inamete, 2001). Hence, the recognition accorded the TNC by Nigerian government. From the study, however, it is obvious that as at the time of recognition, TNC was not in effective control of the most part of Libya, particularly Tripoli, Sirte, etc, and its government was not firmly established. The above assertion is corroborated by Talmon (2011) when he averred that:

*As long as the NTC's control is (was) limited to the eastern parts of Libya, with the Tripoli and western parts remaining under the control of Qaddafi forces, it may be recognized only as the local de facto government of the authority which it controls. Any recognition of the NTC as the de jure government of the State of Libya, while Qaddafi forces are (were) still in control of the capital, seems premature and would arguably constitute an illegal interference in the internal affairs of Libya.*

Effectiveness means discharging governmental functions and not merely making the authorities will effective. Second, as at the time of recognition, there was no clear-cut demonstration of popular support for the TNC by the Libyan people as fighting was still on. The recognition by Nigerian government and other African States notwithstanding, the action by the TNC was an unconstitutional seizure of power by a new and *de facto* authority within an existing States was premature and as such was illegal. In principle, although recognition is

discretionary, premature recognition of belligerents and insurgent run counter to the exclusive domestic jurisdiction of other state and are illegal. Thus, Nigeria's recognition of the TNC for whatever reason, was premature and not in tandem with the standard stipulations of international law. Nation states must persevere to abide by the traditional diplomatic and customary international law process in their bid to grant recognition to new government in the international system.

## References

- Abdurrahman, N. (2013). "What if Libya Staged a Revolution and Nobody Came?" *Foreign Policy Magazine*. May 15.
- Abidde, S. (2011). "Libya: Nigeria's Foreign Policy Faux Pas". (Online). Available at: <http://nigeriavillagesquare.com>. (May 26, 2013).
- Agwu, F. A. (2011). *The Law of Armed Conflict and Africa Wars*. Ibadan: Macmillan Nigeria Publishers Ltd.
- Akinterinwa, B. A. (2011). "Libyan Conflict and Nigeria's New Diplomatic Finesse". *This Day*. August 28, pp.20-21.
- Aristodemou, M. (1994). "Choice and Evasion in Judicial Recognition of Governments: Lessons from Somalia". *European Journal of International Law*: 532-555.
- Ashley, J. (2011). "The Arab Spring requires a defiantly European Reply". (Online) Available: <http://www.guardian.co.uk/commentisfree/2011/06> (September 10, 2012).
- Aust, A. (2005). *Handbook of International Law*. Cambridge: Cambridge University Press.
- Baba-Ahmed, H. (2011). "Nigeria's Stand on Libya: Too Little, Too Late". (Online). Available: <http://baba-ahmed.blogspot.com>. (May 16, 2013).
- Brownlie, I. (2008). *Principles of Public International Law*. 7<sup>th</sup> edn. Oxford: Oxford University Press.
- Bureau of Near Eastern Affairs (2012). "Background Note: Libya". Electronic Information and Publication.
- Child, K. (2011). "Tripoli falls, but SA still reluctant to recognize rebels". *Mail and Guardian*, August, 23.
- Dickson, M. (2008). "African Leaders and the Sit-Tight Syndrome: Exploration and Critical Assessment". *Calabar Journal of Politics and Administration* 4 (1): 145-155.
- Ehsan, S. (2012). "Libya Uprising". *Pakistan Observer*, E-paper <http://pakobserver.net/detailnews.asp?id=98364> (May 16, 2013).
- Eminue, O. (2004). "Politics and Law in Africa". Department of Political Science and Public Administration, University of Uyo, Nigeria. *Monograph*.
- Gboozza (2011). "Why Jonathan, other world leaders moved against Gaddafi". *The African Social News Network*. <http://www.gboozza.com/group/Nigeriapolitics/forum> (May 16, 2013).
- Gvosdov, V. (2012). "The Realist Prison: Tracing the Roots of the Arab Spring". *World Politics Review*, August 24.

- Harris, D. J. (1983). *Cases and Materials on International Law*. 3<sup>rd</sup> edn. London: Sweet and Maxwell.
- Inamete, U. B. (2001). *Foreign Policy Decision –Making in Nigeria*. London: Susquehanna University Press.
- Jennings, R. and Watts, A. (1992). *Oppenheim’s International Law: Peace, Introduction and Part I*. 9<sup>th</sup> edn. New York: Longman.
- Kalu, U. (2011). “Libya: Why Nigeria broke with Gaddafi”. *Vanguard*, August, 26.
- Lee, R. (2011). “Political Unrest in Libya”. *The History Guy*.  
[http://www.historyguy.com/Libya\\_unrest\\_timeline\\_2011.htm](http://www.historyguy.com/Libya_unrest_timeline_2011.htm) (May 15, 2013).
- Malanczuk, P. and Akehurst, M. B. (1997). *Akehurst’s Modern Introduction to International Law*. New York: Routledge.
- Malone, L. (2007). *International Law*. New York: Aspen Publishers.
- Mammadova, G. (2011). The Nature of Libya Crisis. *News.Az*, Monday August 1.
- Nwodo, N. (1987). “The Role of International Law and Politics in the Congo Civil War of 1964, with Special emphasis on the Roles of the Organization of African Unity and the United Nations”. A paper presented at the Annual Conference of the Nigeria Society of International Law, Jos, April 2.
- Ogala Wordpress (2011). “Nigerian Foreign Affairs Ministry Statement on Libya”.  
<http://ogala.wordpress.com/2011/08/23>. (May 16, 2013).
- Okeke, V. O. S. and Aniche, E. T. (2012). “A Critical Exploration of the United Nation’s Security Council Resolution Number 1973 on Libya in 2011”. *African Journal of Social Sciences* 2(3): 53-65.
- Our Reporter (2011). “ARP urges Federal Government to withdraw recognition for Libya’s NTC”. <http://www.thenationonline.net/2011/index.php/news-updates/1861>. (May 16, 2013).
- Roth, B. R. (1999). *Government Illegitimacy in International Law*. Oxford: Clarendon Press.
- Rousseau, C. (1989). *Chroniques des Feits Internationalix*, 93 *RGDIP*.
- Schwarzenberger, G. (1976). *The Dynamics of International Law*. London: Professional Book Press.
- Selfa, L. (2011). “Libya’s Revolution, US intervention, and the left”. *International Socialist Review*, 77, May – June.
- Shaw, M. N. (1998). *International Law*. 4<sup>th</sup> edn. New York: International Thompson Publishing.
- Shaw, M. (2003). *International Law*, 5<sup>th</sup> edn. New York: Cambridge University Press.

Shaw, M. (2008). *International Law*. 6<sup>th</sup> edn. Cambridge: Cambridge University Press.

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

Talmon, S. (2011). "Recognition of the Libyan National Transitional Council". *ASIL Insights*. 15 (16).

The Economy Magazine (n.d). "Libya: Nigeria and the African Union". (Online)  
Available:<http://theeconomyng.com/editor15html>. (May 14, 2013).

Verma, S. K. (2004). *An Introduction to Public International Law*. PHI Learning.

Warbrick, C. (1981). The New British Policy on Recognition of Governments. 30 ICLQ, p.568.

Warbrick, C. (1993). "Recognition of Governments". *The Modern Law Review*, 56 (1): 92-97.

Wolfrum, R. and Phillip, E. (2000). "The Status of the Taliban. Their Obligations and Rights under International Law". *Max Planck Yearbook of United Nation's Law*, 6.