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A Strategy for Syria Under International Law: How to End the Asad Dictatorship While Restoring Nonviolence to the Syrian Revolution

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I. INTRODUCTION: HIGH STAKES

The iron rule of the Asad dynasty over Syria's people is forty-two years old. It began in 1970 when then Defense Minister Hafez al-Asad carried out a bloody coup against his own party colleagues and appointed himself president. Hafez, the family patriarch and dictator for life, killed or jailed companions he perceived as his rivals, supported violent extremism whenever he found it useful, and plundered Syria's riches while arresting and torturing any dissenter. Over two generations of Asads, a brutal government in Damascus has been the main Mideast ally of an increasingly belligerent

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Iran. Bashar al-Asad, the son, has acted as the chief facilitator for Sunni extremist killers in Iraq over the past ten years. In Lebanon, Asad's father and son have wrought havoc since 1975, killing in turn Palestinians, Muslim Lebanese, Christian Lebanese, and whoever dared help the return of stability to a country torn asunder. They assassinated the most prominent Lebanese leaders who stood in their way, including Kamal Jumblat in 1977, Bashir Gemayel in 1982, and in all likelihood Rafik Hariri in 2005. Operatives of self-proclaimed "Loyal to Asad's Syria" Hizbullah are now under indictment before the Special Tribunal of Lebanon for Hariri's murder, and scores of journalists and politicians along with hundreds of other innocent people have been assassinated, "disappeared," or randomly killed.

Most tragically, the Asads never hesitated to commit mass murder against the Syrians. Hama's historic center was leveled to the ground in 1982, and the relentless siege, bombardment, and mass killing continues to this day a pattern of ruthless governance across the country, with Homs the latest victim.

Both the future of the Middle East and the success of the formidable nonviolent mass movement in Tunisia, Egypt, Bahrain, and Yemen depend on what happens next in Damascus. If the dictatorship survives, if its main pillars are not brought to justice on the way to a democratic transition, Asad's continued rule will doom domestic and international peace in the region and beyond. Why? Because the nonviolent movement will find it hard to recover from this blow. Asad's regime itself will have its own noxious effect on peace. Yet more deeply, more world-historically, it will be harder—much harder—to argue to any brave young man or woman cleaving to nonviolence that this path, although potentially bloody in sacrifice, is the right form of resistance to tyranny.

Our joint reflection seeks to bring recognition to the unparalleled bravery and sustained nonviolent resistance of Syria's revolution and to provide concrete political means to help end the forty-two year long reign of death and fear. Drawing on the appropriate tools of international law and the strength of Syrian revolution the ends and the means of the strategy proposed must remain worthy of the sacrifice of Syria's thousands of nonviolent demonstrators.

II. A CLEAR OBJECTIVE: ENDING THE DICTATORSHIP

The objective is clear and has been defined by the year-long revolution. Left in place, the system formed around Bashar al-Asad, his notorious brothers, and the circles around them will continue to murder Syrians they dislike, while gradually causing their opponents to become like them, and sending a signal to the diminishing dictatorships in the world that the way to win is to shoot nonviolent protesters and cling to power at all costs.

Asad and his accomplices must be removed from power and brought to justice. Nothing less will do. As the country's death toll nears the 10,000 mark and many more Syrians languish in prison, the previously dominant nonviolent character of the revolution is slowly giving way to the revolutionaries—civilians or defecting soldiers—taking up arms against one of the best honed repressive machines in the world. On their own, the non-violent protesters do not stand a chance.

III. POWER OF NONVIOLENCE RECOGNIZED AND REWARDED: THE MEANS OF MILITANT DIPLOMACY

More difficult than clarifying the objective of the revolution is the means to achieve it. For that we propose a new means: militant diplomacy.

The means of militant diplomacy demand first and foremost the proactive recognition of the sacrifices made by Syrian revolutionary nonviolence. The West has not sufficiently noticed the depth and strength of the nonviolent movement across the Middle East. That movement has its roots in Gandhi, the legacy of the civil rights movement in the United States, and the examples of Eastern Europe in 1989 and Serbia in 2000. It had a genesis of its own in the Lebanese Cedar Revolution of 2005–06 and the Iranian Green Revolution of 2009.

The Arab Spring of 2011 takes its very name from the Damascus Spring of 2001, which flourished briefly in Damascus until Bashar al-Asad ruthlessly destroyed it by sending his thugs to disrupt discussion meetings in homes—most famously the “Atasi club”—beating up its leaders and throwing them in jail. When on March 16, 2011 Suhair Atasi joined other Syrian women gathered in silence before the Ministry of Interior in the place of Marja to protest the disappearance of their sons, fathers, and husbands, she was dragged by her hair across two streets and imprisoned. Old and young women were beaten, insulted, and arrested. That sit-in followed the first recorded street demonstration in Old Damascus's Hamidiyya district the previous day. Meanwhile the southern city of Deraa had been boiling over the torture of a dozen of its children for scribbling the slogans of the Egyptian revolution on the walls. Deraa erupted on March 18 in a massive nonviolent rebellion that spread spontaneously and massively, and which continues to date. As in Hama and Homs, Asad's tanks were sent in to quell peaceful protests. And as in Hama and Homs, the moment the tanks disappear, Deraa will be instantly reclaimed by its people. Aleppo and Damascus are no different. Remove the apparatus of repression, and millions will be celebrating in the street their reclaimed country.

Nonviolence as belief and practice—echoed in country after country in the words “peacefully, peacefully”—has had extraordinary traction. Responsible in large part for the removal of Hosni Mubarak and Zine El Abidine Ben Ali in early 2011, the nonviolence movement has travelled from the Middle East to begin to undermine the Burmese military dictatorship and the African presidents-for-life and has reached into

the heart of Russia and China's authoritarian systems, not to mention, in a very different context, the Occupy Wall Street protests in the United States. Only eleven countries voted against the resolution condemning Syria's government passed by the U.N. General Assembly on February 16, 2012, a vote that followed the veto of Putin's Russia and the Communist Party's China in the Security Council. In the General Assembly, Russia and China led the list of Asad's friends and supporters—let us call them Friends of the Asads (FA). The Russian and Chinese governments were unsurprisingly joined by the most brutal governments on earth: Iran, Zimbabwe, North Korea, Cuba, and Belarus. These FA countries, their despots terrified by the possible precedent that may soon haunt them, are next in line in the worldwide sweep of the nonviolent revolution's march.

This is why the global future, and not only the future of the Middle East, is being decided in Syria. Thousands of Syrians have walked into the jaws of death, trusting that their acts would bring about the basic rights and governance they deserve. Meanwhile, a bloody regime gloats and persists, putting the lie to nonviolence not only in Syria but in each land that takes the evil lesson from its course: nonviolence will fail when repression rules. Since the first nonviolent protests of the women of the place of Marja and the children of Deraa in mid-March 2011 and the unimaginable violence rained on them by the Asad government, the world has been derelict in its duty to protect Syria's nonviolent heroes. It is beyond the time to act.

What Support Can Be Given Internationally to the Nonviolent Protestors?

Given the continued veto by Russia and China of any meaningful resolution in the Security Council, other sources of legitimacy must be sought. The Friends of Syria (FS) will defeat the few dictatorships in the FA camp by a comprehensive counter-strategy—one adumbrated in their first meeting in Tunis at the end of February 2012, but which is in need of better articulation.

On the diplomatic front, FS governments can act individually and collectively in a dual pincer strategy. The general principle is simple: delegitimize the Asad government institutionally, while legitimizing the nonviolent opposition through international recognition.

The relatively new Syrian National Council (SNC) has significant claims on such recognition. It has created an ever-closer process of consultation with the many groups in Syria, growing as a body in legitimacy as Syria's people turn collectively in horror from the tyrant's long train of abuses. Despite inevitable dissensions in a group whose leaders are scattered in exile and managing disagreements over matters of life and death, it has achieved an imperfect but functional unity. Despite the daily dangers accrued through overt association with the SNC, nonviolent demonstrators have repeatedly expressed their support for it. There is no other "game in town" for the nonviolent movement. Yet it is essential to understand that the SNC can be only provisionally and partially legitimate until free elections are carried out in Syria. In the

interim, it needs to expand its representativeness, giving particular prominence to women, minorities, Alawites, Christians, Druze, and Kurds, and fulfill its promise of as efficient a rotation in its leadership as possible.

Its legitimacy depends on five factors: (1) the support of the people as expressed in continuing non-violent demonstrations; (2) the maximum exercise of democratic deliberation despite the practical difficulties; (3) the continuing quest for descriptive and substantive representativeness of all parties in the absence of electoral representativeness; (4) a growing international recognition, in law and in fact, that they stand on a far superior ground than the regime as the right interlocutors—thereby also a recognition that the massive popular disaffection is a *Revolution*, and not a “civil war”; and, (5) on a moral plane, its continued adherence to the path of either non-violence or, in the most dire circumstances, the least possible use of force. Like the signers of the U.S. Declaration of Independence and of many other founding documents of great nations, the SNC and any group purporting to speak for a people in turmoil must have their legitimacy judged by some criteria. We suggest these. By any of the five interlocked criteria, the SNC is the most legitimate group in Syria—certainly including the present totally discredited regime of Bashar al-Asad. It is not surprising, then, that European Union (EU) capitals and Gulf Cooperation Council (GCC) countries severed diplomatic relations with the current Syrian government. Significantly, the EU officially recognized the SNC on 28 February.

As for the Asad regime, much more can be done to accelerate the process of delegitimization. First steps would include surrendering the Syrian embassies to the opposition as a far more legitimate representative of Syria's people than the present envoys. This measure would immediately promote defections in those embassies and in the Syrian diplomatic services. Should FS governments decide that giving the embassy to the Syrian people as represented transitionally by the opposition is not sufficiently supported by consular law, they can simply expel the local Syrian ambassador and top aides at the embassy.

They can also provide serious logistics to assist the SNC as the most significant umbrella group for this transitional period, in order to better advance the agenda of Syrian democracy. Despite its inevitable organizational problems, the opposition must act as the real government and be increasingly recognized as such.

The U.N. General Assembly can meet again to vote formally for such recognition. Individual governments can start the process immediately. Governments are free under international law to recognize the foreign government they consider legitimate in a given country. While the effective control of territory is sometimes developed as a condition of recognition internationally, it is left to individual governments to decide. This is the time to advance the better part of a halting doctrine and practice: in situations such as Syria, a government cannot claim to represent people it kills massively and systematically.

One highly symbolic, extremely practical, measure that results from this dual strategy of derecognition and recognition is that it is virtually costless. Many Syrians have been deprived of travel documents for years. This hampers their action and increases the risks on their lives. These Syrians should be issued passports by the SNC government and their passports recognized for travel abroad by the FS.

In addition to official recognition of the resistance envoys as the temporary government, with the consequences such recognition entails for the isolation of Asad and his circle of killers, the leading political parties from both the government and the opposition in FS countries can help enhance the quality of support to the revolution. Party leaders across the political spectrum of FS societies should meet with designated representatives of the opposition and offer them headquarters, logistical, and media support.

Parliaments in supportive countries in the seventy-strong FS group can also play a key role by organizing open debates and working meetings where nonviolent revolutionary Syrians can be heard and their requests studied and discussed seriously, both for immediate needs and in preparation for the transition to democracy.

The U.N. Secretariat and the Arab League apparatchiks must immediately stop their pointless mediation with a killer regime, now being formalized by their joint envoy calling for a “dialogue” that puts the two sides on an equal moral footing and threatens to destroy the revolution. Instead, it should address the SNC and the resistance inside the country as the only worthy interlocutors for Syrian society until free elections are possible, that is, after Asad is removed from power.

On the front of judicial accountability, Syrian and international human rights organizations have been active in gathering the evidence needed for the indictment and eventual trial of Syria’s leading killers. Two practical measures can be further developed in coordination with the opposition, which knows the country best.

First, a list of *personae non gratae* needs to be established, making the central pillar of the repression and their financiers. Such a “list of shame” has already been established in various countries for the most notorious henchmen of Asad. The process needs to be enhanced, regularized, and rigorously documented, and its parameters publicly adopted. Fighting corruption is central to accountability. The immediate kin involved in mass murder and the financiers of the Asad family must have their assets frozen, and they must be questioned and eventually arrested when they travel, or they must be denied visas. To the extent allowed by the law, they must be separated from their ill-gotten properties abroad, to be held in trust for their Syrian victims, and some frozen assets must be disbursed to the extent possible to the families of those killed and jailed. A joint committee of oppositional representatives, honest wealthy Syrians, and respected international figures can establish a special compensation fund for bereaved families.

Conversely, efforts to openly distance the merchants and industrialists from the regime need to be perceived as an important aspect of the opposition's strategy. Not only must the SNC press them further for support, but it is important for the revolution to have stronger views on the day after, thereby reducing the fears of the minorities and the wealthy, and involving them in the formation of a short and longer term economic vision that covers (a) managing the economics of the revolution to lessen the terrible plight of ordinary people and to accelerate the demise of the regime, (b) preparing for the economic transition, and (c) working on the day and years after Asad's removal.

This work will prepare for full judicial accountability. A massive international investigation that registers names of the victims, the circumstances of their death, and the names of the main commanders of the repression and its most notorious thugs, should be started immediately. Here also much work has already been achieved by leading Syrian and international human rights organizations and by the Office of the U.N. Commissioner for Human Rights. These files cannot just gather dust. The office of the ICC cannot continue to hide between formal pretexts to ignore the Syrian dossier. It is high time for Prosecutor Luis Moreno Ocampo to officially start the *investigation* so that the files are ready when the circumstances are ripe to formally proceed with an *indictment*. Once the SNC is recognized by the more than seventy FS countries, it can ask the ICC Prosecutor to move on the indictment, with the help of the FS if China and Russia continue blocking the ICC from carrying out its legal duty as inscribed in its *raison d'être* in the first place.

In short, Asad's government must be isolated politically, delegitimized diplomatically, and investigated criminally, while the Syrian nonviolent revolution represented in part by the SNC should be increasingly recognized, assisted, and dealt with as the transitional government of Syria.

In this transition period, the responsibility of the Syrian opposition to enhance its unity and develop its ties to the resistance inside Syria cannot be emphasized enough. Only free elections after the removal of Asad can give it full legitimacy, but the opposition can take many steps in the meantime: the rotation in the leadership, as agreed when the SNC was announced, must be respected; women and minorities must be included in a real and visible way; collective, professional debates to sharpen the vision of democratic post-Asad Syria must be a daily concern; the Syrian youth and the professional diaspora must be involved through finance, organization, and technology in support for human rights and election monitoring; and moves to connect with the other revolutions in the region should be ongoing, along with discussion of nonviolent means to end all regional disputes, including the Arab-Israeli conflict. These measures are important in themselves. They are important to set the stage for a constructive transition to democracy when the dictator is removed. They are important, above all, because the world needs a serious oppositional entity as a

Syrian partner for change, with provisional and partial but real legitimacy, in order to bring to an end the forty years of bloodshed for which Asad rule is responsible in Syria and in the Middle East.

Nothing in international law requires a Security Council resolution for FS governments and societies to take any of the above steps. Call it militant diplomacy.

IV. ON THE GROUND: A COERCIVE STRATEGY BUILT ON HUMAN RIGHTS

Humanitarian support cannot wait for a positive response from Asad to the International Committee of the Red Cross (ICRC)'s continuous begging him for entry or to the lamentably hollow calls, in the United Nations and elsewhere, for him to please be nice and stop the killing machine.

The more quickly militant diplomacy proceeds, the more quickly international derecognition will suffocate the Asad regime. Yet as Asad's crimes mount in Syria, the urgent need to protect the nonviolent demonstrators and the civilian population at large requires not only that the screws be tightened relentlessly but also that they be given a potential razor edge. The killers in Syria will be tried, but they must first be removed from power.

Although the status of Responsibility to Protect remains imprecise in international law, Syria's nonviolent revolution presents both a test case and a formidable occasion to set new standards for dictatorships whose murders mount into the thousands. In December 2004, a forty-strong coalition of Middle East Non-Governmental Organizations (NGOs) expressed at the G-8 meeting in New York its firm belief that "dictatorship is a crime against humanity." Nothing proved the point more than the Asad system.

Decisive action on the ground requires a coalition of governments willing to stop the killing of unarmed demonstrators. Several North Atlantic Treaty Organization (NATO) and Arab League leaders have already expressed their support for ending the dictatorship. In the *New York Times* on February 23, Anne-Marie Slaughter, director of policy planning at the U.S. State Department from 2009 to 2011, argued that the Friends of Syria should militarily establish "no-kill zones" in several places as near as possible to the borders of Syria and gradually expand these zones. Army defectors and others could flee to the zones, which would be used only defensively and would protect all Syrians within them. We support this strategy and add that within these zones, political and judicial institutions could be established that would then maintain the law, prevent revenge killings, and at the same time allow the Syrian opposition to articulate its differences and its unity within a legal structure that enhances its domestic and international legitimacy. The zones would allow widespread consultation, discussion, and even protest, providing in the best case the genesis for the fledgling democracy that would take over from the Asad regime. At the same

time, a significant military buildup on the borders of Syria would make clear the potential for action if all peaceful and nonviolent means should fail.

The combination of “no-kill zones” and an international military build-up form a coercive strategy that accomplishes three goals.

First it demoralizes the dictator. His hope for prevailing through the continued use of force against unarmed citizens will be undermined when his apparatus of repression sees a growing international coalition commanding a formidable force of last resort.

Second, it demoralizes the core of the army and the bureaucracy. By demonstrating the illegitimacy of the regime and making it clear that it will not prevail, it encourages soldiers and officers to desert and to link their future with a growing civil opposition. Particularly in conjunction with increased diplomatic delegitimization of the Syrian foreign office and sanctions on the leading financiers of the repression, the gathering mobilization encourages the domestic Syrian bureaucracy to express its disquiet in various ways, from resignations to establishing open or secret bridges to the opposition.

Third, it gives hope to the nonviolent movement and encourages persistence in this path. The opposition can then continue to pursue peaceful strategies knowing that its actions will have results and that the regime will eventually be defeated and its leaders tried. Realistically, we must recognize that strictly peaceful strategies can continue only in a climate that promises the increasing certainty of an ever-closer end of Asad's political life.

Only in the worst case and in the last resort might force be needed. Even then, it should be applied selectively, gradually, and with the least possible violence.

If the exercise of outside force is required, it must in the best case be legitimated by the Security Council. In the next best case it would be legitimated by (1) a substantive application of the Responsibility to Protect by the FS governments, individually and collectively, (2) a combination of extensive consultations within the coalition and with the Syrian opposition, with demonstrations of various sorts of domestic and international measures to assist civilians and end the killing, (3) the features that make the nonviolent opposition a far more legitimate representative interlocutor than Asad's government, (4) the moral act itself of holding back until the last possible moment, and (5) the justice and appropriateness of the acts of force if and when they are exercised.

How can a coercive strategy be put in place?

Before any troops move on the ground, small symbolic measures can frighten and unnerve the tyrant. Daily drones with cameras can transmit close-up images of his palace, the headquarters of his apparatus of repression, and the rubber stamp

parliament to give the pillars of the regime a tangible warning. On the request of the SNC and in conjunction with its military bureau just established to integrate the Free Syrian Army, stealth helicopters and jets can follow into the Syrian skies, dropping summons to the International Criminal Court (ICC) and leaflets with health and security instructions, followed perhaps with non-lethal bombs that would explode with noise but no harm, pointing only to potential future action. Troops from Jordan and Turkey—even from Iraq, if it wants to host the Arab Summit later this month and in Lebanon under a new government—must be seen to move to every possible border of the country, in preparation for any eventuality. These troops would also defend the “no-kill” zones of safety, established first at the border and later farther in, to shelter the refugees and provide a sanctuary for defecting soldiers. Where Asad’s troops thin out sufficiently to warrant the surrender of the territory to the revolutionary committees and the Free Syrian Army under SNC governmental control, dozens of international NGOs can lend their formidable organizational know-how to help the opposition organize as a legitimate government within these territories, while NATO will protect the safe zones and provide the logistical support needed for expanding them. At that point, any use of force must be coordinated closely enough to be a joint strategy between the international community and, to coin a term needed by the human rights logic of international law, the Syrian Oppositional Government (“SOG”). By then Asad and his circles will be nothing more than criminal fugitives that the “SOG” is seeking to arrest and bring to justice with the help of the FS.

An important measure in this process is the deployment of human rights monitors to ensure that revenge killing does not, as in Libya, follow the demise of the dictator and his henchmen. Some of us advocated this “human rights monitors” approach to end the regime of Saddam Husain in Iraq in the 1990s, together with his indictment in a Special Tribunal for Iraq, both measures to be inscribed in a Security Council Resolution that considered him no longer the legitimate ruler of Iraq under international law. We still believe that, had this “Iraq Democratic Initiative” been adopted, the disastrous war of 2003 could have been avoided.

If these measures are not enough to get Asad scurrying in fear, or if his retaliation reaches a Benghazi-Srebrenica level, then at long last all necessary means must be used to prevent a new Hama. It may be that Asad’s systematic brutality has already reached a “Hama level.” The Responsibility to Protect is facing a severe test in Syria. This is why doing it right at this critical moment of Middle East and world history will help international law define more precisely the threshold of crimes against humanity and the set of contextual circumstances that justify in law an international military intervention. Yet even at this last stage, which we may fervently hope will never arise, violence should be kept to a minimum, and must specifically target the political and military commanders of the killing machine.

The likelihood is high that in the end massive violence will not be needed. But only a credible coercive strategy developed by the nonviolent opposition and its backers worldwide, expressed with as little actual violence as possible, will ensure that the nonviolent character of the revolution is responsible, and is seen as responsible, for its success. The alternatives are defeat or another Libya. Both outcomes would deeply undermine the growing commitment to nonviolence across the globe, from Damascus to Beijing. That would be the greatest loss, both for the Middle East and for humanity.

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