International Law, Dignity, Democracy, and the Arab Spring

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Introduction

As recognized in the United Nations Universal Declaration of Human Rights, “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”¹ Although expressed nearly sixty-four years ago, this prescient affirmation of the need to continually protect human rights by the rule of law, and the interrelated need for rebellion against tyranny and oppression when relevant human rights are trampled, is clearly relevant to what some have termed the Arab Spring of 2011–2012 and the rebellion by individuals and groups against tyranny and oppression in Tunisia, Egypt, Libya, Yemen, and Syria.

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More recently, various individual and group participants in the Arab Spring have embraced and reaffirmed predominant patterns of human expectation and claims occurring worldwide regarding individual dignity and worth; self-determination of peoples; human rights with respect to relatively free and genuine participation in governmental processes and the standard of legitimacy for governments; democracy as a universal core value; and the right of rebellion or revolution and the concomitant right of a given people to seek self-determination assistance.

Each of these forms of human expectation has a long history, and the exact contours of each and their interrelation and effectuation are still unfolding in the Middle East, North Africa, and elsewhere. Each form also has a present legal and policy mooring in basic international legal instruments, including the United Nations Charter and a number of authoritative human rights instruments. Therefore, one must address relevant norms and policies set forth in such instruments as part of an adequate international legal and policy analysis of non-state actor expectations and actions that have taken place during the Arab Spring as well as the international community’s responses to them. Importantly, one must also keep in mind that international law has never been merely state-to-state, as it might be if states were the only formal actors in the international legal process with rights and duties or if private individuals and groups did not also have human rights duties. Among early U.S. recognitions of private human rights duties was President Thomas Jefferson’s Sixth Annual Message to Congress, in which he formally approved the withdrawal of “citizens of the United States from all further participation in those violations of human rights . . . so long continued on the unoffending inhabitants of Africa.”

I. General International Legal Policies at Stake

A. Human Dignity

Human dignity is a fundamental international legal precept. The right to human dignity is part of universal human rights law that is expressly related to the value and worth of each human being as well as the equality of men and women. As the United Nations Charter declares, when creating the Charter in 1945 the peoples of the United Nations had been deter...
minded to reaffirm their “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . . .”\textsuperscript{5} The United Nations Charter also recognizes the global nature of each member’s obligation “to take joint and separate action”\textsuperscript{6} to promote “universal respect for, and observance of, human rights”\textsuperscript{7} and thus, universal respect for and observance of human dignity.

As noted in the 1948 Universal Declaration of Human Rights, the Declaration was promulgated in part to provide “a common understanding of these [Charter-based] rights . . . .”\textsuperscript{8} In fact, the first article set forth in the Declaration expressed the expectation that “[a]ll human beings are born free and equal in dignity and rights.”\textsuperscript{9} With respect to freedom, justice, and peace, the Declaration also proclaimed that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,”\textsuperscript{10} an expression that also appears verbatim in the preambles to the two main global human rights treaties, the International Covenant on Civil and Political Rights (ICCPR)\textsuperscript{11} and the International Covenant on Eco-

\textsuperscript{5} U.N. Charter, pmbl. Importantly, the Charter requires that human rights be respected and observed “for all without distinction as to . . . sex . . . or religion.” \textit{Id.} arts. 1, para. 3, 55, para. c.

\textsuperscript{6} \textit{Id.} art. 56.

\textsuperscript{7} \textit{Id.} art. 55, para. c. The duty of universal respect and observance is necessarily operative both internally and externally. It applies in all social contexts and is without geographic or temporal limitations. Any limits regarding the reach of human rights are found in human rights law, and, as often recognized, some human rights are absolute and non-derogable.

\textsuperscript{8} Universal Declaration, supra note 1, pmbl.


\textsuperscript{10} Universal Declaration, supra note 1, pmbl.

\textsuperscript{11} International Covenant on Civil and Political Rights pmbl., Dec. 9, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].
nomic, Social, and Cultural Rights. Both of these global human rights treaties also affirm “the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms” and proclaim that equal and inalienable rights “derive from the inherent dignity of the human person.”

Quite clearly, processes of political oppression and violent attacks on civilians during the Arab Spring violated the human dignity of oppressed human beings and thwarted equality, freedom, justice, and peace. Such forms of political oppression also violate other relevant human rights, including the right of a people to political self-determination and prohibitions of unlawful governmental force.

B. Self-Determination and Relevant Human Rights

The precept of self-determination of peoples is enshrined in the United Nations Charter. Moreover, the ICCPR recognizes that political self-determination is a human right and expressly affirms that, “by virtue of that right” all peoples have the right to “freely determine their political status and freely pursue their economic, social and cultural develop-
ment.”16 Importantly, the right of self-determination is that of peoples and not that of states, governments, political or religious factions, or terrorist minorities. In fact, an illegal regime, engaged in a strategy of denial of self-determination and violations of relevant human rights, has no right under international law to assure its own survival. Its claims of necessity are illegitimate.17

To the extent that persons are denied equal participation in their political processes, they are “denied the sharing of political power or shared participation in a process of political determination by an aggregate ‘self.’”18 In a given case, a denial of self-determination by a government or private actors operating in their own or foreign territory can also infringe on human rights to freedom of expression, including the free exchange of ideas nationally and internationally;19 freedom of assembly;20 citizens’ abilities to take part in governmental processes directly or through freely chosen representatives;21 and individual dignity and worth,22 equality,23 and freedom for all from impermissible discrimination on the basis of political or other opinion, race, sex, or other categories listed in human rights instruments.24 Participation in political self-determination and enjoyment of human rights are therefore intertwined.25

16. ICCPR, supra note 11, art. 1(1); see also U.N. Charter art. 1, para. 1; Promotion of a Democratic and Equitable International Order, G.A. Res. 55/107, pmbl., ¶ 3(a), U.N. Doc. A/RES/55/107 (Dec. 4, 2000); Declaration on Principles of International Law, supra note 15, ¶ 5(1) (“the right freely to determine . . . their political status”); Lung-chu Chen, An Introduction to Contemporary International Law 30–33 (2d ed. 2000). The Human Rights Committee created by the ICCPR has also recognized that “denying peoples the right to determine their own political status . . . would be incompatible with the object and purpose of the Covenant.” Human Rights Comm., General Comment No. 24, ¶ 9, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 2, 1994), reprinted in 34 I.L.M. 839 (1995). Additionally, the International Court of Justice has recognized a people’s right to self-determination as an obligation erga omnes (i.e., a right owing by and among all persons). East Timor (Port. v. Austl.), 1995 I.C.J. 90, ¶ 29 (June 30). Moreover, the African Charter recognizes that the right of a people to self-determination is an “inalienable” right. African (Banjul) Charter on Human and Peoples’ Rights, supra note 9, art. 20(1).

17. See infra Parts I.D, II.


19. ICCPR, supra note 11, art. 19.

20. Id. art. 22.

21. Id. art. 25(a).

22. Id. pmbl.; see also supra Part I.A (discussing individual dignity as part of universal human rights law).

23. ICCPR, supra note 11, pmbl., arts. 2(1), 26.

24. See id. arts. 2(1) (listing an extensive set of impermissible grounds for discrimination, including “political or other opinion”), 26; see also U.N. Charter, pmbl., arts. 1, para. 3, 55, para. c (addressing the Charter-based guarantee of human rights and freedom from discrimination on the basis of race, sex, language, or religion).

Such an interconnection is also recognizable in other ways. For example, the Universal Declaration of Human Rights affirms that the only legitimate or authoritative government is one based on the will of the people: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

26. Universal Declaration, supra note 1, art. 21(3). Concerning this democratic basis for governmental authority, the core value of democracy, and relevant restraints on governmental conduct, see id. art. 29(2) (stating that limitations of human rights are only permissible in order to serve certain just requirements “in a democratic society”); Charter of the Association of Southeast Asian Nations (ASEAN) pmbl., Nov. 20, 2007 (adherence “to the principles of democracy, the rule of law and good governance, respect for and protection of human rights”), available at http://www.asean.org/archive/publications/ASEAN-Charter.pdf; Arab Charter on Human Rights, supra note 9, art. 24(7) (“No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society . . . .”); Inter-American Convention on the Forced Disappearance of Persons, supra note 9, pmbl. (“in the framework of democratic institutions”); African (Banjul) Charter on Human and Peoples’ Rights, supra note 9, art. 20(1)–(3); American Convention on Human Rights, supra note 9, pmbl. (“within the framework of democratic institutions”), arts. 15 (“in a democratic society”), 16(2) (“in a democratic society”), 29(c) (“representative democracy as a form of government”), 32(2) (“in a democratic society”); ICESCR, supra note 12, art. 4 (“in a democratic society”); ICCPR, supra note 11, arts. 14(1) (“in a democratic society”), 21 (same), 22(2) (same); Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and 14 pmbl. (“best maintained . . . by an effective political democracy”), arts. 6(1) (“in a democratic society”), 8(2) (same), 9(2) (same), 10(2) (same), 11(2) (same), Nov. 4, 1950, 213 U.N.T.S. 221, E.T.S. No. 5 (1950); Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 2(4) (“in a democratic society”), Sept. 16, 1963, E.T.S. No. 46 (1968); American Declaration of the Rights and Duties of Man, supra note 9, art. XXVIII (“advancement of democracy”); Jordan J. Paust, The Illegality of Apartheid and the Present Government of South Africa, 131 CONG. REC. 34073-75 (Dec. 4, 1985); S.C. Res. 940, pmbl. (labeling the government in Haiti as an “illegal de facto regime” and “[r]eaffirming . . . the goal of the international community regarding the restoration of democracy in Haiti and the prompt return of the legitimately elected President”), ¶ 4 (authorizing states “to form a multinational force . . . to use all necessary means to facilitate the departure from Haiti of the military leadership . . . [and] the prompt return of the legitimately elected President”), U.N. Doc. S/RES/940 (July 31, 1994); Declaration on the Strengthening of International Security, G.A. Res. 25/2734, ¶ 22, U.N. GAOR, 25th Sess., Supp. No. 6, U.N. Doc. A/RES/2734 (Dec. 16, 1970) (condemning “all forms of oppression, tyranny and discrimination . . . wherever they occur”); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, intro., (June 29, 1990) (committing to the “development of societies based on pluralistic democracy”), reprinted in 29 I.L.M. 1305 (1990); CHEN, supra note 16, at 33, infra Part I.C; cf. Arab Charter on Human Rights, supra note 9, art. 30(2) (“in a tolerant society that respects human rights and freedoms”).

In Military and Paramilitary Activities in and Against Nicaragua, the majority opinion of the International Court of Justice stated that “adherence by a State to any particular doctrine does not constitute a violation of customary international law,” confused “sovereignty” with the “State,” and assumed nonsensically that a totalitarian dictatorship comports with “freedom of choice.” (Nicar. v. U.S.), 1986 I.C.J. 14, ¶ 263 (June 27). Such statements are in serious error, because the right of self-determination under the United Nations Charter is not that of a “State” but of a people, and both self-determination and human rights law require a domestic political process based on the relative free will of a given people. See Karima Bennoune, Remembering the Other’s Others: Theorizing the Approach of International Law to Muslim Fundamentalism, 41 COLUM. HUM.
based on the relative free will of the people is necessarily mirrored in the concomitant right of a people to freely determine their political status, which is recognized in connection with self-determination.27 As the International Court of Justice has recognized, “application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned.”28 Modes of enjoyment of the right of self-determination recognize not merely a relatively full and free participation in a present political process, but also “[t]he establishment of a sovereign and independent State . . . or the emergence into any other [freely determined] political status . . . .”29 These modes of enjoyment are particularly relevant to a given people’s process of self-identification30 and their consensual participation in a relatively new and independent political process.

C. Democracy as a Core Value

In 2005, the international community formally expressed its commitment “to actively protecting and promoting all human rights, the rule of law and democracy” and recognized that these “are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations . . . .”31 The international community also reaffirmed “that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems,” while reaffirming “the necessity of due respect for sovereignty and the right of self-determination.”32 Moreover, the international community declared that there is a “responsibility to protect” state populations or “R2P”: “Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity”33 and, quite clearly therefore, not to commit

\[\text{\textsuperscript{RTS. L. REV. 635, 695 (2010) ("[T]he human right to political participation is not to be exercised toward the end of establishing totalitarian systems that seek to deny rights to others (such as women).")}.}\]

29. Declaration on Principles of International Law, supra note 15, ¶ 4; see also Chen, supra note 16, at 33–34.
32. 2005 World Summit Outcome, supra note 31, ¶ 133.
33. Id. ¶ 138. The U.N. Secretary General has recognized that this paragraph is “firmly anchored in well-established principles of international law.” U.N. Secretary-
such crimes against portions of its own population.

With regard to “due respect for sovereignty,” it should be noted that sovereignty is not absolute under international law nor impervious to its reach.34 More specifically, the pretended cloak of state sovereignty ends where human rights begin. It is well recognized that human rights violations and international crimes are of international concern rather than internal affairs of a single state even if they occur totally within a single state. As the International Court of Justice recognized decades earlier, violations of basic human rights are violations of *obligatio erga omnes*, “are the concern of all States,” and all states “can be held to have a legal interest in their protection . . . .”35

During the Arab Spring, it became especially evident that Qaddafi’s regime in Libya not only denied democracy, human rights, and self-determination to the people of Libya, but also engaged in murderous armed attacks against sections of the Libyan civilian population that constituted

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war crimes and crimes against humanity and led to the United Nations Security Council’s authorization for member states to use responsive military force to protect civilians and civilian-populated areas in Libya. Despite similarly systematic and widespread murderous armed attacks on demonstrators and other civilians in Syria, the Security Council has not authorized member states to use force in order to protect civilians in Syria.

D. Unlawful Political Oppression

Clearly, the human right to participate freely in a domestic political process and to have a government based on the relative free will of the people is violated by a strategy designed to deny such rights and the related right of a people to political self-determination. Such a strategy and...
the resulting process of oppression are not tolerated under the United Nations Charter, especially since respect for human dignity, equal rights of men and women, other human rights, self-determination of peoples, and democracy are among the major purposes and core values of the United Nations.

Where a government engages in a strategy to deny political participation of persons in a process of self-determination and to violate correlative human rights, such government engages, however indirectly, in a process of political oppression and politicide (or the destruction of an authoritative political process) that violates self-determination and related human rights, and therefore such government lacks authority and legitimacy under international law. It is not a government that functions in a democratic society, and, for this reason, it is not a government that can lawfully limit human rights to free speech, association, and assembly—rights that can only be subject to limitations that are prescribed by law and are reasonably necessary for certain purposes “in a democratic society.”

During the Arab Spring, there were the usual attempts by governmental elites in Tunisia, Egypt, Libya, Yemen, and Syria to control local and transnational media, but advances in technology allowed numerous individuals within such countries, and some from abroad, to communicate and coordinate action through Facebook, Twitter, and other forms of electronic media. Illegitimate regimes have always sought to control the media, but advances in technology have increased opportunities for democratic opposition and domestic and transnational participation by individuals and groups in the effectuation of human rights and political self-determination.

Where a government uses armed force against a people as part of a strategy to deny self-determination and human rights, it violates Article 2, Paragraph 4 of the United Nations Charter, which prohibits the threat or use of force “against the . . . political independence” of another state “or in any other manner inconsistent with the Purposes of the United Nations.”

39. See, e.g., U.N. Charter, pmbl., arts. 1, paras. 2–3, 55, para. c, 56.
40. See id.
41. See supra note 26 and accompanying text.
42. For examples of human rights instruments that contain an express “in a democratic society” barrier to lawful limitations of certain human rights, see supra note 26; see also Jordan J. Paust, International Law and Control of the Media: Terror, Repression and the Alternatives, 53 IND. L.J. 621, 627–28 (1978).
43. See, e.g., S.C. Res. 1973, supra note 36, pmbl. (condemning “acts of violence and intimidation committed by the Libyan authorities against journalists, media professionals and associated personnel”).
44. See, e.g., Obama Middle East Speech, supra note 14 (“[E]vents of the past six months show us that strategies of repression . . . will not work anymore. Satellite television and the Internet provide a window into the wider world. . . . Cell phones and social networks allow young people to connect and organize like never before. And so a new generation has emerged. And their voices tell us that change cannot be denied.”); Travis, supra note 36.
45. See U.N. Charter, art. 2, para. 4. Article 2, paragraph 4 is conditioned by the phrase “in their international relations,” but international relations have never been merely state-to-state and formal actors can include states, nations, peoples, belligerents, and other actors. See supra note 2; infra note 70.
Because these purposes include promoting self-determination of all peoples and respect for and observance of human rights, Article 2’s proscription logically extends to armed attacks by a government not merely against a people abroad, but also against its own people or against a people or peoples within its territory that are part of its population. Armed attacks by a government against a number of its own civilians would not only violate human rights law, but would also constitute a crime against

46. See U.N. Charter, arts. 1, paras. 2–3, 55, para. c, 56.

47. See, e.g., Jordan J. Paust, Aggression Against Authority: The Crime of Oppression, Politicide and Other Crimes Against Human Rights, 18 Case W. Res. J. Int’l L. 283, 287–90 (1986); infra notes 51–52 and accompanying text; see also supra note 33 (discussing R2P). Such forms of armed aggression can also trigger the right of a given people to secede from a state denying them self-determination and to seek self-determination assistance. See, e.g., Jordan J. Paust & Albert P. Blaustein, War Crimes Jurisdiction and Due Process: The Bangladesh Experience, 11 Vand. J. Transnat’l L. 1, 20 n.69 (1978) (the 1970 Declaration on Principles of International Law does not protect the territorial integrity of a state that is denying the right of a people to self-determination and they have rights to self-determination assistance, to collective self-defense, and to secede); infra Part II.

48. See, e.g., Arab Charter on Human Rights, supra note 9, art. 8(1) (“No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.”), (2) (“Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes.”); ICCPR, supra note 11, arts. 2(1) (“All individuals within its territory” are among those entitled to rights under the treaty.), 6(1) (discussing arbitrary killings of civilians), 7 (discussing cruel and inhuman treatment or punishment of civilians). In a given instance, armed violence can also be connected to other human rights violations, such as violations of human dignity; self-determination; freedom of speech, assembly, and association; and freedom to take part in democratic political processes.

Additionally, human rights violations can occur at the hands of private groups and individuals, for example, during times of governmental oppression and during or after rebellion or revolution. See, e.g., African (Banjul) Charter on Human and Peoples’ Rights, supra note 9, pmbl. (“the performance of duties on the part of everyone”), arts. 27–29; American Convention on Human Rights, supra note 9, arts. 29(a), (d), 32; ICCPR, supra note 11, pmbl. (“the individual, having duties to other individuals and to the community to which he belongs”), art. 5(1) (the treaty cannot be interpreted to imply “for any . . . group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant”), 14(1) (“obligations” of all persons can be addressed in a court of law); Convention for the Protection of Human Rights and Fundamental Freedoms, supra note 26, art. 17 (“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”); Universal Declaration, supra note 1, art. 29(1) (“everyone has duties to the community”); American Declaration of the Rights and Duties of Man, supra note 9, pmbl. (“duty [owed] by each individual . . . . Rights and duties are interrelated in every social and political activity . . . . Duties of a juridical nature . . . duty of man”); Human Rights Comm., General Comment No. 20, ¶ 2, U.N. Doc. CCPR/C/21/Rev.1 (Oct. 3, 1992), reprinted in International Human Rights Instruments, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (May 27, 2008) (interpreting torture and cruel, inhuman, and degrading treatment under ICCPR Article 7 as prohibited, “whether inflicted by people acting . . . . in a private capacity”); BUERGENTHAL ET AL., supra note 1, at 52, 128, 177–79; CHEN, supra note 16, at 78, 207–08, 232 (“all persons” have duties regarding genocide); HANNUM, ANAYA & SHELTON, supra note 1, at 151 (noting that private duties were not defined but their existence was recognized in Article 29 of the Universal Declaration),
humanity under customary international law, for which there is universal
jurisdiction. Moreover, such a strategy of denial of self-determination
and human rights through the use of armed force can be threatening to
international peace and international security, both of which are also listed
among relevant purposes of the United Nations Charter.

Importantly, the authoritative 1970 Declaration on Principles of Interna-
tional Law expressly affirmed that the Charter prohibits "any forcible
action" by a state that "deprives peoples . . . of their right to self-determi-
ation . . . ." Similarly, the 1974 Definition of Aggression adopted by the
United Nations General Assembly reiterated "the duty of States not to use
armed force to deprive peoples of their right to self-determination" and
affirmed that violations of such duty constitute international crimes of
aggression or offenses against peace. The end of governmental aggres-
sion against certain governments' own people during the Arab Spring not
only ended such forms of illegal force and oppression against those people,
but also served overall international peace and security.

E. The Right of Rebellion or Revolution

A significant number of scholars have recognized that "the right of a
people to revolt against tyranny is now a recognized principle of interna-
tional law." As noted elsewhere,

166 (duties were recognized in the American Declaration); MARK W. JANIS, AN INTRODUC-
TION TO INTERNATIONAL LAW 163, 174–79 (1988); McDougall, Lasswell & Chen, supra
note 1, at 96–107, 585, 587, 807–10; THEODORE MORON, HUMAN RIGHTS IN INTERNAL
STRIFE: THEIR INTERNATIONAL PROTECTION 34 (1987); PAUST, THE REALITY OF PRIVATE RIGHTS
AND DUTIES, supra note 2, at 1242–43; Jordan J. Paust, The Other Side of Right: Private

49. For more information about crimes against humanity involving attacks against
civilians, see, for example, Jordan J. Paust, The International Criminal Court Does Not
Have Complete Jurisdiction Over Customary Crimes Against Humanity and War Crimes, 43

50. See U.N. Charter, art. 1, para. 1.

51. See Declaration on Principles of International Law, supra note 15.

52. See Definition of Aggression, G.A. Res. 3314 (XXIX), U.N. GAOR, 29th Sess.,
recognition that private individuals can be criminally sanctioned for acts of aggression
and other offenses against peace, see, for example, Henfield's Case, 11 F. Cas. 1099,
1108–15, 1117, 1118, 1120 (C.C.D. Pa. 1793) (No. 6,360) (Wilson, J., charge to grand
jury) (regarding a relevant "duty of humanity," "acts of hostility" and "aggression," and
crimes against "peace"); Territorial Rights—Florida, 1 Op. Att'y Gen. 68, 69 (1797) ("an
offence against the law of nations" and "the peace of mankind"); Breach of Neutrality, 1
Op. Att'y Gen. 57, 58 (1795) (offense "against the public peace").

53. Gerald Sumida, The Right to Revolution: Implications for International Law and
World Order, in POWER AND LAW: AMERICAN DILEMMA IN WORLD AFFAIRS 130, 134 (Charles
A. Barker ed., 1971), reprinted in MYRES S. MCDougall & W. MICHAEL REIMANN, INTERNA-
TIONAL LAW IN CONTEMPORARY PERSPECTIVE - THE PUBLIC ORDER OF THE WORLD COMMU-
UNITY 176, 168 (1981); accord Antonio Cassese, Terrorism and Human Rights, 31 Am. U. L.
Rev. 945, 946–47 (1982); Edward Collins, Jr. & Timothy M. Cole, Regime Legitimation in
Instances of Coup-Caused Governments-in-Exile: The Cases of Presidents Mubarak and
Aristide, 3 J. Int'l. L. & Pec. 199, 210 (1996); Adama Dieng, Role of Judges and Lawyers
in Defending the Rule of Law, 21 Fordham Int'l. L.J. 550, 551 (1997); Alejandro Lorite
The right of revolution is an important international precept and a part of available strategies for the assurance both of the authority of the people as the lawful basis of any government and of the process of national self-determination. Under international law, the permissibility of armed revolution is necessarily interrelated with legal precepts of authority and self-determination, as well as with more specific sets of human rights. For example, the right to change a governmental structure is necessarily interrelated with the question of the legitimacy of that structure in terms of the accepted standard of authority in international law and with the precept of self-determination, both of which are interrelated and are also interconnected with human rights of individuals to participate in the political processes of their society.54

These international precepts also limit the permissibility of rebellion or revolution. For example, the rights of revolution and self-determination are rights of the people; therefore, they are rights that are often exercised by

a majority or in their name against an oppressive minority elite. Yet, the majority should seek to “ensure authoritative government, political self-determination, and the human rights of all members of the community equally and freely to participate.”

Also, international law places limits on the methods and means of violence and the types of treatment of human beings that must be considered when addressing the propriety of private individual and group participation in rebellion or revolution and in post-rebellion or post-revolution processes. The legitimacy of a rebellion or revolution does not legitimize the use of certain tactics or conduct that are absolutely proscribed under international law. Of particular importance during and after the Arab Spring is the need to protect fundamental universal rights of women to dignity and equality and their absolute, non-derogable, and peremptory jus cogens rights to freedom from torture and cruel, inhuman, and degrading treatment at the hands of radical fundamentalists. Effective protection of women’s human rights will require continued affirmation of (1) the existence of human rights duties of private groups and persons, and (2) the primacy of fundamental universal and peremptory jus cogens rights of women over contradictory claims in the name of the limited right to practice one’s religion.

55. Id. at 567.

56. Id. at 566, 569–70.

57. See Buergenthal et al., supra note 1; Paust, supra note 53, at 578–80; see also Daniel H. Derby, A Democratic Response to Foreign Political Offenses: The Need for Legislation to Counter Anti-Terrorism Excesses, 1 TOURO J. TRANSNAT’L L. 1, 26 (1988); Kevin J. Greene, Terrorism as Impermissible Political Violence: An International Law Framework, 16 VT. L. REV. 461, 489 (1992); Patricia Y. Reyhan, Genocidal Violence in Burundi: Should International Law Prohibit Domestic Humanitarian Intervention?, 60 ALB. L. REV. 771, 780–84 (1997); Travis, supra note 36, at 141 (affirming international duties to prevent, promote, and protect the right to rebellion, but also warning of potentially dire consequences, especially for women, if, “after the flight of many middle-class secularists and religious minorities” and impermissible social violence, post-revolution elections “will be swept by the best-funded and organized radical theocratic groups,” who engage in violations of human rights and self-determination).

58. For example, the legitimacy of a self-determination struggle does not legitimize tactics that violate non-derogable human rights or are designed to result in the impermissible terrorization of others or related crimes against humanity. See, e.g., Jordan J. Paust, Terrorism’s Proscription and Core Elements of an Objective Definition, 8 SANTA CLARA J. INT’L L. 51, 52, 59–60 (2010). With respect to armed rebellion and revolution, conduct that is not intended to produce terror and does not result in terror should not be labeled terrorism. See id. at 58–39. For this reason, mere opposition to an illegitimate regime through selective acts of violence is not terrorism.

59. For a discussion concerning the non-derogable and jus cogens nature of such absolute human rights, see, for example, ICCPR, supra note 11, arts. 4(2), 7; RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702(d), § 702 cmts. a, n (1987); Jordan J. Paust, The Absolute Prohibition of Torture and Necessary and Appropriate Sanctions, 43 VAL. U. L. REV. 1335 (2009).

60. See, e.g., Bennoune, supra note 26, at 677 (women are “often swallowed by what is considered ‘culture’ or disappeared by what is called ‘religion’”), 696 (international lawyers need to recognize both “state and non-state forms of coercion of women”).

61. For a discussion concerning the existence of private duties under treaty-based and customary human rights law, see, for example, supra notes 2–3, 48, 60.

62. Freedom from distinction on the basis of sex or religion is recognized in Articles 1(3) and 55(c) of the United Nations Charter, but the human right to freedom of relig-
II. Regime Change in Libya and Self-Determination Assistance to the People of Libya

In March 2011, the United States and other members of NATO began a campaign using significant military force in Libya that clearly amounted to participation in an international armed conflict under international law. In Resolution 1973, the United Nations Security Council authorized the use of military force to protect civilians and civilian-populated areas. The Security Council has authority to authorize enforcement measures under Articles 39 and 42 of the United Nations Charter in response to "any threat to the peace, breach of the peace, or act of aggression."
With respect to Libya, the Council decided that attacks on and continued threats to civilians and civilian-populated areas in Libya “continue[d] to constitute a threat to international peace and security”66 and the Council decided to authorize all necessary measures of protective force, including creation of a no-fly zone.67

Later in 2011, the United States and other members of NATO continued to use armed force in Libya and it grew from protection of civilians to support for rebel forces, which contributed to rebel control of Tripoli and regime change some seven months after NATO members’ use of armed force had begun.68 Over this period of months, it became reasonably necessary to provide support for regime change in Libya to effectively protect civilians who were under a series of murderous armed attacks and serious threats of imminent future attacks by the Qaddafi regime. In addition to the United Nations Security Council authorization to use all necessary measures of protective force, which covered the subsequent need to support regime change to protect civilians from armed attacks, during later stages of the Libyan armed conflict there was a change in the international legal status of the Libyan rebel-insurgents to belligerents, and they con-

41 and 42, to maintain or restore international peace and security.”), 42 (the Security Council “may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include . . . blockade, and other operations by air, sea, or land forces of Members of the United Nations.”).


67. Id. ¶¶ 6–8. Because “all necessary measures” had been authorized, it would be improper to claim that the Security Council had only authorized the creation of a no-fly zone.

68. See, e.g., Thom Shanker and Eric Schmitt, Seeing Limits to ‘New’ Kind of War in Libya, N.Y. TIMES (Oct. 21, 2011), http://www.nytimes.com/2011/10/22/world/africa/nato-war-in-libya-shows-united-states-was-vital-to-toppling-qaddafi.html# (U.S. predator drone “helped to guide a French warplane to attack Colonel Qaddafi’s convoy”); Eric Schmitt & Steven Lee Myers, Sharper Surveillance and NATO Coordination Helped Rebels Race to Capital, N.Y. TIMES (Aug. 22, 2011), http://www.nytimes.com/2011/08/22/world/africa/22nato.html (stating that the United States provided intensified aerial surveillances in and around Tripoli during the rebel takeover of Tripoli, NATO coordinated with the rebels, and “[t]hrough Saturday, NATO and its allies had flown 7,459 strike missions . . . attacking thousands of targets”); Larry Shaughnessy, U.S. Has Nearly Doubled Air Attacks on Libya in Past 12 Days, CNN (Aug. 23, 2011), http://articles.cnn.com/2011-08-22/politics/us.libya.costs_1_attacks-civilians-libyan-mission?_s=PM:POLITICS (“[t]here was an average of 1.7 strike sorties a day from April 1 to August 10, compared with 3.1 strike sorties in the past 12 days” and attacks by predator drones has more than doubled); Jim Garamone, Situation Fluid, but Gadhafi Regime Nears End, Obama Says, U.S. DEPT OF DEFENSE (Aug. 22, 2011), http://www.defense.gov/news/newsarticle.aspx?id=65104 (“More than 5,300 American sorties have been flown as part of Operation Unified Protector; 1,210 were strike sorties and 101 were Predator unmanned aerial vehicle strikes. The targets included air defenses, arms caches and ground forces.”). The General in command of NATO’s air operation in Libya has noted that selective use of force by NATO involved continual protection of civilians and civilian-populated areas from armed attacks by pro-Qaddafi forces (PGF). Anti-Qaddafi forces (AGF) were not attacked because “[w]e saw when the . . . [AGF] entered towns, they liberated the town and the people. They did not indiscriminately attack civilians and in fact, kept the civilians away from any of the fighting between the AGF and PGF.” E-mail from Lieutenant General Ralph J. Jodice II to author (Apr. 20, 2012, 09:50 CST) (on file with author).
sented to and welcomed U.S. and NATO uses of force. Still later, the Libyan National Transitional Council (NTC) gained recognition as the legitimate representative of the Libyan people, and its consent provided additional independent legitimacy for the use of force to support regime change, provide self-determination assistance to the Libyan people, and participate in collective self-defense against continuous armed attacks by remnants of the Qaddafi regime.

Self-determination assistance can be permissible under international law. The 1970 Declaration on Principles of International Law affirms that self-determination assistance can be permissible under the United Nations Charter when recognizing that “[i]n their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples [seeking self-determination] are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.” Moreover, the 1970 Declaration implies that the territorial integrity of states can be disrupted if they do not conduct themselves in compliance with the principle of equal rights and self-determination of peoples. The 1974 Declaration of Aggression also seems to allow for the right of a people to self-determination assistance by declaring that “[n]othing in this definition . . . could in any way prejudice the right to self-

69. Paust, supra note 63, at 43 n.4.  
70. For sources discussing the recognition in July 2011 by thirty-two countries (including the United States) of the NTC as “the legitimate governing authority in Libya,” see, for example, Press Release, Republic of Turk. Ministry of Foreign Affairs, Fourth Meeting of the Libya Contact Group Chair’s Statement (July 15, 2011), available at http://www.mfa.gov.tr/fourth-meeting-of-the-libya-contact-group-chair_s-statement_-15-july-2011_istanbul.en.mfa; see also William Wan & William Booth, Libyans Given Full U.S. Recognition, WASH. POST, June 16, 2011, at A9; Stefan Talmon, Recognition of the Libyan National Transitional Council, 15 ASIL INSIGHTS (June 16, 2011), available at http://www.asil.org/insights110616.cfm. With respect to recognition of the NTC of Libya and Security Council encouragement of the NTC (or “the Libyan authorities”) to implement its plans, for example, to protect Libyan civilians, restore governmental services, prevent violations of human rights, and ensure an inclusive political process involving free elections, see, for example, S.C. Res. 2009, supra note 36, ¶¶ 5, 7.  
71. See Paust & Blaustein, supra note 47, at 11–12 n.39 (“Contextual reality and the serving of all goal values require a new reading of article 51 of the Charter” where a given people are denied self-determination by an oppressive elite using military force, “especially in the light of massive violations of human rights of their people. Outside states cannot precipitate violence, but where an armed attack has occurred against a people seeking self-determination it is not improper to assist those being attacked.”) (parentheses omitted). Recognition of the right of self-defense and collective self-defense of a people entitled to self-determination who are under armed attack is all the more appropriate given that such peoples have formal participatory roles in the international legal process. Moreover, international law and international relations have never been merely state-to-state. With respect to documentation of these facts, see, for example, Paust, Nonstate Actors, supra note 2, at 979–81, 1000. International relations also recognizably exist once a status of belligerency is reached. At such a moment at least, all of the customary laws of war are applicable. Id. at 981 n.7.  
73. Declaration on Principles of International Law, supra note 15.  
74. Declaration on the Principles of International Law, supra note 15; see Paust & Blaustein, supra note 47, at 19–20 n.69.
determination . . . of peoples forcibly deprived of that right . . . nor the
right of these peoples to struggle to that end and to seek and receive sup-
port, in accordance with the principles of the Charter . . . .”75

In 1984, the United Nations General Assembly responded to the illegal
regime in South Africa by affirming the permissibility of self-determi-
nation assistance and “recognizing the legitimacy of [the people of South
Africa’s] struggle to eliminate apartheid and establish a society based on
majority rule with equal participation by all the people of South Africa,”76
urging “all Governments and organizations . . . to assist the oppressed peo-
ple of South Africa in their legitimate struggle for national liberation,”77
and condemning “the South African racist regime for . . . persisting with
the further entrenchment of apartheid, a system declared a crime against
humanity and a threat to international peace and security.”78

With respect to Libya and other countries in Africa, the African Char-
ter on Human and Peoples’ Rights provides additional support for some
forms of self-determination assistance. As the African Charter affirms,
“[O]ppressed peoples shall have the right to free themselves from the bonds
domination by resorting to any means recognized by the international
community,”79 which would include rebellion or revolution, and “[a]ll peo-
ple shall have the right to assistance of the States parties to the present
Charter in their liberation struggle against foreign domination, . . .”80

As I noted previously,

Various . . . Security Council resolutions and international instruments and
decisions indicate that use of force to overthrow a foreign government and to
provide self-determination assistance to a people is not absolutely impermis-
sible under the [United Nations] Charter.81 However, permissibility must
rest on a relatively free will of a given people and their request for assistance,
unless there is an independent basis for support in an authoritative Security
Council or regional authorization.82

Conclusion

Various individuals and groups during the Arab Spring have reaf-
firmed international expectations regarding individual dignity and worth;
self-determination of peoples; human rights with respect to relatively free
and genuine participation in governmental processes and the standard of
legitimacy for governments; democracy as a universal core value; and the

75. Definition of Aggression, supra note 52, art. 7.
28, 1984).
77. Id. ¶ 7.
78. Id. ¶ 3.
79. African (Banjul) Charter of Human and Peoples’ Rights, supra note 9, art. 20(2).
80. Id. art. 20(3).
81. See Paust, supra note 72, at 548 n.72.
82. Id. at 548. For information concerning the propriety of certain forms of
regional action authorized by regional organizations under Article 52 of the United
Nations Charter, such as NATO, the OAS, the OAU, and the Arab League, see, for ex-
ample, id. at 545–47.
right of rebellion or revolution against an oppressive government and the concomitant right of a given people to seek self-determination assistance. Efforts to achieve each are still unfolding, as they progress in all sectors of the human community. In fact, their effectuation is not merely an outcome at a given social moment, but rather a process involving the evolution of human relations. More generally, human dignity and democratic freedoms must be continually nurtured through affirmative, optimistic involvement with others.