THE LIBYAN UPRISING AND THE RIGHT OF REVOLUTION IN INTERNATIONAL LAW

Thomas Keenan¹

University of Notre Dame, South Bend, USA

email: tkeenan@bsfllp.com

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Abstract: Despite the ubiquitous coverage of the Libyan revolution throughout the last six months, very little has been said regarding the legal foundations for the rebels' actions. Within the international legal framework, it must be asked whether the Libyan people even had a legal right in the first place to overthrow the Gaddafi regime. In fact, the existence of a right to rebel under international law is very much an unsettled matter. Among the sources of international law, a right to rebel is not enumerated in any of the principal international instruments. In truth, the only significant mention of the right is a passing but ambiguous reference in the preamble of the Universal Declaration of Human Rights. A customary right of revolution is similarly absent, as many nations criminalize treason and other insurrectionary activities. Instead, if such a right exists in international law, it must derive from the well-enshrined right of self-determination. This right would thus constitute an additional exception to international law's general prohibition on the use of force, standing alongside self-defense and Security Council peace enforcement. Yet establishing a right of revolution would mark a significant departure from these other exemptions. In essence, the right of revolution represents an allowance for non-state actors to resort to force unilaterally for the protection of human rights. For this very reason, contemporary international law likely does not recognize a popular right to revolt. In light of international law's firm restrictions on lawful uses of force, there is no evidence that the law currently acknowledges a novel exception for the individual enforcement of human rights. Thus, in the absence of a change in the law, the proper legal remedy for the Libyan people was not rebellion but rather an appeal to the international community.

Keywords: International law, revolution, right of revolution, uprising, Libya

1 Candidate for Juris Doctor, University of Notre Dame Law School, 2012; B.A., History, Georgetown University, 2008. Many thanks to Professor Mary Ellen O'Connell for all her help in preparing this Note.

Introduction

The civil unrest that spread throughout much of North Africa and the Middle East in the early weeks of 2011 quickly deteriorated into horrific violence with the onset of civil war in Libya in late February. Reports of heavy casualties sustained by protestors saturated the airwaves as Libyan leader Colonel Muammar Muhammad al-Gaddafi ordered heavy artillery and aerial strikes to combat the uprising.² The protestors soon responded with force of their own, making initial territorial advances across the country. By mid-March, the international community decided to intervene by imposing a Security Council-approved no-fly zone.³ Despite months of stagnation due to the inability of the disorganized rebels to successfully oust Gaddafi,⁴ recent months have witnessed the liberation of Libya and the death of its former dictator.⁵ Though much of the academic focus on Libya has concentrated on the validity of the international intervention, the questions remains whether the Libyan rebels even had the legal right to resort to force in the first place under current international law.

In fact, the legality of revolution within international law is quite uncertain. A right to rebel is not present in any major international treaty and establishing a customary rule would be difficult, if not impossible. Rather, the right of revolution, if it exists at all, must stand as a means of enforcing the recognized right of self-determination.⁶

This Note will examine the asserted right of revolution and its application to Libya. Part I presents an in-depth analysis of the modern Libyan state and the circumstances that led to the revolution. Part II discusses the location of the right within international law, presenting a historical analysis of rebellion followed by a contemporary approach that accepts revolution as a complement to the right of self-determination. Next, Part III evaluates the case for and against

2 See *Libya Protests: 140 "Massacred" as Gaddafi Sends in Snipers to Crush Dissent*, TELEGRAPH, Jan. 13, 2011, available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8335934/Libya-protests-140-massacred-as-Gaddafi-sends-in-snipers-to-crush-dissent.html> [hereinafter *140 Massacred*]; *Libya Protests: Reports of Intense Benghazi Violence*, BBC NEWS, Feb. 20, 2011, available at <http://www.bbc.co.uk/news/world-africa-12516156> [hereinafter *Intense Benghazi Violence*].

3 See S.C. Res. 1973, ¶ 4, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

4 See *Libya: Rebels Move on Brega as Gaddafi Aide Holds Talks*, BBC NEWS, Apr. 4, 2011, available at <http://www.bbc.co.uk/news/world-africa-12957681> [hereinafter *Rebels Move*].

5 See *Libya's Col Gaddafi Killed in Crossfire, Says NTC*, BBC NEWS, Oct. 21, 2011, available at <http://www.bbc.co.uk/news/world-africa-15397812> [hereinafter *Crossfire*]; *Libya's New Rulers Declare Country Liberated*, BBC NEWS, Oct. 23, 2011, available at <http://www.bbc.co.uk/news/world-africa-15422262>.

6 The scope of this Note is limited to evaluating whether the Libyan rebels exercised a *recognized* right to rebel under current international law. In the case that an actual right is not found in the present law, this Note does not speak to the normative claim that international law *should* recognize a right of revolution.

the existence of such a right, weighing the arguments in light of the purposes of the international system, wars of liberation, Just War Theory, and the doctrine of humanitarian intervention. In sum, because the current international legal framework does not acknowledge an exception to the general prohibition on the use of force for the enforcement of human rights in the revolutionary context, there is likely no right of revolution in international law today. Finally, Part IV applies the right of revolution, assuming that it did exist, to the situation in Libya, concluding that the Libyan rebels may not have a sufficient case to sustain their decision to use force under Just War Theory.

I. The Revolution in Libya

A. *The Birth of Modern Libya and the Rise of Gaddafi*

Born out of tumultuous circumstances, the modern state of Libya can trace its origins to the 1969 coup d'état that placed Colonel Muammar Gaddafi in power. Following independence from Italian colonial rule after World War II,⁷ Libya became a constitutional monarchy under King Idris al-Sanusi in 1951.⁸ Yet the accumulation of oil wealth in the hands of the more privileged members of Libyan society, paired with the growth of Arab nationalism in the region, soon aroused the ire of the populace.⁹ This resentment came to a head in 1969 when a group of military officers led by Colonel Muammar al-Gaddafi successfully staged a coup against King Idrus, overthrowing the monarchy and installing Libya's current political system.

Known as the Third Universal Theory according to his manifesto *The Green Book*, Gaddafi's regime represented an amalgamation of socialism and Islamic practices particular to Libya's tribal makeup.¹⁰ This theory stressed a direct democratic participation by the people to implement a political system founded on social justice and Arab unity.¹¹ Although he technically held no leadership role, Gaddafi served as the de facto head of state as the "Brother Leader and Guide of the Revolution."¹²

Gaddafi's administration, however, had been marked by the suppression of dissent and a disregard for human rights. In 1973, Gaddafi delivered his "Five-Point Address" that, among other things, announced the imposition of Sharia

7 See *The World Factbook*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html> (last visited Apr. 3, 2011).

8 See *Timeline: Libya*, BBC NEWS, Mar. 31, 2011, available at http://news.bbc.co.uk/2/hi/middle_east/country_profiles/1398437.stm.

9 See *Background Note: Libya*, U.S. DEP'T ST., <http://www.state.gov/r/pa/ei/bgn/5425.htm> (last visited Apr. 3, 2011).

10 See *The World Factbook*, *supra* note 6.

11 See *id.*

12 See *Background Note: Libya*, *supra* note 8.

law and a program for “purging the country of the politically sick.”¹³ Declaring a cultural revolution for the newly christened Great Socialist People’s Libyan Arab Jamahiriya, the Gaddafi government sought to quash its opposition, often doing so in the form of executions or assassinations.¹⁴ Fearing possible threats from both his own military and emerging Islamic fundamentalist groups, Gaddafi initiated a campaign to uproot potential coups in the late 1980s and early 1990s. This in turn led to massive arrests and allegations of torture and other abuses.¹⁵ Libyan law also imposed severe restrictions on freedom of expression and association, even going so far as to ban all groups who opposed the ideologies of the 1969 revolution.¹⁶

More recently, in June of 1996 a mass killing of detainees took place at Abu Salim prison, a high security detention center in Tripoli. According to eyewitnesses, the massacre began in response to an uprising by prisoners demanding an improvement in living conditions.¹⁷ Although the precise number of killed is not known, several human rights organizations including Amnesty International and Human Rights Watch have estimated the figure to be over 1,200.¹⁸ Despite initial denials, Gaddafi himself eventually acknowledged that killings took place at Abu Salim.¹⁹ Nevertheless, the failure by the government to properly address the needs of the affected families resulted in widespread criticism and vocal protests.²⁰ Accordingly, the Abu Salim massacre, along with the Gaddafi regime’s history of systematic human rights violations, set the stage for the protests that surged throughout many areas of Libya in February 2011.

B. Revolution

On December 17, 2010, Mohamed Bouazizi, a Tunisian fruit vendor, set himself on fire in protest against the harassment he had experienced throughout his life from local police.²¹ Remarkably, this event sparked a wave of upheaval that would fundamentally alter the political and social order of North Africa and the

13 See Mohamed Eljahmi, *Libya and the U.S.: Qadhafi Unrepentant*, MIDDLE EAST Q., Winter 2006, at 11, available at <http://www.meforum.org/878/libya-and-the-us-qadhafi-unrepentant>.

14 See *id.*

15 See *Background Note: Libya*, *supra* note 8.

16 See *Libya: Mark Anniversary by Restoring Rights*, HUM. RTS. WATCH, <http://www.hrw.org/en/news/2009/08/31/libya-mark-anniversary-restoring-rights> (last visited Apr. 7, 2011)

17 See *Truth and Justice Can’t Wait*, HUM. RTS. WATCH, <http://www.hrw.org/en/node/87096/section/9> (last visited Apr. 3, 2011) [hereinafter *Truth*].

18 See *Libya: Investigation Needed into Prison Deaths*, AMNESTY INT’L AUSTL., <http://www.amnesty.org.au/news/comments/346> (last visited Apr. 3, 2011) [hereinafter *Investigation*]; *Truth*, *supra* note 16.

19 See *Investigation*, *supra* note 17.

20 See *Truth*, *supra* note 16.

21 See Yasmine Ryan, *The Tragic Life of a Street Vendor*, AL JAZEERA, Jan. 20, 2011, available at <http://english.aljazeera.net/indepth/features/2011/01/201111684242518839.html>.

Middle East over the coming months.²² Responding to rising food prices, high unemployment, and a historical lack of fundamental political freedoms, Tunisian citizens successfully expelled President Zine El Abidine Ali from the country on January 14, 2011.²³ Protestors in Egypt soon followed suit, demanding the removal of President Hosni Mubarak from office after years of corruption, human rights abuses, rigged elections, and poor economic conditions.²⁴ With the resignation of President Mubarak on February 11, the revolutionary momentum turned to Libya.

Not surprisingly, Libya's deplorable human rights situation under the Gaddafi regime provided a firm foundation for a popular revolt. On February 15, Libyan authorities arrested Fathi Terbil, a lawyer representing the families of Abu Salim victims.²⁵ As hundreds of protestors gathered outside the detention center in Benghazi to demand Terbil's release, Libyan officials used tear gas and batons to break up the crowd.²⁶ However, the unrest in Benghazi continued into the following day as protestors began hurling stones and homemade incendiary devices at police attempting to disperse the rally with rubber bullets and water cannons.²⁷ The situation soon unraveled as protestors set fire to cars and a police headquarters.²⁸ Utilizing online social networking sites, Libyans across the country called for a "Day of Rage" on February 17.²⁹

In fact, February 17 stood as powerful reminder to many Libyans of Gaddafi's heavy-handed approach in dealing with dissent. On February 17, 2006, an anti-Gaddafi protest in Benghazi turned deadly when security forces forcefully intervened to disperse the crowd.³⁰ When activists tried to organize a demonstration to mark the one-year anniversary of the protests, the regime responded with mass arrests and convictions that initially ranged from six to twenty-five years.³¹

22 See *id.*

23 See Richard Spencer, *Tunisia Riots: Reform or Be Overthrown, US Tells Arab States amid Fresh Chaos*, TELEGRAPH, Jan. 13, 2011, available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/tunisia/8258077/Tunisia-riots-Reform-or-be-overthrown-US-tells-Arab-states-amid-fresh-riots.html>.

24 See *Unrest in the Middle East and North Africa—Country by Country*, CNN, Feb. 18, 2011, available at http://articles.cnn.com/2011-02-18/world/mideast.africa.unrest_1_anti-government-protests-unrest-police-and-military-crackdown/3?s=PM:WORLD.

25 See *Libya: Arrests, Assaults in Advance of Planned Protests*, HUM. RTS. WATCH, <http://www.hrw.org/en/news/2011/02/16/libya-arrests-assaults-advance-planned-protests> (last visited Apr. 7, 2011).

26 See *id.*

27 See *Libya Protests: Second City Benghazi Hit by Violence*, BBC NEWS, Feb. 16, 2011, available at <http://www.bbc.co.uk/news/world-africa-12477275> [hereinafter *Second City*].

28 See *Libyan Private and State Media Slant Protest Coverage*, BBC NEWS, Feb. 17, 2011, available at <http://www.bbc.co.uk/news/world-middle-east-12496420>.

29 See *Second City*, *supra* note 26.

30 See *Death Toll Hits 19 in Libya's "Day of Rage"*, AL ARABIYA NEWS CHANNEL, Feb. 17, 2011, available at <http://www.alarabiya.net/articles/2011/02/17/138021.html>.

31 See *Libya: Feb. 17 Significant to Jailed Activists*, L.A. TIMES, Feb. 17, 2011, available at

With these memories fresh in many Libyan minds, anti-government groups rose up in several cities across the country on February 17, 2011. Activists set government buildings ablaze in Zentan while security forces opened fire on a rally in al-Bayda.³² In Benghazi, government efforts to control the uprisings left approximately fourteen people dead.³³ Eyewitnesses reported that the government released thirty prisoners from a local prison to aid in the repression of the protestors.³⁴ Others claimed that security forces employed helicopters and snipers to attack demonstrators.³⁵ Government supporters also staged their own counter-protests, assembling in pro-Gaddafi strongholds like Tripoli.³⁶

The collective death toll soon escalated into the hundreds as police and security officials struggled to suppress the revolts.³⁷ Allegations soon emerged that Gaddafi was hiring mercenaries from neighboring countries to support his containment efforts.³⁸ In addition, the government restricted access to certain websites and cut off electricity in many areas.³⁹ On the ground, government forces persisted in resorting to deadly force to quell the unrest. In Benghazi, Libyan troops fired at protestors with machine guns, mortars, helicopter gunships, and other “large-calibre weapons.”⁴⁰ Anti-government efforts in Tripoli met with tear gas, live ammunition, and eventually even warplanes.⁴¹ On February 20, Gaddafi’s son Saif al-Islam warned of an impending civil war, maintaining that the government would fight to “the last man, the last woman, the last bullet” to defend itself.⁴²

<http://latimesblogs.latimes.com/babylonbeyond/2011/02/libya.html>.

32 See *Libya Protests: Death in Al-Bayda as Unrest Spreads*, BBC NEWS, Feb. 17, 2011, available at <http://www.bbc.co.uk/news/world-middle-east-12500476>.

33 See *id.*

34 See *Deadly “Day of Rage” in Libya*, AL JAZEERA, Feb. 18, 2011, available at <http://english.aljazeera.net/news/africa/2011/02/201121716917273192.html>.

35 See *Pro-Gaddafi Forces “Kill 14 Protestors in Day of Rage”*, LONDON EVENING STANDARD, Feb. 17, 2011, available at <http://www.thisislondon.co.uk/standard/article-23924340-pro-gaddafi-forces-kill-14-protesters-in-day-of-rage.do>.

36 See *Libya Protests: Al-Bayda Security Chief “Sacked”*, BBC NEWS, Feb. 17, 2011, available at <http://www.bbc.co.uk/news/world-africa-12490504>.

37 See *Libya: Governments Should Demand End to Unlawful Killings*, HUM. RTS. WATCH, <http://www.hrw.org/en/news/2011/02/20/libya-governments-should-demand-end-unlawful-killings> (last visited Apr. 9, 2011).

38 See, e.g., *Has Gaddafi Unleashed a Mercenary Force on Libya?*, GUARDIAN.CO.UK, Feb. 22, 2011, available at <http://www.guardian.co.uk/world/2011/feb/22/gaddafi-mercenary-force-libya>.

39 See *Libya Media Crackdown amid Anti-Government Protests*, BBC NEWS, Feb. 18, 2011, available at <http://www.bbc.co.uk/news/world-middle-east-12512202>.

40 See *140 Massacred*, *supra* note 1; *Intense Benghazi Violence*, *supra* note 1.

41 See *Libya: Anti-Gaddafi Protests Spread to Tripoli*, BBC NEWS, Feb. 20, 2011, available at <http://www.bbc.co.uk/news/world-africa-12520366>; *Libya Protests: Tripoli Hit by Renewed Clashes*, BBC NEWS, Feb. 21, 2011, available at <http://www.bbc.co.uk/news/world-africa-12531637>.

42 *Libya Protests: Gaddafi’s Son Warns of Civil War*, BBC NEWS, Feb. 21, 2011, available at <http://www.bbc.co.uk/news/world-middle-east-12520586>.

As events in Libya quickly spun out of control, the international community condemned Gaddafi for targeting his people. Human rights organizations promptly demanded that Gaddafi be held accountable for his actions.⁴³ On March 1, the General Assembly by consensus suspended Libya from its position on the United Nations Human Rights Council.⁴⁴ Likewise, the African Court on Human and Peoples' Rights on March 25 issued a decision ordering the government of Libya to cease any actions in violation of international human rights law.⁴⁵ The Security Council eventually weighed in on the matter, issuing Resolution 1970 that both deplored "the gross and systematic violation of human rights, including the repression of peaceful demonstrators"⁴⁶ and referred Libya to the International Criminal Court (ICC) for possible crimes against humanity.⁴⁷

Even many of those acting on behalf of the state had compunctions about the manner in which Gaddafi was responding to the protests. A number of Libya's diplomats abroad denounced the government's actions and repudiated their allegiance to the Gaddafi regime, including Libya's ambassador to the United States as well the country's delegation to the United Nations.⁴⁸ Within Libya itself, factions of the police and the Libyan armed forces began defecting based on tribal and other loyalties.⁴⁹

By the end of February, the first outward signs of actual revolution materialized as cities began to fall into the hands of anti-government forces. Though the new rebel power was focused primarily in the east, the revolution's influence did extend into certain western cities such as Misrata.⁵⁰ However, the rebel's position in many cities was tenuous at best as Gaddafi quickly responded with counterattacks.⁵¹ On February 27, rebels in Benghazi formed the National Transitional

43 See, e.g., Fred Abrahams, *Hold Gadhafi Accountable for Atrocities*, HUM. RTS. WATCH, <http://www.hrw.org/en/news/2011/02/22/hold-gadhafi-accountable-atrocities> (last visited Apr. 9, 2011).

44 See *Live Blog—Libya March 1*, AL JAZEERA, Mar. 1, 2011, available at <http://blogs.aljazeera.net/live/africa/live-blog-libya-march-1>.

45 See Order for Provisional Measures Against Libya, African Comm'n on Human and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahiriya (African Ct. on Human and Peoples' Rights 2011), available at http://www.african-court.org/fileadmin/documents/Court/Cases/Order_for_Provisinal_Measures_against_Libya.PDF.

46 S.C. Res. 1970, pmbL, U.N. Doc. S/RES/1970 (Feb. 26, 2011)

47 See *id.* ¶ 4.

48 See *Condemnation of Gaddafi as Libyan Diplomats Abandon Regime*, BBC NEWS, Feb. 21, 2011, available at <http://www.bbc.co.uk/news/world-middle-east-12529744>; *Libya Diplomat: "Why I'm Not Supporting Gaddafi"*, BBC NEWS, Feb. 21, 2011, available at <http://www.bbc.co.uk/news/world-africa-12527603>.

49 See *Libya Unrest: Violence Against Protestors Backfires*, BBC NEWS, Feb. 21, 2011, available at <http://www.bbc.co.uk/news/world-middle-east-12523007>.

50 See *Gaddafi Loses More Libyan Cities*, AL JAZEERA, Feb. 24, 2011, available at <http://english.aljazeera.net/news/africa/2011/02/2011223125256699145.html>.

51 See *Gadhafi Forces Strike Back at Libya Uprising*, ASSOCIATED PRESS, Feb. 24, 2011, available at http://news.yahoo.com/s/ap/20110224/ap_on_re_af/af_libya.

Council (NTC) to act as the political wing of the revolution.⁵² Within days, the NTC had declared itself the “sole national representative of Libya with all its social and political strata and all its geographical regions.”⁵³

As increasing amounts of Libyans took up arms against the Gaddafi regime, the rebels made significant gains in the first few days of March, only to then be set back by more government counterattacks. At this time, a number of foreign states sought to intervene in the conflict on the side of the rebellion. In particular, France, the United Kingdom, and several Gulf states sought permission from the Security Council to implement a no-fly zone.⁵⁴ Meanwhile, the European Parliament called on all European Union members to recognize the NTC as the official government of Libya.⁵⁵ Within a matter of days, a few members of the international community, including France⁵⁶ and Qatar,⁵⁷ had done just that.

Finally, on March 17 the United States joined in the call for a no-fly zone, leading the Security Council to pass Resolution 1973 authorizing Member States to “take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack.”⁵⁸ The Resolution reaffirmed the duty of Libyan authorities to protect the civilian population and again noted that the systematic attacks against civilians could constitute crimes against humanity.⁵⁹ On March 19, an international coalition principally led by the United States, the United Kingdom, and France launched over 100 missiles into Libya against regime targets.⁶⁰ As President Barack Obama would later explain, the decision to intervene was based on humanitarian concerns. Recalling the decades of oppression that the Libyan people had endured under Gaddafi and the “looming humanitarian crisis” that they now faced, President Obama maintained that the United States had a responsibility “to commit resources to stop the killing.”⁶¹

52 See *Anti-Gaddafi Figures Say Form National Council*, REUTERS, Feb. 27, 2011, available at <http://www.reuters.com/article/2011/02/27/libya-council-revolution-idUSWEB194120110227>.

53 INTERIM TRANSITIONAL NAT'L COUNCIL, STATEMENT BY THE TRANSITIONAL NATIONAL COUNCIL ¶ 2 (2011), available at <http://www.libyanmission-un.org/tnc.pdf>.

54 See *Libya Live Blog—March 7*, AL JAZEERA, Mar. 7, 2011, available at <http://blogs.aljazeera.net/live/africa/libya-live-blog-march-7>.

55 See Manon Malhère, *EP Calls for Recognition of Libyan Transition Council*, EUROPOLITICS, <http://www.europolitics.info/external-policies/ep-calls-for-recognition-of-libyan-transition-council-art297934-40.html> (last visited Apr. 9, 2011).

56 See *Clinton to Meet Libyan Rebels*, AL JAZEERA, Mar. 10, 2011, available at <http://english.aljazeera.net/news/europe/2011/03/2011310101413705407.html>.

57 See *Libya: Air Strikes Hit Gaddafi's Hometown of Sirte*, BBC NEWS, Mar. 28, 2011, available at <http://www.bbc.co.uk/news/world-africa-12877319>.

58 S.C. Res. 1973, *supra* note 2, ¶ 4.

59 See *id.* at pmb1.

60 See *Libya Live Blog—March 19*, AL JAZEERA, Mar. 19, 2011, available at <http://blogs.aljazeera.net/live/africa/libya-live-blog-march-19>.

61 President Barack Obama, Address at the National Defense University (Mar. 28, 2011).

After months of a protracted stalemate, the rebels finally turned the tide in August with a successful offensive against Tripoli.⁶² Fresh from their recent liberation of the capital, rebel troops pursued the remnants of Gaddafi's armed forces until the tyrant himself was captured and killed on October 20.⁶³ Yet reports indicate that the rebels would not have made these gains without extensive reliance on coalition air support.⁶⁴ Indeed, throughout the conflict, foreign military advisers have been covertly providing support to the rebel troops, transforming them from a "poorly trained and equipped"⁶⁵ group into a "moderately effective fighting force."⁶⁶

II. International Law and the Right of Revolution

Whether a right of revolution exists in law has been a matter of contention for centuries. Throughout Western history, scholarly opinions have differed greatly on the matter, ranging from John Locke's endorsement of the right to rebel via social contract theory to Hugo Grotius' general denial that such a right exists entirely.⁶⁷ Not surprisingly, the place of a right of revolution within the modern international legal framework is equally uncertain. It is not explicitly enumerated in any major treaty or international document apart from a brief reference in the preamble of the Universal Declaration of Human Rights (UDHR).⁶⁸ And based on the right's inherent focus on justifying the ability of non-state actors to throw off the recognized system of governance, one would be hard-pressed to find the *opinio juris* necessary to establish a customary rule of international law. Instead, any legal sanction of the right of revolution will likely come, if at all, as a way to enforce the right of self-determination.

A. Historical Treatment of the Right of Revolution

As it still remains today, the right of revolution has been a heavily disputed topic throughout the development of Western jurisprudence. In the Middle

62 See *Gaddafi Loyalists Face Last Stand in Tripoli*, BBC NEWS, Aug. 24, 2011, available at <http://www.bbc.co.uk/news/world-africa-14654001>.

63 See *Crossfire*, *supra* note 4. See *Libya Interim Leaders Give Ultimatum to Gaddafi Forces*, BBC NEWS, Aug. 30, 2011, available at <http://www.bbc.co.uk/news/world-africa-14715518> [hereinafter *Ultimatum*].

64 See *Libya Targeted Civilian Protestors—War Crimes Court*, BBC NEWS, Apr. 6, 2011, available at <http://www.bbc.co.uk/news/world-africa-12983054>.

65 *Rebels Move*, *supra* note 3.

66 Lolita C. Baldor & Slobodan Lekic, *NATO Covert Guidance Steered Libyan Rebel Gains*, NAVYTIMES, Aug. 23, 2011, available at <http://www.navytimes.com/news/2011/08/ap-nato-covert-guidance-steered-libyan-rebel-gains-082311/>.

67 See *infra* Part II.A.

68 See Universal Declaration of Human Rights pmbl., G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR] ("Whereas 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 . . .").

Ages, a number of legal philosophers demonstrated favorable opinions toward the right. Speaking in twelfth-century England, John of Salisbury proclaimed that “[t]o slay [a] tyrant is not merely licit, [but] is equitable and right; for it is commanded by our Lord that whoever takes the sword shall die by the sword.”⁶⁹ A century later, Saint Thomas Aquinas asserted that people have a limited right to renounce a sovereign who acquired power illegitimately, such as through violence or simony.⁷⁰ This acquisition by “defect,” as Aquinas called it, “prevent[ed] the establishment of any just authority... for whoever possesse[d] himself of power by violence [could] not truly become lord or master; except in the case that it subsequently became legitimate, either through public consent or through the intervention of higher authority.”⁷¹

Yet the ongoing development of natural law and natural rights jurisprudence in the Renaissance marked a change in opinion as philosophers reconsidered the propriety of the right of revolution. For instance, in his seminal work *Leviathan* Thomas Hobbes declares that an individual only has the liberty to disobey the sovereign in cases of self-defense.⁷² Additionally, the father of modern international law, Hugo Grotius, generally denied a popular right to rebel. Asserting that the purpose of civil society is the “Preservation of Peace,” Grotius insisted that “a superior Right in the State over us and ours [exists], so far as is necessary for that End.”⁷³ If that “promiscuous Right of Rebellion” were allowed, the state could not attain its proper end for “there would be *no longer a State*, but a Multitude without Union.”⁷⁴ For this reason, “those who are invested with the sovereign Power ...cannot lawfully be resisted.”⁷⁵

Interestingly though, Grotius admitted a few exceptions to his rule. Most pertinently, he accepted a right to rebel against a king who “design[s] the utter Destruction of the whole Body of his People.”⁷⁶ By this very act, the sovereign “declares himself an Enemy to the whole Nation, [and] is presumed... to renounce the Government.”⁷⁷ Yet Grotius could not foresee any sovereign in his right mind ever attempting to do such a thing, provided that the sovereign only ruled over one country.⁷⁸ Furthermore, Grotius concluded that in disputed cases,

69 See OLIVER O'DONOVAN, *THE DESIRE OF THE NATIONS* 238 (1996).

70 See THOMAS AQUINAS, *COMMENTARY ON THE SENTENCES OF PETER LOMBARD* (c. 1250), reprinted in *A TEXTUAL INTRODUCTION TO SOCIAL AND POLITICAL THEORY* 60 (Richard Bellamy & Angus Ross eds., 1996).

71 *Id.* at 60–61.

72 See THOMAS HOBBS, *LEVIATHAN* (1651), reprinted in *THE GREAT LEGAL PHILOSOPHERS* 124 (Clarence Morris ed., 1959).

73 1 HUGO GROTIUS, *ON THE RIGHTS OF WAR AND PEACE* 102 (Richard Tuck & Jean Barbeyrac eds., 2005) (1625).

74 *Id.* at 102–03.

75 *Id.* at 119.

76 *Id.* at 120.

77 *Id.* at 121.

78 See *id.*

the people should simply accept the sovereign's authority: "But especially in a controverted Right, no private Person ought to determine; for then he ought to side with Possessor. Thus CHRIST commanded us to pay Tribute to *Caesar*..."⁷⁹

Grotius' renunciation of rebellion notwithstanding, the Enlightenment brought with it the strongest supporter yet of a right of revolution in the figure of John Locke. Writing in the context of England's Glorious Revolution, Locke premised his version of social contract theory on the concept of inherent individual natural rights, namely life, liberty, and property.⁸⁰ To ensure fuller protection of these rights, people come together in the state of nature to form a social contract whereby the new state will act as the common judge in resolving disputes. The people thus consent to a surrender of their sovereignty in exchange for a guarantee that the state will protect their natural rights.⁸¹

But when the sovereign abuses its power, defying the trust that the people have placed in it, Locke asserted that the people have a right to rebel.⁸² At that point, the state has breached the social contract by violating the very natural rights it promised to protect. A popular use of force is thus warranted to meet the state's violence against the social contract. "[W]hen the oppressed people resist tyranny it is not they who disturb government or bring back the state of war. Rebellion is an 'Opposition, not to Persons, but Authority.' A tyrant has no authority. It is tyrants who are the true rebels."⁸³

Locke's theory of the right of revolution took on even greater significance when Thomas Jefferson adopted it as the basis for the American Declaration of Independence. In the Declaration, Jefferson begins by proclaiming that "Governments are instituted among Men, deriving their just powers from the consent of the governed" for the purpose of securing the natural rights of the people.⁸⁴ But when a government "becomes destructive of these ends, it is the Right of the People to alter or to abolish it," and to erect in its place a new one that will ensure these rights.⁸⁵ Over a decade later, the French Declaration of the Rights of Man and of the Citizen echoed the sentiment, emphasizing that the aim of all government is the "preservation of the natural and imprescriptible rights of man," namely "liberty, property, security, and *resistance to oppression*."⁸⁶

79 *Id.* at 125.

80 See JOHN LOCKE, TWO TREATISES OF GOVERNMENT (1689), reprinted in THE GREAT LEGAL PHILOSOPHERS 137 (Clarence Morris ed., 1959)

81 See M.D.A. FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE 107 (8th ed. 2008).

82 See *id.* at 108–09.

83 See *id.* at 109.

84 THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

85 *Id.*

86 DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN art. 2 (Fr. 1789) (emphasis added).

B. The Rights of Self-Determination and Revolution in International Law

As a matter of the international law of armed conflict, the question of revolution is one of the *jus ad bellum*. Under the current international framework, the United Nations Charter in Article 2(4) strictly regulates the *jus ad bellum*, imposing a general prohibition on the threat or use of force by one state against the integrity and independence of another,⁸⁷ with limited exceptions for Security Council authorizations⁸⁸ and state self-defense.⁸⁹ However, the right of revolution is unique in that it is a purely internal right claimed by non-state actors. The present regulatory system thus does not conclusively speak to the merits of the legal argument for revolution.

In light of its contentious nature, it is not surprising that the very existence of an independent right of revolution remains uncertain in international law today. In fact, among the instruments central to modern international law, the resort to revolutionary force is only explicitly referenced once. In its preamble, the UDHR states that the legal protection of human rights is essential “if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.”⁹⁰ Customary support for a right to rebel is equally absent as the concept of revolution threatens the very foundations of international law’s state-centric system. States by and large are not apt to support a general right of non-state actors to upset international stability, especially where such support could potentially invite foreign interference in a state’s domestic affairs.⁹¹ Indeed, any revolution by its nature will begin as an uprising that the opposing government and often other states do not consider legally valid.⁹² Though the international

87 See U.N. Charter art. 2, para. 4 (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”).

88 See *id.* at art. 39 (“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”).

89 See *id.* at art. 51 (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”).

90 See UDHR, *supra* note 67, at pmbl.

91 See ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES 102 (1995).

92 In fact, many states criminalize treason and other insurrectionary activities. See, e.g., U.S. CONST. art. III § 3 (defining treason as “levying War against [the United States], or in adhering to their Enemies, giving them Aid and Comfort” and directing Congress to assign a punishment for the crime); Treason Act, 1351, 25 Edw. 3, c. 2 (Eng.) (prohibiting “levy[ing] war against our lord the King in his realm”); CODE PÉNAL [C. Pén.] art. 412–3–412–6 (Fr.) (criminalizing insurrections); STRAFGESETZBUCH [StGB] [PENAL CODE], May 15, 1871, § 81(1) (Ger.) (“Whoever undertakes with force or through threat of force . . . to change the constitutional order based on the Basic Law of the Federal Republic of Germany, shall be punished with imprisonment for life or for not less than ten years.”).

community has thrown its weight behind certain revolutionary efforts in the past, its behavior on the whole has been “rather vacillating or ambiguous.”⁹³

Indeed, if the right of revolution is to be found anywhere in international law, it almost certainly will act as a necessary extension of the recognized right of self-determination. This right of self-determination is plainly present in many of the foundational documents of international law. The United Nations Charter sets out as one of the United Nations’ purposes the development of “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”⁹⁴ Within the UDHR itself, Article 21 stresses that “[t]he will of the people shall be the basis of the authority of government,” though it also notes that this will shall be expressed through periodic elections.⁹⁵

Self-determination also features prominently in the two major international covenants that implement the UDHR, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Under Article 1 of both treaties, “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁹⁶ Furthermore, the two treaties instruct all states parties to “promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”⁹⁷

Among relevant regional agreements, the African Charter on Human and Peoples’ Rights states in Article 20 that all peoples have an “unquestionable and inalienable right to self – determination.”⁹⁸ This right entails the people’s ability to “freely determine their political status and . . . pursue their economic and social development according to the policy they have freely chosen.”⁹⁹ The Charter then notes in the following paragraphs that “[c]olonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community”¹⁰⁰ and that “[a]ll peoples shall have the right to the assistance of the States parties to the present

93 Bertil Dunér, *Rebellion: The Ultimate Human Right?*, 9 INT’L J. HUM. RTS. 247, 250 (2005). To illustrate this point, Dunér notes that while three of the states emerging from the former Yugoslavia received international recognition within a period of a few years, the United Nations has consistently condemned the de facto partition of Cyprus for decades. *See id.* The same may be said about the yet unsettled international recognition of Kosovo.

94 U.N. Charter art. 1, para. 2.

95 UDHR, *supra* note 67, at art. 21, para. 3.

96 International Covenant on Civil and Political Rights art. 1, para. 1, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights art. 1, para. 1, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

97 ICCPR, *supra* note 95, at art. 1, para. 3; ICESCR, *supra* note 95, at art. 1, para. 3.

98 African Charter on Human and People’s Rights art. 20, para. 1, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58.

99 *Id.*

100 *Id.* at art. 20, para. 2.

Charter in their liberation struggle against foreign domination, be it political, economic or cultural.”¹⁰¹

The United Nations General Assembly has also made a point of reaffirming the significance of self-determination in Resolution 2625, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation. The Resolution directs states to refrain “from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.”¹⁰² Moreover, the General Assembly acknowledged popular enforcement of the right, holding that “[i]n their *actions against, and resistance to*, such forcible action [by oppressive states] in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.”¹⁰³ Likewise, the International Court of Justice in its advisory opinion in the *Western Sahara* case¹⁰⁴ characterized the right of self-determination as a universal popular right requiring “a free and genuine expression of the will of the peoples concerned.”¹⁰⁵

Thus conceivably a right of revolution does exist in international law as a mechanism for enforcing the right of self-determination. This right arguably then provides an avenue for bypassing domestic prohibitions on treason and other insurrectionary activities, inserting in their place a positive right to overthrow fundamentally unjust regimes. In fact, taking a cue from John Locke, those contemporary scholars who defend a right of revolution largely find support for their arguments in the right of self-determination. For example, Michael Walzer argues that a state is only legitimate to the extent that it represents the will of the people.¹⁰⁶ Consequently, citizens are in no way bound to defend a tyrannical regime. Rather, citizens are always free to rebel against an “illiberal or undemocratic government.”¹⁰⁷

Accordingly, as Jordan J. Paust contends, revolution is “one of the strategies available to a people for the securing of authority, national self-determination and a relatively free and equal enjoyment of the human right of all persons to participate in the political processes of their society.”¹⁰⁸ Yet Paust is careful to

101 *Id.* at art. 20, para. 3 (emphasis added).

102 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. Doc. A/8028 (Oct. 24, 1970).

103 *Id.*

104 *See* 1975 I.C.J. 12 (Oct. 16).

105 *Id.* at 31–33.

106 *See* Michael Walzer, *The Moral Standing of States: A Response to Four Critics*, 9 PHIL. & PUB. AFF. 209, 214 (1980).

107 *Id.* at 215.

108 Jordan J. Paust, *The Human Right to Revolution*, in HUMAN RIGHTS IN THE WORLD COMMUNITY 445, 452 (Richard Pierre Claude & Burns H. Weston eds., 3d ed. 2006). Paust’s arti-

reject revolution as a means of righting mere political wrongs.¹⁰⁹ Instead, revolution is only justified if it meets two conditions: first, it must be taken up on the authority and interest of a majority of the population, and second, it must be in response to a state that “becomes destructive of the process of self-determination and the right of individual participation,” oppressing its citizenry either politically or economically.¹¹⁰ Hence, as Karl Doehring stated, “[o]nly oppression of a very brutal kind, . . . constituting a severe violation of human rights, would justify armed self-help.”¹¹¹

III. The Law of Armed Conflict and the Right of Revolution

At its core, the dispute over the existence of a legal right to revolt reflects the uncertain scope of contemporary international law’s two foundational tenets. On the one hand, international law staunchly values the preservation of order and stability among states. For this reason, international law imposes an expansive proscription on the use of force, leaving narrow allowances for self-defense and Security Council actions to enforce the peace.¹¹² On the other hand, the defense of human rights and fundamental freedoms remains critical. The crucial question then is whether international law admits a similar allowance for non-state actors to resort to force for the protection of human rights.

The arguments for the existence of a right of revolution within international law all represent an attempt to demonstrate that international law does in fact contain this human rights enforcement mechanism. From the outset, revolution as a means of realizing the right of self-determination is arguably consistent with the United Nations Charter’s overarching support for human rights. Additionally, supporters of the right call attention to international law’s sanction of wars of liberation against colonial and other foreign oppressors, arguing that it would be inconsistent to recognize this use of force but not a right to rebel. Third, revolutions may meet the requirements of Just War Theory. Finally, proponents point to the growing acceptance within the international community of humanitarian interventions by third-party states. According to these advocates, if foreign states

cle largely assumes that a right of revolution already exists in international law stemming from the right of self-determination. *See id.* at 445 (“Today, it is common to recognize that all peoples have a right of self-determination and, as a necessary concomitant of national self-determination, a right to engage in revolution.” (footnote omitted)). In doing so, he relies primarily on natural law theories, American legal history and constitutional jurisprudence, the preamble of the UDHR, and the asserted right of self-determination. *See id.* at 446–52.

109 *See id.* at 450.

110 *See id.* at 449 (“[T]he right of revolution is necessarily a right of the majority against, for example, an oppressive governmental elite.”).

111 *See* Karl Doehring, *Self-Determination*, in *THE CHARTER OF THE UNITED NATIONS* 47, 61 (Bruno Simma et al. eds. 2d ed. 2002).

112 *See supra* notes 86–88 and accompanying text.

have a right to intercede on the behalf of a subjugated people, surely the people themselves do as well.

Yet, despite these efforts, a number of commentators have submitted equally persuasive counterarguments, largely premised on the law's reluctance to endorse additional exceptions to the general prohibition on the use of force. Consequently, a resolution of this matter principally depends on whether international law permits breaches of the peace in order to further the protection of human rights in revolutionary circumstances, or instead restricts the lawful uses of force to narrow instances like the preservation of international stability. Based on the law's longstanding constraints on the permissibility of force as demonstrated in the United Nations Charter and the international law of armed conflict, international law likely does not recognize a right of revolution at present.

A. The Right of Revolution and the Charter Framework

From the perspective of revolution as an instrument in the achievement of human rights, the right of rebellion is consistent with many aspects of the Charter system. As enunciated in Article 1 of its Charter, the purposes of the United Nations include developing "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples"¹¹³ along with promoting and encouraging "respect for human rights and for fundamental freedoms for all."¹¹⁴ As mentioned, the UDHR endeavors to institute a structure adequate to the protection of human rights so that people do not have to "have recourse, as a last resort, to rebellion against tyranny and oppression."¹¹⁵ In order then to effectively defend these rights, and in particular the right of self-determination, people should have the right to use force in the most extreme of circumstances. Denying this option calls into question the fundamental and universal nature of human rights.¹¹⁶

Moreover, as the UDHR ostensibly suggests, if the international structure fails to sufficiently guard fundamental freedoms, the people may exercise force as a last resort in the defense of their rights.¹¹⁷ Where a government uses force to suppress the exercise of the very rights entitled to a people by virtue of their humanity, the people need not wait on a prolonged appeal to the international community. Indeed, the right of revolution fills the void where the international community is unable or unwilling to protect a people from a brutally oppressive

113 U.N. Charter art. 1, para. 2.

114 *Id.* at art. 1, para. 3.

115 UDHR, *supra* note 67, at pmbl.

116 *See* Dunér, *supra* note 92, at 251.

117 *See* Gerald Sumida, *The Right of Revolution: Implications for International Law and Order*, in POWER AND LAW 130, 134 (Charles A. Barker ed. 1971) ("[T]he right of a people to revolt against tyranny is now a recognized principle of international law:").

regime. As Antonio Cassese noted, recognition of the right of self-determination would be of “scant legal value” without some sort of enforcement mechanism.¹¹⁸

At the same time, the Charter framework places considerable emphasis on sustaining international tranquility. The first purpose of the United Nations enumerated in the Charter is to “maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace.”¹¹⁹ Thus the Charter generally forbids threats or the use of force against the “territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,”¹²⁰ only providing for the lawful use of force for the purpose of ensuring state sovereignty¹²¹ and peaceful relations among states.¹²²

Some scholars even go so far as to suggest that the pursuit of international peace and order may supersede the defense of human rights in the case of a conflict between the two. Simon Chesterman observes that while “the promotion of human rights through ‘international cooperation’ is to be found among the purposes of the United Nations, the first listed purpose in Article 1 is the maintenance of international peace and security.”¹²³ Even Karl Doehring, who supported a right to “armed self-help” in extreme circumstances, admitted that the dominant view within the international community is that the “sovereignty of States remains the highest authority.”¹²⁴ Additionally, numerous commentators have challenged the absolute, universal nature of human rights, contending that a natural law approach to rights is untenable.¹²⁵ As stated by Bertil Dunér, these “formulations in terms of inherent values and the like used in UN parlance are mystifying and cannot be taken to the letter.”¹²⁶ The current international human rights system then, according to Dunér, appears to side with the regime against a rebelling populace for the sake of upholding international stability.¹²⁷ Though these opinions rest on the questionable presumption that one founda-

118 See CASSESE, *supra* note 90, at 311.

119 U.N. Charter art. 1, para. 1.

120 *Id.* at art. 2, para. 4.

121 See *id.* at art. 51 (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”).

122 See *id.* at art. 39 (“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”).

123 Nehal Bhuta, “*Paved with Good Intentions . . . —Humanitarian War, the New Interventionism and Legal Regulation of the Use of Force*,” in *INTERNATIONAL LAW AND THE USE OF FORCE* 362, 364 (Mary Ellen O’Connell ed., 2d ed. 2009).

124 See Doehring, *supra* note 110, at 61.

125 See Dunér, *supra* note 92, at 251.

126 *Id.*

127 See *id.* at 248.

tional precept must necessarily trump the other,¹²⁸ they do serve to indicate at the very least that the Charter's use of force exceptions do not extend to the realm of revolutionary human rights enforcement.

Moreover, the isolated reference to the right of revolution in the UDHR Preamble by itself holds little legal weight. The fact that a right to rebel is nowhere referenced in any other major international instrument indicates a lack of clear acceptance for the right within international law. In truth, though a few states during the drafting of the UDHR did seek to include the right of revolution among the document's articles, the dominant view among the states present was that revolution should be relegated to the Preamble.¹²⁹ Thus, "[r]ather than conveying a precise" right, the language in the Preamble is likely nothing more than "a rhetorical device to put aside differences."¹³⁰

From a more practical standpoint, acknowledging the right of revolution could very well lead to increased international violence. When legal recognition is bestowed upon a revolutionary movement, it may aggravate the current hostilities by providing an authority for the rebellious party to wage full-scale war. This not only would escalate the suffering endured within the particular country, but could also disrupt the peace in neighboring states through the migration of refugees or even the extraterritorial extension of the conflict.¹³¹ Moreover, revolutionary legitimacy provides a plausible basis for foreign intervention, thereby leading to a steady erosion of the principle of non-intervention.¹³² Furthermore, as rebellions are granted legitimacy, people across the globe can cite them as a precedent in justifying their right to resort to force, regardless of whether their cause is actually bona fide. If the Charter truly does restrict the use of force to exclusive scenarios like the perpetuation of international peace, then the window for locating a general right of revolution becomes increasingly limited.

B. Wars of Liberation and the Right of Revolution

A second argument in favor of the right of revolution stems from a comparison to wars of liberation. As it stands, international law accepts narrow circumstances for forceful self-determination, namely in the context of secession or liberation. As the Supreme Court of Canada admitted in the *Secession of Quebec* case,¹³³ a right of secession arises under international law where peo-

128 Rather than operating from the presumption that one foundational tenet must prevail over its counterpart, this Note treats the preservation of international stability and the protection of human rights as co-equal concerns. The question that this Note addresses is whether the Charter system permits "use of force" enforcement of human rights principles (here in a revolutionary context) like it does for peace and stability principles.

129 See *id.* at 253–54.

130 *Id.* at 254.

131 See *id.* at 258.

132 See *id.*

133 [1998] S.C.R. 217 (Can.).

ple are governed as part of a colonial empire, subject to foreign subjugation, or possibly where they are denied any “meaningful exercise” of their right of self-determination within their own state.¹³⁴ Thus Additional Protocol I to the Geneva Conventions applies to armed conflicts in which “peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations.”¹³⁵

Yet scholars like Karl Doehring have highlighted the fact that the right of self-determination, as enumerated in the principal human rights treaties, is universal; it is not limited merely to peoples living under colonial or other alien regimes.¹³⁶ Hence, the view that only military struggles against colonialism are justified can no longer be sustained.¹³⁷ The inability then to distinguish between wars of liberation and revolutions, where the people in both scenarios strive to free themselves of a government that does not represent their interests, remains an inconsistency in the law that must be resolved in favor of the right of revolution.

Though opponents of rebellion concede that this inconsistency exists,¹³⁸ they argue that a sensible explanation lies behind it. The post-1945 condemnation of imperialism and the injustices that inevitably follow from it pervade many of international law’s foundational documents. Freedom from colonial or racist regimes therefore offers more of a *prima facie* case for action than a general right of revolution, the validations for which remain heavily fact-specific.¹³⁹ Accordingly, “liberation” movements arguably have a stronger presumption of validity than revolutionary ones. This presumption sufficiently supports a right to resort to force in the liberation context, but not in a revolutionary one. Acknowledging a general right of revolution does not provide an adequate safeguard against unsavory revolutionary groups that seek to breach the peace for illicit purposes.

C. Just War Theory and the Right of Revolution

From a moral standpoint, support for a right of revolution can also potentially be found in Just War Theory. As originally articulated by medieval philosophers like Saint Thomas Aquinas, Just War Theory sets forth five requisite conditions that must be met to validate a use of force.¹⁴⁰ First, Right Authority

134 *Id.* ¶ 154.

135 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 1, para. 4, June 8, 1977, 1125 U.N.T.S. 3.

136 See Doehring, *supra* note 110, at 61.

137 See *id.*

138 See, e.g., Dunér, *supra* note 92, at 252 (calling this incongruence in the law the “strongest argument in favour of the right of rebellion”).

139 See *id.*

140 See MARY ELLEN O’CONNELL, INTERNATIONAL LAW AND THE USE OF FORCE 120 (2d ed.

mandates that only a leader with the proper authority can make the decision to go to war.¹⁴¹ Second, a just war must have a Just Cause.¹⁴² Third, those waging the war must have a Right Intention in resorting to force.¹⁴³ Fourth, force can only be a Last Resort.¹⁴⁴ Last, Chance of Success dictates that force is not permissible if there is no chance of victory.¹⁴⁵ These requirements speak to both the legal basis of force and necessity obligations.

For the first prerequisite, revolutions may derive their Right Authority from the popular sovereignty inherent in the right of self-determination. As Michael Walzer has argued, a government is only legitimate insofar as it adequately represents the will of the people.¹⁴⁶ Thus, under Lockean notions of state authority, when a regime ceases to represent the will of the people, instead turning its military might against the citizenry, the proper authority reverts to the people to set up a new government. Yet, due to the fundamental difficulties in ascertaining the popular will in such circumstances, a justifiable revolution will likely need to receive, at the very least, extensive and unequivocal support throughout the particular nation.

In the revolutionary context, Just Cause may lie in the popular response to gross violations of human rights. Not only are the people acting in self-defense; they are also exercising their lawful right of self-determination. Likewise, a proper revolution has Right Intention when it sets as its goal the replacement of a tyrannical regime with a government that is more responsive to the needs of the people.

From a necessity standpoint, a revolution conceivably satisfies Last Resort when it acts as a response to flagrant violations of international law. Once a state utilizes lethal force against its citizenry, determined to utterly suppress the people in the exercise of their rights, the time is ripe for a popular use of force. It cannot reasonably be expected that an oppressed people, facing the full wrath of a violent regime, must wait for the international community to come to their aid.

Lastly, though a rebellion likely does not have overwhelming odds in its favor when it stands up against a government, a rebellion may comply with the Chance of Success condition if it has a reasonable chance of victory. Indeed, the past is rife with examples of revolutions that have succeeded in the face of tremendous adversity. A widespread popular uprising, resolute in the defense of their liberties and their very lives, can overcome this necessity threshold.

2009).

141 *See id.*

142 *See id.*

143 *See id.*

144 *See* Mary Ellen O'Connell, Class Lecture (Jan. 26, 2011).

145 *See id.*

146 *See* Walzer, *supra* note 105, at 214.

From the outset, however, the Just War rationale runs into a number of potential problems. The recognition of this particular form of popular sovereignty challenges the state-centric focus that underlies the international legal system. At least prior to the onset of hostilities, a rebel group necessarily is not the legitimate government recognized at the international level.¹⁴⁷ Acknowledging a right of the people to simply declare themselves sovereign “invites chaos” by legitimizing the rebellion at the expense of the present government’s legitimacy.¹⁴⁸ As mentioned, this may encourage a growth in the conflict as foreign states may use this newfound authority to stage interventions.¹⁴⁹

Additionally, proponents of international stability have maintained that characterizing the overthrow of a government as a Just Cause stretches the concept “to the breaking point.”¹⁵⁰ If peace and order are paramount, as these scholars argue, the resort to rebellious force cannot be justified. Additionally, a general right of revolution provides no mechanism for adjudicating the conflict between the rebels’ and the government’s competing “Right” Intentions.¹⁵¹ And, as previously mentioned, there is no way of ensuring that revolutionary groups even have Right Intentions to begin with.¹⁵² A broad right of rebellion will conflate genuine efforts with groups that may eventually adopt regimes that are just as undesirable as their predecessors, leaving the international community in a precarious position if a successful rebellion seeks international recognition for its indefensible replacement.

Finally, though a government’s forceful repression of its people may present a compelling reason to justify popular resistance, Last Resort may require an appeal to the international community. Just as the Charter framework places strict limits on the appropriate use of force, the preservation of international peace and security is primarily the duty of the United Nations. To ensure respect for this system and the values upon which it rests, an oppressed people cannot unilaterally decide to use force.

D. Humanitarian Intervention and the Right of Revolution

A final argument for the right of revolution hinges on the emerging recognition of third-party humanitarian intervention. In recent years, the motivations for several international actions have incorporated humanitarian concerns,

147 See Hamner Hill, *Can Just War Theory Survive the War on Terror?*, 2010 J. INST. JUST. & INT’L STUD. 77, 82.

148 See Dunér, *supra* note 92, at 258.

149 See *supra* note 131 and accompanying text.

150 See Hill, *supra* note 146, at 82.

151 See *id.*

152 See *supra* Part III.A.

including Kosovo in 1999,¹⁵³ Iraq in 2003,¹⁵⁴ and, most significantly, the multi-lateral effort in Libya. As President Obama himself stated in defending the decision to intervene in Libya, the United States reserves the right to use its military “unilaterally when necessary to defend our people, our homeland, our allies, and our core interests,” interests that include “challenges that threaten our common humanity and our common security.”¹⁵⁵ Further evidence of nascent international acceptance for humanitarian interventions comes in the form of the Responsibility to Protect (R2P) doctrine. R2P holds that where a state is unwilling or unable to live up to its obligation to protect its citizens from gross human rights violations, the *duty* to protect falls to other states.¹⁵⁶

For purposes of the right of revolution, it would be absurd to grant third-party states a right to intervene, only to deny the people a similar right to respond. Again, in light of the United Nations’ dual purposes, both humanitarian intervention and the right of revolution would further the cause of human rights.¹⁵⁷ As states increasingly admit a right to intervene on a humanitarian basis, so does international law correspondingly admit a stronger right of revolution.

Despite the prevalence of the debate on humanitarian intervention, this is the weakest argument in favor of a right to rebel for the simple reason that humanitarian intervention is not part of contemporary international law, at least not yet.¹⁵⁸ Though human rights can certainly play a role in the decision to use force, strictly speaking they do not by themselves validate force under the Charter system for third-party states.¹⁵⁹ The concept of humanitarian intervention seriously erodes the Charter’s prohibition on the use of force and the inviolability of state sovereignty.¹⁶⁰ Thus past unilateral humanitarian interventions such as NATO’s bombing campaign in Kosovo have been regarded as unlawful.¹⁶¹ Though the humanitarian intervention movement has gained momentum, it has not conclu-

153 See INT’L COMM’N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT VII (2001) [hereinafter R2P REPORT].

154 See Dunér, *supra* note 92, at 247 (referencing Prime Minister Tony Blair’s human rights argument in support of the Iraq invasion).

155 See Obama, *supra* note 60.

156 See R2P REPORT, *supra* note 152, at VIII.

157 Richard Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives*, in INTERNATIONAL LAW AND THE USE OF FORCE 353, 355 (Mary Ellen O’Connell ed., 2d ed. 2009).

158 See Dunér, *supra* note 92, at 247 (“[N]o right to humanitarian intervention is recognised by international law”).

159 See Bhuta, *supra* note 122, at 364 (“[I]t does not follow that hortatory statements concerning human rights protections within the Charter provide any legal basis for the unilateral use of force to prevent human rights abuses.”).

160 See *id.* at 363 (“[T]he intention of the drafters [of the United Nations Charter] . . . was to prohibit the use of force in the broadest possible terms.”).

161 See Jack Anderson, *Kosovo and the Legality of NATO’s Actions*, 11 IRISH STUD. INT’L AFF. 31 (2000); Mary Ellen O’Connell, *The UN, NATO, and International Law After Kosovo*, 22 HUM. RTS. Q. 57 (2000).

sively become an accepted rule of international law. Without this rule, there is no intervention hook upon which the right of revolution may hang.

IV. The Right of Revolution as Applied to Libya

Assuming that a right of revolution does exist in international law, the Libyan rebels had strong arguments in their favor, but ultimately may have lacked a complete case for rebellion. As mentioned, this right would likely arise as an enforcement mechanism for the protection of human rights within the Charter system, especially the right of self-determination. In this case, the Libyan rebels arguably had a legal right stemming from their intent to overthrow the Gaddafi regime after decades of repression, but this intent in itself was not sufficient. Due to the absence of an established legal method for evaluating revolutionary cases, this Note will analyze the *jus ad bellum* claim of the Libyan rebels from a Just War perspective. This approach will adequately assess the necessity arguments for and against the Libyan resistance. Indeed, the rebels likely satisfied the first two Just War conditions, Right Authority and Just Cause. But arguments for Right Intention and Last Resort in this scenario, however, are somewhat more dubious. And finally, the rebels should have seriously considered their Chance of Success in order to meet the final Just War requirement before committing to violent regime change.

If legal authority truly does revert to the people when a government demonstrates its unwillingness to act in the interests of its people, such as through the commission of flagrant human rights abuses, then the case for Right Authority in the Libyan people was unquestionably strong. Within days of the uprising's commencement, the government had employed heavy artillery and helicopter gunships to quell the insurrection.¹⁶² It is true that the protests had grown unruly in a short amount of time, but Gaddafi's response was patently disproportionate. Mortars, mercenaries, and aerial attacks are not justifiable means for dealing with a disorderly popular movement. The condemnations in the Security Council resolutions and Libya's referral to the ICC only confirm this.¹⁶³ Though doubts may be raised regarding the lack of organization among the rebels and the basis for the NTC's legitimacy, these misgivings are probably not enough to detract from the general popular authority to seek a change in governance. The fact that the rebellion was widespread, extending beyond its eastern roots to western cities like Misrata, demonstrates that this was not simply a minority movement, but rather a pervasive attempt to remove Gaddafi from power.

Likewise, the long train of human rights abuses committed by the Gaddafi regime, including the violent response to the recent protests, provided a Just Cause. Granted, when the demonstrations degenerated into disorder, leading to property damage and attacks on police, Gaddafi was well within his legal author-

¹⁶² See *supra* note 39–40 and accompanying text.

¹⁶³ See *supra* notes 45–46 and accompanying text.

ity to respond with an increased police presence akin to the Egyptian uprising. But to counter the protests in Benghazi and other cities in a manner more suited to wartime urban assaults was unacceptable. The rhetoric of the Libyan government, including its warning that “rivers of blood” would flow if a resolution to the situation was not found,¹⁶⁴ indicates the lengths that this regime was willing to go to in order to restore control. After nearly a half-century of repression, the Libyan people had a right to demand change.

Finding Right Intention for the rebel cause is a bit more problematic due to the haphazard nature of the rebellion. Serious questions can be raised regarding the rebels’ plans for the restoration of government in the aftermath of ousting Gaddafi. In fact, it took the NTC months to submit a roadmap for rebuilding the Libyan state in the event of Gaddafi’s fall.¹⁶⁵ Presumably, as the NTC declared in its mission statement, many of the now ex-rebels are “committed . . . to build[ing] a constitutional democratic civil state based on the rule of law, respect for human rights and the guarantee of equal rights and opportunities for all.”¹⁶⁶ Yet Libya possesses an incredible diversity which permeates the ranks of the revolution. Throughout the conflict, the NTC was not been the only group vying for a leadership position; indeed, other rebel-controlled cities had governing councils of their own.¹⁶⁷ Moreover, there were even divisions within the rebel armed forces as rival commanders rose in competition with one another.¹⁶⁸ Indeed, as the NTC has had trouble disarming the numerous armed groups that roam the countryside, violence has flared up between the rival factions as they struggle to fill the power vacuum in certain areas.¹⁶⁹ Even more alarming is the possibility that unrecovered portions of Gaddafi’s enormous weapons stockpile may end up in the hands of hostile groups.¹⁷⁰ This fundamental lack of organization casts some doubt on whether the rebels now share a unified, defensible vision for the future of Libya.

Similar doubts attach to the Last Resort requirement, particularly because the protests so swiftly deteriorated into a full-fledged armed conflict. In comparison to the relative nonviolence from protestors participating in the Tunisian and

164 See *Gaddafi’s Son Warns of “Rivers of Blood” in Libya*, AL ARABIYA NEWS CHANNEL, Feb. 21, 2011, available at <http://www.alarabiya.net/articles/2011/02/21/138515.html>.

165 See *Libya: Opposition Outline Post-Gaddafi “Road Map”*, BBC NEWS, May 6, 2011, available at <http://www.bbc.co.uk/news/world-africa-13306779>.

166 See *The Interim Transitional National Council Statement*, INTERIM TRANSITIONAL NAT’L COUNCIL, <http://ntclibya.org/english/the-statement/> (last visited Apr. 21, 2011).

167 See Jon Lee Anderson, *Who Are the Rebels?*, NEW YORKER, Apr. 4, 2011, available at http://www.newyorker.com/talk/comment/2011/04/04/110404taco_talk_anderson#ixzz1HuHK7Txo.

168 See *id.*

169 See *Libyan Factions in Deadly Clashes near Zawiya*, BBC NEWS, Nov. 14, 2011, available at <http://www.bbc.co.uk/news/world-africa-15726099>.

170 See *UN Security Council Concern over Libya Arms Stockpile*, BBC NEWS, Nov. 1, 2011, available at <http://www.bbc.co.uk/news/world-africa-15531816>.

Egyptian revolts, Libya devolved into civil war within a matter of days. Despite the initial attacks on Benghazi, perhaps the rebels should have made more concerted efforts to negotiate with the Gaddafi government or to reach out to the international community for a solution. Indeed, although the unrest in Egypt resulted in over 800 deaths as government forces used live ammunition, snipers, and security vehicles to restrain the protests,¹⁷¹ a general resort to force was not necessary to overthrow President Mubarak.

At the same time, given the Libyan government's apparent motive to completely eradicate dissent, a viable argument may be made that the only option remaining for the protestors was to respond to force with force. Once Gaddafi threw the full might of the Libyan military at the protestors, the proverbial Rubicon may have been crossed.

Finally, the rebels face an uphill battle in establishing Chance of Success. As demonstrated by the stalemate in the months preceding the Tripoli offensive, it is difficult to argue the revolution by itself ever had a significant likelihood of victory. The rebel troops' disorganization, lack of training, and reliance on international air support all stand as strong evidence of their inability to topple the Gaddafi regime on their own.¹⁷² Conceivably, if the bar for Chance of Success is low, the rebels could argue that, at least from their perspective prior to the onset of the conflict, they saw some prospect of attaining their goals, especially in light of early defections from the Libyan military¹⁷³ and the spread of anti-Gaddafi sentiment across the country. Yet such improbability may not be enough to excuse the death and destruction that followed from what became a devastating civil war.

Moreover, the Chance of Success prerequisite cannot take into account any assumption by the rebels that their attempt would have received international support for two reasons. First, because legal international interventions in support of revolutions are the exception rather than the norm, an objective evaluation of revolutionary claims cannot realistically take into account the remote chance that the international community, via the Security Council, would have decided to take action. Second, even if an intervention was likely in this particular case, a problematic assumption in itself, hinging a revolution's legality on third-party assistance subordinates the rebel's role to that of the intervening states. The revolution then becomes an effort of the international community to depose the regime rather than one by the people themselves. In such a case, where ample support for action necessarily exists among other states, the rebels arguably should have appealed to the international community in the first place rather than resorting to force.

171 See *Egypt Unrest: 846 Killed in Protests—Official Toll*, BBC NEWS, Apr. 19, 2011, available at <http://www.bbc.co.uk/news/world-middle-east-13134956>.

172 See *supra* notes 63–65 and accompanying text.

173 See *supra* notes 47–48 and accompanying text.

Conclusion

The ambiguity surrounding the right of revolution within international law arises from an uncertainty concerning the breadth of the asserted purposes of international law, namely whether the protection of human rights in a revolutionary context entails a lawful avenue for the use of force like the one that is present in the United Nations Charter for the maintenance of international order. As a matter of human rights, people may have a just claim to rebel in limited circumstances where their right of self-determination is violently suppressed by the state. The law arguably should not deny a people a right to forcefully free themselves of the most tyrannical regimes, where they unequivocally seek to establish a just system of governance that is responsive to their needs. Yet the international framework seems to prefer instead that an oppressed people take their complaints to the international system charged with the defense of their rights rather than permit them to resort to force unilaterally. Though a convincing case can be made that international law *should* recognize a right to revolution, the current state of the law appears to say otherwise, restricting the lawful use of force to limited instances such as the preservation of international peace and stability.

Even if international law did recognize a right of revolution, it must be one of extremely limited scope. In the case of Libya, the rebels did have strong arguments in their favor, but in the end may have fallen short of a conclusive justification. Under Just War Theory, the Libyan resistance had a persuasive claim on the grounds of Right Intention and Just Cause. However, they had a much more difficult case to make for the remaining Just War elements, especially for the Chance of Success requirement. Accordingly, the Libyan rebels' decision to resort to force may not have fallen within the narrow confines of this theoretical right of revolution.