RESPONSIBILITY TO PROTECT:
ARAB SPRING PERSPECTIVES

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In this article important issues of legitimacy of government and external interference in the affairs of a State are raised. As a preliminary, the rights and obligations of a State with regard to territorial integrity and sovereignty are considered, prior to analyses of the emergent concept of the responsibility to protect and the principle of self-determination. The article then takes into account events of the Arab Spring, before the author concludes by drawing lessons for States, not only those whose people look to change their own governments, or style of governments, but also those intent on intervention in third States.

I. INTRODUCTION

Responsibility to protect is a concept that has grown in momentum over the last decade or so. It is one perceived to be necessary in a world where concern for human rights and humanitarian affairs has become all-consuming and perhaps paramount.1 Yet it is one fraught with dangers, both for those “benefiting” from the concept and those who have undertaken the burden of it.

As a concept, responsibility to protect may be seen to sit at the cusp of and act as a hinge to internal self-determination, on the one hand, and external self-determination, on the other. Self-determination itself is “the right of a people to determine its own political destiny.”2 Internal self-determination is perhaps best seen as the right of a people to govern through autonomy,3

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1. COSTAS DOUZINAS, THE END OF HUMAN RIGHTS: CRITICAL LEGAL THOUGHT AT THE TURN OF THE CENTURY 374 (2000): “Human rights have become the raison d’être of the state system.” This can be seen to be evidenced and brought home by the increasing number of human rights non-governmental organizations (NGOs) in existence and their increasing participation in the international arena: see in this context, for example, DAVID ARMSTRONG, THEO FARRELL, ET AL., INTERNATIONAL LAW AND INTERNATIONAL RELATIONS 168 (2009).

2. ALINA KACZOROWSKA, PUBLIC INTERNATIONAL LAW 574 (4th ed. 2010).

whereas the logical extreme of external self-determination is secession, separation from the State, but it is also a right to non-intervention in the internal affairs of States.

This article proceeds to consider rights and obligations of a State with reference to territorial integrity and sovereignty, including obligations with reference to the human rights of its people. It goes on to examine the burgeoning doctrine of the responsibility to protect and how it came into being, before analysing the principle of self-determination. Finally, the article looks at events of the Arab Spring, commencing in 2011 and moving up to the present day. It draws lessons for States, not only those whose people look to change their own governments, or indeed style of governments, but also those intent on intervention, especially the USA and those of the European Union, the latter being committed to intervention for purposes of humanitarian relief.

can be understood as “[A] people’s pursuit of its political, economic, social and cultural development within the framework of an existing state.” Reference re Secession of Quebec, [1998] 2 S.C.R. 217, para. 126 (Can.).

4. Although, it is worth recalling that secession is not in itself a right of international law, or, more specifically, of self-determination: Georg Nolte, Secession and external intervention, in SECESSION: INTERNATIONAL LAW PERSPECTIVES 65, 84 (Marcelo G. Kohen ed., 2006); See also Reference re Secession, supra note 3, at para. 126, and 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), Annex, 25 U.N. GAOR, 25th Sess. Supp. No. 28, U.N. Doc. A/5217, at 121 (Oct. 24, 1970) (“The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.”). This is indicative of the potential characteristics of external self-determination.

5. See U.N. Charter art. 2, para. 4; see infra note 14 and accompanying text.

6. If a State should fail in this regard the international community may, it appears, question its territorial integrity. See Declaration on Principles of International Law, supra note 4, at p. 124: the Declaration provides that nothing therein “shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples . . . and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.” See also infra note 135 and accompanying text.

II. SOVEREIGNTY AND TERRITORIAL INTEGRITY

The concept of “sovereignty” as understood today represents the entirety of international rights and duties that are recognized by international law to be residing in “an independent territorial unit,” or the State. In essence, therefore, sovereignty is a description of statehood, and the criteria of statehood are laid down by international law. By Article 1 of the Montevideo Convention on Rights and Duties of States, “[t]he State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.” These four criteria, while not necessarily exhaustive, tend to be adopted in substance by jurists, and reflect “sovereignty.”

multi-sectoral team of humanitarian experts and . . . opened a humanitarian office in the Libyan capital.”)

8. See JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 32 (2d ed. 2006); see also Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 I.C.J. 174, at 180 (April 11). Indeed, only States can be sovereign; See HURST HANNUM, AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS 15 (rev. ed. 1996). However, sovereignty is not only a description of statehood, and there are various ways in which the term “sovereignty” (which for many scholars means more than “the State”) is used; See, e.g., ALAN JAMES, SOVEREIGN STATEHOOD: THE BASIS OF INTERNATIONAL SOCIETY 14-22 (1986). New lines of thought on the issue of sovereignty have opened up as sovereignty has been transformed, for example, in the EU States. Questions arise as to whether sovereign States may mutate into post-sovereign States, whether sovereignty may survive within the compass of the EU or, perhaps more particularly, within the compass of the Eurozone, or survive devolution of power, for example within the UK. In that context issues of subsidiarity become apparent, as do issues of the politics of identity; See, e.g., NEIL MACCORMICK, QUESTIONING SOVEREIGNTY: LAW, STATE, AND NATION IN THE EUROPEAN COMMONWEALTH 191-92, 198 (1999) (arguing for a new order transcending the sovereign State, and in turn weakening the concept of exclusive territoriality, the idea as a whole developing out of the broad idea of subsidiarity); but see NEIL WALKER, LATE SOVEREIGNTY IN THE EUROPEAN UNION, IN SOVEREIGNTY IN TRANSITION 3, 31 (2003) (emphasis in original) (arguing that, in what is a post-Westphalian phase of sovereignty, although there are pressures on sovereignty, it is necessary to conceive of new political values and virtues flourishing “through the operation of sovereignty,” not in its absence).

11. See BROWNLIE, supra note 9, at 70.
Sovereignty is inextricably linked with the concept of “territorial integrity.” As evidenced by Article 2 of the United Nations Charter, both concepts are peremptory norms of international law. Article 2(1) reads: “The organization is based on the principle of sovereign equality of all its Members,” while Article 2(4) states: “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.”

More than a century ago, Oppenheim wrote, “[s]ince the Law of Nations is a law between States only and exclusively, States only and exclusively are subjects of the Law of Nations.” This view, though, has gradually changed over the intervening years. As the international legal order has evolved, international law has become more than Oppenheim recognized in 1905. Today, international law does not exclusively involve States, and it is not the case that States only are subjects of international law. International law now recognizes community or collective interests through such means as the prohibition of torture and genocide. It is through this recognition of collective interests that we can see exposed recognition of many of the contemporary problems in international law and indeed recognition of collective interests may contribute to those problems.

12. See, e.g., Xianfa, pmbl. (1982) (China); see also Wouter G. Werner, Self-Determination and Civil War 6 J. CONFLICT & SEC. L. 171, 173 & n. 9 (2001). While sovereignty is generally associated with the territory of a State, Cezary Mik distinguishes it from the principle of territorial integrity in the context of extradition and asylum; Cezary Mik, State Sovereignty and European Integration: Public International Law, EU Law and Constitutional Law in the Polish Context, in SOVEREIGNTY IN TRANSITION, supra note 8, at 367, 377-78.

13. Certain overriding principles of international law exist, forming a body of jus cogens, rules, rights or duties that may be termed fundamental, inalienable or inherent. See BROWNLIE, supra note 9, at 510; accord Vienna Convention on the Law of Treaties, art. 53, May 22, 1969, 1155 U.N.T.S. 331 (stating that “[f]or the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”); See also Crawford, supra note 8, at 100-01, 127, 447. Nevertheless, not only are sovereignty and territorial integrity peremptory norms of international law, so arguably is the right to self-determination, the principle of which is recognized by international law. However, while external self-determination may be seen as a peremptory norm, this is not the case with internal self-determination, and, for example, in any event a State may give away power to exploit natural resources within its territory.


15. 1 LASSE OPPENHEIM, INTERNATIONAL LAW: A TREATISE § 289 (1905).
The crux of the matter is that States not only have rights in international law – rights, for example, of sovereign equality and of territorial integrity – but States also have obligations. Obligations not only extend to refraining from interfering against the territorial integrity of another State but also extend to protecting human rights within the State\textsuperscript{16} and to protecting human rights of those in other States. These issues are all relevant in the context of the Arab Spring.

So far as an ever-expanding body of human rights obligations are concerned, the international human rights movement gained momentum at the end of the Second World War. Human rights were emphasized by the 1945 United Nations Charter, whereby the peoples of the United Nations determined “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women and of nations large and small.”\textsuperscript{17} The UN Charter makes various references to human rights, though these references are essentially aspirational rather than substantive.\textsuperscript{18} Indeed, the aspirational nature of human rights is particularly visible with reference to the events of the Arab Spring.

Set against the background of what is now a vast number of human rights bodies are the two principal human rights treaties: the International Covenant on Civil and Political Rights (ICCPR)\textsuperscript{19} and the International Covenant on Economic, Social and Cultural Rights (ICESCR).\textsuperscript{20} The essential purpose of the human rights regime is to promote and protect vital human interests, a purpose made evident in the Preamble to each of the two 1966 International Covenants. Today, there is general acceptance of the importance of human rights in the international structure. There are currently 167 parties to the ICCPR and 160 to the ICESCR.

The concept of human rights has expanded exponentially since the end of World War II and has demonstrated a vibrancy and all-embracing nature. In the words of David Kennedy, “Humanitarian voices are increasingly powerful on the international stage.”\textsuperscript{21} Thus, human rights challenge the

\textsuperscript{16}See supra note 6.

\textsuperscript{17}U.N. Charter, pmbl.

\textsuperscript{18}See id.; see also U.N. Charter arts. 1(3), 13(1)(b), 55, 56, 62(2) and 68; See infra note 53.

\textsuperscript{19}International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171 [hereinafter ICCPR].


\textsuperscript{21}David Kennedy, The International Human Rights Regime: Still Part of the Problem?, in EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS 20 (Rob Dickinson et al. eds., 2012).
long-established *jus cogens* norm of sovereignty. As William Twining puts it:

> Either internally or externally . . . municipal law can no longer be treated in isolation. . . . [T]he twin doctrines of national sovereignty and non-interference in internal affairs of independent states is being steadily challenged, most prominently, but not exclusively, by international humanitarian and human rights law.22

### III. HUMANITARIAN INTERVENTION AND THE RESPONSIBILITY TO PROTECT

The fact that the territorial integrity of the State assumes a paramount position in international law always needs to be borne in mind when dealing with the issue of humanitarian intervention. As Jennifer Welsh states, humanitarian intervention can be defined as “coercive interference in the internal affairs of a state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing widespread human suffering.”23

It is possible to distinguish intervention of this nature undertaken by either States or groups of States, on the one hand, and intervention under UN auspices, on the other. The former is particularly difficult to reconcile with Article 2(4) of the UN Charter. At most, and on consideration of the Kosovo crisis of 1999, it can be said that in a crisis, the UN did not condemn the doctrine of humanitarian intervention.24

Humanitarian intervention by the UN through the Security Council is a different matter, bearing in mind the role the Security Council has with regard to the maintenance of international peace and security.25 The UN Security Council has intervened, for example, in Somalia, Rwanda, Haiti and East Timor.26 Moreover, of relevance is the question whether there is an obligation on the part of States, or groups of States, to intervene in situations where there are substantial violations of human rights within the domestic jurisdiction of a State in circumstances where the Security Council fails to deal with the situation. Examples of Rwanda, Darfur and Kosovo might be pertinent,27 as well as Syria at the present time. Nevertheless, se-
lective interventions raise questions concerning the concept of human rights, and, in particular, its “universality.”

In recent years, humanitarian intervention has perhaps merged into an emergent concept of a “responsibility to protect” (R2P). R2P comprises “the responsibilities to prevent catastrophic situations, to react immediately when they do occur and to rebuild afterwards.”\textsuperscript{28} R2P is an important and influential trend; it “redefine[s] the principle of humanitarian intervention in a way that seeks to minimize the motives of the intervening powers . . . ”\textsuperscript{29} In a sense, minimizing intervening states’ motives explicitly censure the State in which the intervention takes place, and, by implication, rebukes and questions the motives of those who fail to intervene.

The responsibility does not fall on States alone but on the international community – and with reference to any military action, the principal focus is on the UN. As a doctrine, R2P can be traced back to 2001:

The concept of R2P entered the legal vocabulary in 2001 when the International Commission on Intervention and State Sovereignty (ICISS) established by the Canadian Foreign Minister in 2000 and made up of recognised experts in international law published its report entitled “The Responsibility to Protect.”\textsuperscript{30} ICISS’ recommendations received endorsement from the UN Secretary-General’s High-Level Panel on Threats, Challenges and Change in 2004, favoring ICISS’ conclusion that R2P should be exercised “only with the endorsement of the Security Council.”\textsuperscript{31}

Five criteria were identified by the High-Level Panel to assess whether military intervention is justified:

In considering whether to authorize or endorse the use of military force, the Security Council should always address – whatever other considerations it may take into account – at least the following five basic criteria of legitimacy:

(a) \textit{Seriousness of threat}. Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify prima facie the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, 

\textsuperscript{28} SHAW, \textit{supra} note 24, at 1158.

\textsuperscript{29} \textit{Id.}

\textsuperscript{30} KACZOROWSKA, \textit{supra} note 2, at 734; \textit{See also INT’L COMM’N ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT} (2001), especially the Synopsis.

ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?

(b) Proper purpose. Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

(c) Last resort. Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

(d) Proportional means. Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?

(e) Balance of consequences. Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?32

UN Secretary-General Kofi Annan recommended that the 2005 World Leaders’ Summit adopt R2P, and a text was concluded at the summit. This was important as the concept and principle was agreed, even though the final text was weaker than had been proposed. Paragraphs 138 and 139 of the 2005 World Summit Outcome are relevant:

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic

32. Report of Secretary-General, supra note 31, at ¶ 207.
cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.33

The UN Security Council, in Resolution 1674 of April 28, 2006, reaffirmed “the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” and later that year invoked R2P in relation to Darfur, recalling Resolution “1674 (2006) on the protection of civilians in armed conflict, which reaffirms inter alia the provisions of paragraphs 138 and 139 of the 2005 United Nations World Summit outcome document . . . ”34

In the Report of the Secretary-General, Implementing the Responsibility to Protect,35 a three-pillar strategy was outlined for advancing the agenda mandated by the Heads of State and Government at the 2005 World Summit, as follows:

Pillar one: the protection responsibilities of the State;
Pillar two: international assistance and capacity-building;
Pillar three: timely and decisive response.

The Report does not provide support for unilateral military interventions: “[c]ollective action in the use of force must be undertaken with the authority of the Security Council and in accordance with Chapter VII of the Charter.”36

It is worth bearing in mind that R2P is not enshrined in treaty. So, to be considered as a norm of international law, its acceptance as part of customary international law is the most likely applicable route. Thus, State practice and *opinio juris* will be needed.

It is clear from the above that the primary responsibility lies with the State for protecting its own people. Further, the responsibility of the international community to protect is only engaged when the State fails in its

responsibility.37 In that case, the principal responsibility of the international community is to provide aid and assistance with intent to deal with an impending humanitarian crisis. The question, however, is what happens if the State fails in its responsibility and if the international community’s assistance is not effective. It is here that coercive measures – as a last resort – may include military action authorized by the international community, but only through the Security Council utilizing in particular its Chapter VII powers.

The more controversial issue revolves around the question of whether a State or group of States may intervene for humanitarian purposes in the event that the Security Council fails to take action. If R2P, through coercive measures, is only exerisible by the UN Security Council, and if the Permanent Members of the Security Council have a right of veto, can real progress be made with reference to establishing a norm of R2P? This is an issue that has found particular resonance in the Arab Spring and has proved particularly contentious with reference to the situation that has arisen in Syria.38

In any event, intervention by the international community may not bring an end to a humanitarian crisis, particularly if that crisis takes the form of atrocities committed against a particular section of a population; it may also mean the pattern of atrocities changes, leading to victims coming from a different sector of society.39 The international community must consider this issue in all relevant instances. Arguably, the more intractable a conflict, the greater the ongoing human rights abuses, and failure in the UN Security Council may exacerbate matters.40 The Responsibility to Protect should not be seen as a panacea, even if it eventually becomes accepted as a new norm of international law in the case of humanitarian intervention.41

Before turning to consider issues of R2P and intervention in the context of the events of the Arab Spring, it is pertinent to give some thought to matters of self-determination. Ultimately, the issues arising in the States concerned reflect self-determination, both internal and external.

37. See Anne Orford, International Authority and the Responsibility to Protect 1 (2011) (stating “[i]f a state “manifestly” fails to protect its population, the responsibility to do so shifts to the international community”).
38. See infra, § V.E.
39. See infra, § V.D.
40. Consider the situation in Syria in February 2012.
41. Indeed, intervention may exacerbate matters; hence, the fifth point (e) identified by the High-Level Panel, see supra p. 8.
IV. AN ANALYSIS OF THE PRINCIPLE OF SELF-DETERMINATION

“Self-determination” connotes images of freedom, yet for many across the globe it represents nothing but fractured hopes. The purpose of this section is to explore issues and conflicts inherent in the theory of self-determination, prior to examining the theory’s applicability to the Arab Spring. The theory has proven dynamic in its evolution but also limited when measured against other established norms of international law.

While relatively modern in acceptance as a legal theory, the political origins of the concept of self-determination go back to the eighteenth century and the American Declaration of Independence of 1776 and the French Revolution of 1789. The legal theory traces forward to the twentieth century and has had different meanings in different contexts. In the aftermath of the First World War, the League of Nations was established by the victorious Allied Powers, and the League’s Covenant, its charter, was approved at the 1919 Paris Peace Conference as part of the Treaty of Versailles.

The theory of self-determination was “politically popular at the time of the Peace Settlement of 1919-20 in Europe,” and the effect was that minorities who found themselves on “the wrong side of boundaries of new States” had the option to change their nationality or on occasion were “the subject of large-scale population transfer and exchange.” There was not, however, acceptance of self-determination as a general principle at this time, and it had different meanings for major actors: it was the essence of a lasting peace in Europe for U.S. President Woodrow Wilson, yet for Vladimir Lenin it was “a means of realizing a dream of world-wide socialism.” The political implications of and dissonance inherent in self-determination are thus evident at this early stage.

Essentially, specific provisions defining obligations were incorporated in the Treaty of Versailles, but these were limited in extent. Despite the influential authority of Woodrow Wilson, the principle of self-determination itself “was not specifically included in the Covenant of the League of

42. Cassese, supra note 3, at 11.
44. See The Treaty of Peace between the Allied Associated Powers and Germany, June 28, 1919, 225 Consol. T.S. 188 [hereinafter Treaty of Versailles].
47. Cassese, supra note 3, at 13.
Nations.” It was only those States signing the League’s minority treaties that came under any obligation to the League for the protection of minorities within their borders. In their approach, the League sought to:

. . . suppress in the future those special conditions which give rise to minority grievances and can arguably legitimate a claim to self-determination . . . the League [rejected] self-determination and particularly secessionist self-determination as a further remedy for minority groups.

This line was subsequently confirmed by a Commission of Rapporteurs to the Council of the League of Nations on the Aaland Islands question. There, the Commissioners stated, to allow minorities to withdraw from the State to which they belong “would be to destroy order and stability within States and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the State as a territorial and political entity.”

It was after 1945 that the principle of self-determination was affirmed, but its application following the Second World War took a different approach. Then, the theory was applied to “peoples under colonial domination,” initially almost exclusively so. The principle became enshrined in international law, in particular through Article 1(2) of the United Nations


49. Id. at 70. The minority treaties imposed “no general principles of good government upon the signatory States . . . They merely [registered] certain conditions which had to be accepted by a limited number of European States who, as a result of the War, were receiving political recognition, or great increases in territory, at the hands of the principal Allied and Associated Powers.” Blanche E.C. Dugdale & William A. Bewes, The Working of the Minority Treaties, 5 J. Brit. Inst. Int’l Aff. 79, 79 (1926). The policy was to secure equality of citizenship among the inhabitants of the signatory States, who were to have equal freedom “to practise their own religion, and speak their own language” and in that way to counteract separatism, yet the minorities themselves were not parties to the treaties. Id. at 79-80. Particular clauses in the Treaty of Versailles specified the obligations towards minorities. See, e.g., Treaty of Versailles, supra note 44, arts. 86, 93 (regarding the “Czecho-Slovak State” and Poland respectively). For the separate peace treaties concluded, see Buchheit, supra note 48, at 67-70.


Charter\textsuperscript{53} and subsequently through Article 1 of the ICCPR.\textsuperscript{54} In the Western Sahara Case “the Court accepted . . . that the principle of self-determination is a part of customary international law,”\textsuperscript{55} the emergent norm being applicable to the decolonization of those non-self-governing territories under the aegis of the United Nations.\textsuperscript{56}

The post-Cold War era has seen a further shift in direction for the principle of self-determination. Further, it is the classification of self-determination as a general principle rather than a rule, albeit with a number of customary rules,\textsuperscript{57} which opens up the space for ideas and evolution. States are no longer the sole parties involved in international law, and interpretation of self-determination by the International Court of Justice in cases such as East Timor (Portugal v. Australia)\textsuperscript{58} “has served as a point of entry into international law for newcomers, the newly returned and even the absent, and for their challenges to international law’s marginalization of them.”\textsuperscript{59} This interpretation, which may be connected with the decline of the nation-State, has opened up the door for minorities to argue their case for self-determination. Thus “external” self-determination, formerly applied to the colonial situation, is now less commonly the issue. The focus has now turned towards the right of self-determination to guarantee “internal” self-determination – a protection of the right “of national or ethnic groups

\textsuperscript{53.} See U.N. Charter, supra note 14, at art. 1(2), 55, 56. Article 1(2) of the Charter provides that a purpose of the United Nations is: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.” Self-determination reappears in Article 55 of the Charter, which commences: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.” Both articles represent self-determination as an aim, an aspiration, rather than a right or an obligation necessarily creating a legal effect, although under Article 56 “[a]ll Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.” See also supra note 18 and accompanying text.

\textsuperscript{54.} ICCPR, supra note 19. See also ICESCR, note 20, at art. 1.


\textsuperscript{56.} See Western Sahara, supra note 55, at ¶ 54; Harris, supra note 55, at 115.

\textsuperscript{57.} See generally CASSESE, supra note 3, at 126-33.

\textsuperscript{58.} East Timor (Port. v. Austl.), Judgment, 1995 I.C.J. 90 (June 30).

\textsuperscript{59.} KAREN KNOP, DIVERSITY AND SELF-DETERMINATION IN INTERNATIONAL LAW 110 (2002); See also id. at 206.
within the state to assert some degree of ‘autonomy’ over their affairs, without giving them the right to secede.”60 The emphasis on “internal” self-determination is linked with the democratic decision-making process,61 and is less in conflict with the integrity of the State than is “external” self-determination, although issues surrounding intermeddling in the internal affairs of a State arise in each. It is also the case that few Western colonies now exist, and it was largely Western colonies to which the doctrine applied in the post-Second World War era. For the concept of self-determination to continue to be of significance beyond the context of decolonization, it has to evolve.

In any event, self-determination is now accepted as a legal principle,62 a customary legal right, and thus has both legal and political implications. As is clear, though, the principle has proved contentious: not only in its content but also in its application.63 In recent years, and outside the colonial context, few States have achieved external self-determination through unilateral secession;64 one possible exception being Bangladesh and a further potential example being Kosovo.65

While the nature of external self-determination is evident, as is the nature of internal self-determination, there is an element at the border of the two where it is perhaps not clear which will apply. Is, for instance, internal self-determination sufficient for those claiming self-determination in the case of Tibet, or perhaps more properly in the case of the Tibet Autonomous Region?66 What of Aceh in Indonesia and Mindanao in the Philippines? Further, schemes of autonomy are viewed as double-edged; schemes

60. Groarke, supra note 3, at 84; generally; see generally supra note 3 and accompanying text.
61. Cassese, supra note 3, at 64-65.
62. Brownlie, supra note 9, at 582.
63. Issues such as the definition of “peoples” entitled to the protection of the principle. This article is, however, not the place to delve into such matters.
64. See supra note 4.
65. Even in the case of Bangladesh, “[t]he indications are that the United Nations did not treat the emergence of Bangladesh as a case of self-determination despite good grounds for doing so, but rather as a fait accompli achieved as a result of foreign military assistance in special circumstances. The violence and repression engaged in by the Pakistan military made reunification unthinkable, and in effect legitimized the creation of the new State”: Crawford, supra note 8, at 415-16. Others, though, believe the establishment of Bangladesh does come within the principle of self-determination. See, e.g., Christian Tomuschat, Secession and self-determination, in Secession: International Law Perspectives, supra note 4, at 23, 42. As to Kosovo, as yet that entity has not received international recognition as a State.
of autonomy “have been offered to placate secessionist sentiments and maintain State cohesion, although it is feared such schemes could be a prelude to independence claims, by weakening the central government.”

Instances of entities seeking self-determination at the cusp of internal/external self-determination are hard cases, and R2P may be seen to operate here as well as in cases of more clear-cut self-determination. This is something too that will become visible as we proceed to an examination of the Arab Spring.

V. THE ARAB SPRING

The 2011 uprisings of the Arab Spring commenced in Tunisia, catalysed by the self-immolation of Mohamed Bouazizi on December 17, 2010. Popular uprisings spread across the Arab world over the succeeding months. Initially the uprisings were heralded by much optimism and anticipation, particularly as the West sought to encourage the wider expansion of democracy. In this section, certain States are considered: Tunisia, Egypt, Bahrain, Libya and Syria. All have been a part of the Arab Spring but the approach and effects have been different in each.

A. Tunisia

Tunisia was the first of the Arab States to be affected with the death of one of its citizens, Mohamed Bouazizi. As the uprising unfolded, clashes in the streets took place between the authorities and the public. The clashes were fuelled by modern technology as “it is on the internet that a generation of activists has been credited with enabling the movement to take off.”

The outcome of this internal insurrection was the fall of the “autocratic” leader of Tunisia, Zine el-Abidine Ben Ali, who sought exile in Saudi Arabia.

67. Li-ann Thio, *International Law and Secession in the Asia and Pacific Regions*, in *SECESSION: INTERNATIONAL LAW PERSPECTIVES*, supra note 4, at 297, 331-32 (citing examples of autonomy offered to Tamil insurrectionists in Sri Lanka, to West Papua and indeed Aceh by Indonesia, and to Mindanao by the Philippines); see also Photini Pazartzis, *Secession and International Law: the European Dimension*, in *SECESSION: INTERNATIONAL LAW PERSPECTIVES*, supra note 4, at 355, 373.


Tunisia was the first State to hold elections as a result of the Arab Spring. Elections took place on October 23, 2011: “Moderate Islamists claimed victory . . . in Tunisia’s first democratic election, sending a message to other states in the region that long-sidelined Islamists are challenging for power after the ‘Arab Spring.’”\(^{70}\) There was a massive turnout of voters as the people embraced change and the future: “‘Out of the 4.1 million people registered, more than 90 percent voted,’ said Boubaker Ben Thaber, Secretary-General of the independent commission that organized the vote.”\(^{71}\) Thus, Tunisia may truly be seen as an example of a people determining its own political destiny after the years of autocratic government.

The outcome, nevertheless, for Tunisia is perhaps less promising than the flowering of an internal self-determination may have presaged:

But Tunisians are anything but flourishing. Jobs remain scarce, and the sense of hopelessness that led to the uprising is little abated. Hardly a day goes by without some new confrontation between Islamists and secular Tunisians. In a country that is nearly 100 percent Muslim, a growing rift over religion threatens – in the view of the secular president of the new parliament – to throw Tunisia into “chaos.”\(^{72}\)

To date, the instability created initially in Tunisia has arguably not resulted in a rebirth of optimism, yet that instability has spread to other States in the region. It is worth mentioning that there has been no third-State intervention on the ground in Tunisia and no UN intervention; all issues in Tunisia have been dealt with internally, with no humanitarian intervention or R2P invocation. The extent of foreign intervention may, though, be seen through the mass media: “encouragement has come from abroad, including France and other Arab countries. But much has been generated from within Tunisia.”\(^{73}\) It may be said here that the Tunisian state has taken responsibility with regard to its citizens, through the power of its citizens leading to the protection of its population.\(^{74}\) This emphasizes Pillar one in the three-pillar strategy outlined for advancing the agenda mandated by


\(^{72}\) Fisher, *supra* note 69.

\(^{73}\) Lewis, *supra* note 68.

\(^{74}\) See 2005 World Summit Outcome, G.A. Res. 60/1, *supra* note 33, at ¶ 138.
the Heads of State and Government at the 2005 World Summit: the protection responsibilities of the State. The benefits of the internal Tunisian revolution have yet to become manifest despite the democratic outcome.

B. *Egypt*

Egypt was seen as something of a bellwether so far as the Arab States were concerned in the context of the Arab Spring. The outcome for President Hosni Mubarak was seen as crucial: “All of [the Arab rulers] now watch Egypt’s ‘days of rage’ with mounting trepidation. In the fate of the ailing Egyptian ruler, 82-year-old Hosni Mubarak, they see their own.” Egypt, of course, was a State that had received Western backing as “for decades, American and European leaders chose stability over democracy.” Western leaders were now reluctant to see the downfall of a friendly government in the Middle-East. Mubarak was not a democratically-elected leader yet, and as countless Egyptians protested against his government in the focal point of Cairo, Tahrir Square, the reluctance of the West to intervene was palpable.

Activists in Egypt organized a demonstration against the government on January 25, 2011. Protests spread across the country and, after eighteen days of mass demonstrations, Hosni Mubarak resigned the presidency on February 11, 2011, handing power over to the army. At that time: “U.S. president Barack Obama, who had supported Mubarak remaining in power until a stable transitional administration was in place, called on the new military leaders to take concrete steps towards democratic change.”

75. U.N. Secretary-General, *supra* note 35 and accompanying text.


77. Hardy, *supra* note 76.


80. Id.
It was not until November 29, 2011 that Egypt held parliamentary elections which took place in the midst of widespread violence and unrest.81 In the period prior to the election, thousands of protesters had violently clashed with the interim military-led government, arguing that demands from the original January protests had still to be addressed.82 Just as the Mubarak government had Western support, so did the interim government. It was only on November 25, 2011 that the Obama Administration modified its stance:

Early on the morning of Nov. 25, the Obama administration significantly shifted its public position in the then-on-going standoff between Egypt’s ruling military and pro-democracy demonstrators in Cairo’s Tahrir square. Dropping its weak appeals for ‘restraint on all sides,’ the White House ‘condemned the excessive use of force’ against the protesters and sided with their main demand by asserting that ‘the full transfer of power to a civilian government must take place . . . as soon as possible.’83

In the elections, which were conducted in three phases over a six-week period, the Islamist parties were successful and achieved 67 percent of the total vote.84 Presidential elections took place in May


and June 2012, and the Muslim Brotherhood candidate was victorious.\footnote{Ian Black, \textit{Mohamed Morsi victory unsettles Middle East neighbours}, \textit{The Guardian}, June 25, 2012, \texttt{http://www.guardian.co.uk/world/2012/jun/25/mohamed-morsi-middle-east-neighbours?INTCMP=SRCH}.}

The case of Egypt, from the point of view of the attitude of Western States, was one of reluctance to see the protesters and their will prevail over the status quo. Political reasons were to the fore here and there was lack of intervention. So, if the three-pillar strategy advanced regarding R2P is applied here, protection responsibilities were clearly left to the State, Egypt. However, it is doubtful if they acted in compliance and in January 2012, Human Rights Watch reported a catalogue of abuses in Egypt all of which had taken place in the previous twelve months. The report included the following:

In October, soldiers ran over demonstrators with armored cars and shot them, killing 27 marchers at a Christian rally held to protest the burning of a church. In November, at least 40 demonstrators were killed by anti-riot forces during unrest in and around Tahrir Square, the epicenter of protest. Police routinely beat demonstrators, women included. Human Rights Watch has documented torture and abuse of detainees by soldiers. Military personnel carried out abusive “virginity tests” on women in detention. Servile state media demonize opposition groups and non-governmental organizations as subversive tools of dark foreign forces.\footnote{Daniel Williams, \textit{No Joy in Egypt}, \textit{Human Rights Watch}, Jan. 25, 2012, \texttt{http://www.hrw.org/news/2012/01/25/no-joy-egypt}.}

It is clear that if the universality of human rights is to be respected in situations such as these, UN commitment is required and this is difficult if political imperatives of third States – particularly powerful third States – dictate to the contrary. Here, we see political imperatives of powerful Western States, the US, for example, being concerned with the wider picture in the Middle-East and being unwilling to risk the loss of Egypt as an ally through regime change. We shall later see different political imperatives at work, in the context of Syria, and a rather different angle on regime change in the context of Libya.

With Egypt, it is arguable that the doctrines of sovereignty and non-interference in the internal affairs of States were not successfully challenged by international humanitarian and human rights law,\footnote{Cf. Twining, supra note 22.} and similarly so, indeed, in Tunisia. It is of course right that such doctrines should not be easily challenged: if they were to be, there would be clear and ever-present risks to
international peace, security and stability. Nevertheless, has the international community shirked its responsibilities in regard to Egypt? Should it have taken steps to help protect the population of that country? In other words, would it have been appropriate to assist effectively with international assistance and capacity building?88

However, if the international community might be perceived to have made a minimal response only to the wave of protest in Egypt, its silence and lack of condemnation rang loud with reference to Bahrain.

C. Bahrain

The protests in Bahrain have singularly failed to attract international support. It was in February 2011 that protests reached Bahrain, with demonstrations against the ruling Al-Khalifa family. Protesters were forcibly removed and three died along with one policeman. Roadblocks manned by armed vigilantes were subsequently erected and after four weeks a state of emergency was put into effect.89 Of particular note is the role of Saudi Arabia:

On March 14th, at the request of Bahrain’s ruling Sunni Al-Khalifa family, Saudi Arabia, leading a special contingent under the aegis of the Gulf Cooperation Council, a league of Sunni-led Gulf states, rolled in its troops into Bahrain. The force violently quelled protests instigated by Bahrain’s Shiite majority that were supposedly centered on demands for political and economic reforms.90

The ferment in Bahrain was not met, therefore, with external sympathy but with external support for the government, a government in which power was concentrated in an appointed upper chamber.91 Further, Western support for the Bahraini regime was evident. Britain, for example, a long-

88. See U.N. Secretary-General, supra note 35, at 15-22.
91. Pearson, supra note 89.
standing friend of Bahrain, spoke out in support of the regime, and the United States was perceived to be complicit in the crackdown.

The politics of the Middle-East rather than human rights can be seen as key with regard to Bahrain. There were reports such as:

[A]s many as 30 people are thought to have been killed [in Bahrain] as anti-government demonstrations have been violently suppressed.

Hundreds of protesters have been detained and employees have been dismissed from state-owned enterprises in a move to purge dissent.

Notwithstanding, the fear is one of Iran and advancing influence of Tehran: advancing influence in Bahrain through Shiite opposition, which Saudi Arabia – “the main strategic bulwark against Iranian power” – opposes. Protests continued in 2012 and, for example, it was reported in May 2012, “[A] prominent human rights activist and critic of Bahrain’s ruling family has been arrested.” The previous month, “Bahraini protestors [had] claimed a moral victory against the government in their campaign to focus attention on tensions and repression in the Gulf state, despite failing to disrupt the controversial Formula One grand prix.”

In the context of Bahrain, there has been international interference – but in support of a regime cracking down on internal protest. No intervention has been humanitarian in nature. Coercive measures by States in support of the Bahraini regime may be seen in the context of maintaining

92. Id.
93. Bahrain: We must speak out about brutality in the Gulf, GUARDIAN, Apr. 16, 2011, http://www.guardian.co.uk/commentisfree/2011/apr/17/observer-editorial-britain-role-in-gulf —“William Hague, foreign secretary, was keen to recognise ‘important political reforms’ which he welcomed in the context of “the long friendship between Bahrain and the UK.”
95. THE GUARDIAN, supra note 93.
96. Id. Space does not permit a discussion of the major differences between the Sunni and Shia denominations of Islam.
international peace and security, and a maintenance of stability.99 The potential limitations of any emerging doctrine of R2P are all too evident.

D. **Libya**

In Bahrain intervention by the international community was in support of the incumbent regime. However, this was not the case in Libya, the fourth State the subject of discussion in this article. The protests that ultimately led to the downfall and death of Colonel Muammar Gaddafi, began in Benghazi on February 15, 2011: “Hundreds of anti-government protesters have clashed with police and government supporters in Libya’s second city, in the latest display of unrest in the Arab world. Dozens of people are said to have been hurt in the clashes in Benghazi.”100 The protests escalated, and on February 21, for example, “Protesters in Libya’s capital [were] reported to have set fire to government buildings and attacked the headquarters of state television as the anti-Gaddafi demonstrations that began in the east of the country threaten to engulf the regime.”101 A matter of days later, the National Transitional Council was established:

An interim opposition government, later named the National Transitional Council (NTC) was established on 26 February 2011 under the leadership of former Justice Minister Mustafa Abdul Jalil, the first government official to break ties with Gaddafi. The NTC was eventually universally accepted as the governing body of Libya, first by the Contact Group on 25 August 2011, then the League of Arab States on 27 August, the UN General Assembly on 16 September and the African Union on 20 September.102

As the crisis evolved matters were considered by the UN Security Council. By resolution 1973, which was adopted on March 17, 2011,103 member States were authorized to take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack in the Lib-

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99. It is worth noting Art. 2(3) of the UN Charter: “All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.” U.N. Charter art. 2, para. 3.


yan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory . . .”  
A ban on all flights in Libyan airspace was established to help protect civilians.
A coalition of States, including 15 NATO countries, formed to implement this no-fly zone:

The Coalition successfully provided support to NTC forces in Benghazi and Misrata and then later in Libya’s capital Tripoli, Gaddafi’s hometown Sirte, and other loyalist strongholds in Libya. Crimes against humanity committed by pro-Gaddafi forces continued until 24 October 2011 when NTC officials declared the end of the eight-month conflict in Libya following the death of Gaddafi and his son Mutassim on 20 October. The NATO mission ended on 31 October as the UN Security Council voted unanimously on 26 October [sic] to end the no-fly zone in Libya.

The outcome for Libya was regime change and the death of Colonel Gaddafi – the end of his dictatorial regime. Postponed elections were held on July 7, 2012. It is of interest in the context of self-determination, that “parties based on religion, tribe or ethnicity” were banned from standing in those elections.

The situation in Libya, and its resolution, is notable for the fact that the international community chose to intervene against the regime that was the object of the revolution. Intervention was not wholehearted: for instance, UN Security Council resolution 1973 was not unanimous and five States abstained, including China and the Russian Federation. Nevertheless, intervention did take place and regime change was the outcome. The motive for intervention was said to be humanitarian, to protect civilians, so mini-

104. *Id.* ¶ 4.
105. *Id.* ¶ 6.
110. See *supra* note 105 and accompanying text.
mizing the motives of the intervening powers. Yet, it is difficult to divorce the intervention from the fact that Western powers had an axe to grind with reference to Muammar Gaddafi over the years.

While the terms of UN Security Council resolution 1973 may be seen as a proportionate response to a serious humanitarian threat, it may be questioned as to whether the action taken by the coalition went further than envisaged in the resolution. It is this issue that came into focus in the context of the response by the international community to the uprising in Syria. It is clear that in Libya the state failed to protect its own people; it is equally clear that one result of the intervention by the international community was a change in the pattern of atrocities – victims coming from a different sector of society.

E. Syria

Protest came rather later to Syria and commenced in March 2011, when “[h]undreds of Syrians . . . staged a rare protest in the capital, Damascus, calling for democratic reforms and the release of all political prisoners.” In January 2011, President Bashar al-Assad had “said that there was no chance of political upheaval, and pledged to press on with a package of reforms.” Violence quickly became the hallmark of the Syrian uprising. For example, in the Sunni Syrian city of Hama:

Over 70 [residents] were shot dead during protests on June 3rd [2011]. Fearing escalation beyond its control, the regime temporarily pulled out most forces. Free to protest, tens of thousands took to the

111. See supra note 29 and accompanying text.
112. For example, consider the US air strikes against Libya in 1986 – “President Reagan . . . justified the attacks by accusing Libya of direct responsibility for terrorism aimed at America, such as the bombing of La Belle discotheque in West Berlin 10 days ago.” On This Day 1950-2005: 1986: US launches air strikes on Libya, BBC NEWS Apr. 15, 1986, http://news.bbc.co.uk/onthisday/hi/dates/stories/april/15/newsid_3975000/3975455.stm; Consider too the Lockerbie air disaster of December 21, 1988, for which the Libyan agent, Abdel Basset al-Megrahi, was convicted. Michelle Nichols, Justice served by Gaddafi death, Lockerbie families say, REUTERS, Oct. 21, 2011, available at http://www.uk.reuters.com/article/2011/10/20/uk-libya-gaddafi-lockerbie-idUKTRE79J5152011O2O.
113. See supra note 39 and accompanying text; Hardy, supra note 76. Note, for example, the death of Colonel Gaddafi reported by Reuters. Tim Gaynor & Taha Zargoun, Gaddafi’s death – who pulled the trigger?, REUTERS, available at http://www.reuters.com/article/2011/10/20/us-libya-gaddafi-finalhours-idUSTRE79J5Q720111O2O.
115. Id.
2013–2014] Responsibility to Protect

streets. Some reports suggest 300,000 people, including women and children, turned out on Friday July 1st, the biggest protest to date.\footnote{116} Then, “On July 3rd, having sacked the provincial governor, who was widely liked in Hama, armed troops returned to the city and resumed their campaign of violent intimidation, killing at least 24 demonstrators over the next two days.”\footnote{117}

Violence was such that the Arab League, with Syrian agreement, deployed peace monitors in December 2011,\footnote{118} and it was reported that “[n]ewly-arrived Arab League peace monitors will try Tuesday to see for themselves the situation in the Syrians [sic] city of Homs, which opponents of President Bashar al-Assad say has been pulverized by government troops and tanks in recent days.”\footnote{119} Civil war became a significant fear, and a civil war along sectarian lines, raising issues of internal, and potentially external, self-determination:

An armed insurgency is eclipsing civilian protest in Syria. Many fear a slide to sectarian war between the Sunni Muslim majority, the driving force of the protest movement, and minorities that have mostly stayed loyal to the government, particularly the Alawite sect to which Assad belongs.

Analysts say the Arab League is anxious to avoid civil war. The West has shown no desire to intervene militarily and the United Nations Security Council is split.\footnote{120}

The Arab League’s mission was of short duration as violence continued despite the presence of the monitors,\footnote{121} and questions were quickly raised as to the appropriateness of the leader of the mission, the Sudanese general


\footnote{117. Id.}


\footnote{119. Solomon, supra note 118.}

\footnote{120. Id.}

Mustafa al-Dabi, and the killings continued. The mission failed to end the violence and it was suspended at the end of January 2012.

UN Security Council involvement failed to follow the tenor of its involvement in Libya. The issue of intervention has been raised in the UN Security Council where a Security Council resolution was vetoed by Russia and China. The resolution had not even made mention of questioning Assad’s hold on power and, for example, made no mention of “sanctions nor any other punitive action, or blocking arms deliveries – Russia is Assad’s most important supplier.” Russia also feared the resolution masked objectives of “global domination” and regime change, echoing the thought that the coalition went further than envisaged in the Security Council resolution acted upon regarding Libya. However, “[a]n angry response by American Ambassador Susan Rice reflected the frustration of the U.S. that even a diluted Resolution – which had removed all sanctions and an arms embargo – could not pass.”

In the wake of continuing violence, the UN Security Council in April 2012 agreed to establish the United Nations Supervision Mission in Syria

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127. *See supra* note 103; *see section V.D. on Libya, above.

(UNSMIS).\textsuperscript{129} Clearly there is no appetite in the UN Security Council for intervention in Syria beyond a small supervisory monitoring mission. It must be noted that on August 19, 2012, the UNSMIS mandate ended due to the failure of the parties to meet conditions that would allow the monitors to implement the mandate.\textsuperscript{130}

The situation in Syria remains volatile and the hands of the international community are tied in circumstances where there is disagreement among veto-wielding members of the Security Council as to the line to be followed. This may be contrasted with the situation in Libya, where no veto-wielding members of the Security Council exercised their veto although two did abstain with regard to resolution 1973.\textsuperscript{131} So, in Syria, there is no intervention under UN auspices and a supervisory mission only has been agreed.

As to the question of R2P, if we consider the three-pillar strategy mandated by the Heads of State and Government at the 2005 World Summit, it is clear that Syria has abrogated its protection responsibilities; even after the inception of the supervisory mission, violence continued: “[t]he United Nations accused both sides of breaching the truce and said it had credible reports that at least 34 children had been killed since the accord took effect on April 12.”\textsuperscript{132} The international community, although tardily, took some steps to protect the Syrian population from violence through the advent of the supervisory mission; yet the value of even those small steps remains questionable in view of the terminal difficulties encountered by this mission.\textsuperscript{133}

Politics within the Security Council has proved conclusive, however, in the failure to achieve a resolution condemning the Syrian regime. This factor will be addressed in the concluding section to this article. Nevertheless, it needs to be borne in mind that intervention by the international community in the affairs of a State against its territorial integrity should always

\textsuperscript{129} See S.C. Res. 2043, U.N. Doc. S/RES/2043 (Apr. 21, 2012). UNSMIS was initially established for a period of 90 days; its mandate “to monitor a cessation of armed violence in all its forms by all parties and to monitor and support the full implementation of the Envoy’s six-point proposal,”(¶ 6). By ¶ 3 of the resolution, “all parties in Syria, including the opposition, [were called upon] immediately to cease all armed violence in all its forms.”


\textsuperscript{133} See supra note 130 and accompanying text.
be proportional and as a last resort. This despite the fact that, under the third pillar of the R2P strategy mandated by the Heads of State and Government at the 2005 World Summit, it should be a timely and decisive response once peaceful means have “manifestly” failed.  

VI. CONCLUSION

This article has latterly concentrated on the events of the Arab Spring in a number of countries: Tunisia, Egypt, Bahrain, Libya and Syria. In this concluding section, these events will be related particularly to issues of humanitarian intervention, and R2P, in a context of self-determination. Internal self-determination especially is to the fore as the people of these States rise up against the governments in power. The point has been made that States have obligations as to the human rights of their people and that if a State fails in this respect, the international community may question its territorial integrity. Consequently, a State failing to govern for all may lose legitimacy, and it is this legitimacy that seems to have been lost by governments in States that have felt the force of the Arab Spring.

It is certain that politics is never far from the center of the debate: both politics within the States most concerned and that of the international environment. Remarks of Raymond Aron are apposite: “[p]olitics, insofar as it concerns relations among states, seems to signify – in both ideal and objective terms – simply the survival of states confronting the potential threat created by the existence of other states’, and further – perhaps particularly – that:

-if a province, an integrated portion of the state’s territory or a fraction of the population, refuses to submit to the centralized power and undertake [sic] an armed struggle, the conflict, though civil war with regard to international law, will be considered a foreign war by those who see the rebels as the expression of an existing or nascent nation.

In this regard, the distinction between international and internal matters becomes blurred. Further, issues of internal self-determination, if not addressed, may turn into a move for external self-determination, and thus may

134. See U.N. Doc. A/60/L.1, supra note 33; As to the three-pillar strategy, see U.N. Doc. A/63/677, supra note 35. In this regard, note the five criteria identified by the High-Level Panel to assess whether military intervention is justified; See U.N. Doc. A/59/565, supra note 32.

135. See supra note 6 and accompanying text.

be a prelude to independence claims, further weakening the central government of the State. 137

This article raises important issues of governmental legitimacy as well as external interference in the affairs of a State. The very survival of a State may be in question as a result of revolution and insurrection. It is clear that a people do have a right to revolt and it is equally clear that this right may be linked with secession. As Lee Buchheit remarks:

In the end, one is left with the thought that remedial secession . . . merely affirms a basic right of revolution by oppressed peoples; and this has long been thought to be one of those “inalienable” rights which the international community could neither bestow nor revoke. 138

It is because issues of internal revolution may in turn lead to claims for external self-determination at its logical extreme of secession that the uprisings of the Arab Spring need to be treated circumspectly by the international community. 139 Generally, as we have seen, the international community has exercised caution – although this caution may be seen to be the result of political differences between veto-wielding permanent members of the UN Security Council. 140 Humanitarian intervention should not be exercised lightly as it may involve “coercive interference.” 141 Therefore, the doctrine of R2P is one where, particularly, timely and decisive response needs to be thought through carefully in each individual case. 142 The doctrine should be seen neither as a panacea nor a definitive answer.

In Tunisia, where the Arab Spring may be said to have originated, prompting uprisings elsewhere, matters were in essence dealt with internally and protection responsibilities were managed within the State. Elections have subsequently taken place, yet there are still causes for concern. The first of these is that violent clashes have not ceased:

Tunisia’s Islamist-led government on Wednesday reversed a ban on protests on the capital’s central thoroughfare after an outcry over a violent police crackdown there this week.

137. See supra note 67 and accompanying text.
138. BUCHHEIT, supra note 48, at 223.
139. This is aside from issues of intervening against the territorial integrity of States.
140. This is most evident with reference to the reaction of the international community to the uprising in Syria. See supra note 124 and accompanying text.
141. See supra note 23 and accompanying text.
142. As to “timely and decisive response,” see supra note 35 and accompanying text.
It also began an investigation into the crackdown. The police used tear gas and batons to disperse stone-throwing protesters who stormed Habib Bourguiba Avenue on Monday, in defiance of a ban on rallies on a street that was a focal point of protests that ousted Zine el-Abidine Ben Ali from the presidency last year.\textsuperscript{143}

It is therefore too early to say what the outcome will be for Tunisia, stability is by no means assured, and a second point of concern becomes relevant in this regard. This point is the fact that Tunisia now has an Islamist government – albeit a moderate one. In this context it is noted: “[p]oliticians and activists from the secular opposition have compared the police tactics to those of Mr. Ben Ali’s police state, when freedom was severely curtailed.”\textsuperscript{144} A potential religious rift threatens within Tunisia and the outcome for Tunisia must remain uncertain as internal clashes continue and a “sense of hopelessness” remains.\textsuperscript{145} The importance of pillar two of the three-pillar strategy outlined in the Report of the Secretary-General, \textit{Implementing the Responsibility to Protect},\textsuperscript{146} should be emphasized.

As to Egypt, we have already identified that here protection responsibilities were left to the State. Yet the overthrow of President Hosni Mubarak and the subsequent parliamentary elections have not brought an end to human rights infringements.\textsuperscript{147} Political imperatives of third States ensured a lack of intervention by the international community against the former regime and, if stability is to be maintained in Egypt, again it is necessary to emphasize pillar two of the strategy as above and the context of R2P becomes of direct relevance. As to the protection responsibilities of the State itself towards its citizens it will be interesting to judge the ultimate effect of the result of the 2012 presidential election.\textsuperscript{148}

\textsuperscript{143} Reuters, \textit{Tunisia’s Ban on Protests in Capital is Reversed}, \textsc{N.Y. Times}, Apr. 11, 2012, \url{http://www.nytimes.com/2012/04/12/world/africa/tunisias-ban-on-habib-bourguiba-avenue-protests-is-reversed.html?_r=1}.

\textsuperscript{144} \textit{Id}.

\textsuperscript{145} \textit{See supra} note 72 and accompanying text.

\textsuperscript{146} \textit{See supra} note 35.

\textsuperscript{147} \textit{See supra} note 86 and accompanying text; \textit{see also supra} note 84.

\textsuperscript{148} \textit{See generally} Ian Black, \textit{Egypt approaches first free presidential election with trepidation}, \textsc{Guardian}, May 18, 2012, \url{http://www.guardian.co.uk/world/2012/may/18/egypt-first-free-presidential-election}; It is also interesting that: “Strikingly, all the leading candidates have so far been deferential in their statements on the military and their jealously guarded status, secret budgets and economic empire. That suggests they will continue to wield considerable power behind the scenes, whoever ends up occupying the presidential palace. \textit{See supra} note 81 and accompanying text (“The winning Presidential candidate proved to be Mohamed Mursi of the Muslim Brotherhood”).
What differentiates Bahrain from the previous two studies is the fact that there was intervention by the international community. However, this was not humanitarian intervention, nor was it intervention based on R2P. Far from being in support of the protesters, the intervention was in support of the regime. Bahrain may be seen, then, to reflect one of the limitations on R2P: a political limitation whereby States are unlikely to intervene if it is not in their interest to do so. With regard to Bahrain, wider politics dictated against intervention and for maintenance of the status quo: to have intervened against the regime may have endangered international peace and security. Here, politics can be seen to trump human rights, bringing sharply into focus and question the universality of human rights.

The international response to the situation pertaining in Libya was entirely different. Intervention by the international community, on resolution of the UN Security Council, was in support of the uprising and against the regime of Colonel Muammar Gaddafi, whose government was seen to be illegitimate. The Security Council mandated “all necessary measures” in the protection of civilians. The success of the international coalition led to regime change and the death of Gaddafi in an unsavory manner, and, raising sectarian issues, the pattern of atrocities changed as a result of the intervention. The international community did intervene for humanitarian reasons, although that is not to say there may not have been other relevant reasons, and it can be argued the intervention was timely and decisive. It is not clear, however, that this intervention in a context of R2P has proven to be a panacea when taking into consideration the shift in violence to take place against another sector of society.

The last of the studies above referred to Syria. In this regard, the international community has been unable to agree on intervention except in the form of peace monitors, initially through the offices of the Arab League, and subsequently under UN auspices. Politics has dominated within the UN Security Council and the UN response has been anything other than decisive. So, again, R2P and humanitarian intervention more generally have proven to be idealistic and utopian rather than a panacea as violence has continued and the regime has sought, through its military, to retain its hold on power. It is right that there should be no rush towards a rash intervention.

149. See supra note 99 and accompanying text.
150. See supra note 103.
151. Id.
152. See supra note 112 and accompanying text.
153. See supra note 35 and accompanying text; (pillar three of the three-pillar strategy outlined in the Report of the Secretary-General, Implementing the Responsibility to Protect).
in a State by the international community. However, the reaction to events in Syria does raise questions of the extent of human rights abuses required before there should be coercive intervention against a State failing to protect the rights of its citizens. There is a further question of the viability and efficacy of a Security Council constrained by Permanent Members holding veto powers and who are able to block resolutions, for example, leading to humanitarian intervention.154

The Arab Spring has seen the legitimacy of governments questioned and has seen interference in the internal affairs of a State, Libya, leading to the downfall of its regime. It has also seen a regime desperately fighting for its survival and, in so doing, compromising the well-being of its people: Syria. It has seen a further State, Bahrain, enlist the support of foreign States to suppress an uprising by its own people. In all the States examined issues of self-determination arise as do questions of when to intervene for humanitarian purposes. Regime change itself can of course potentially create new problems, for example, with reference to the Islamist regimes now in place in Egypt and Tunisia, and, where insurrection is unsuccessful yet abuses continue in cases where sectarian issues arise, the spectre ultimately of external self-determination may materialize.155

The emerging doctrine of R2P has a role to play with reference to humanitarian intervention and can be seen to be of relevance in the context of the Arab Spring in support of a repressed population suffering human rights abuses at the hands of the State and provoked to protest and insurrection. The three-pillar strategy invoked by the Secretary-General of the United Nations is a significant contribution and the first two pillars thereof are particularly relevant: the protection responsibilities of the State, and international assistance and capacity building.156 However, States seeking to intervene through the authority of the UN Security Council need to be cautious. They need to bear in mind that the more intractable a dispute the more difficult it is to solve. As Henry Kissinger states, “the frequent outcome of revolution is an increase in central power; the more sweeping the

154. Although, particularly in the context of Syria, it is necessary to ask the question posed in the fifth of the criteria identified by the High-Level Panel in 2004 to assess whether military intervention is justified – is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction? See supra note 32 and accompanying text.

155. This may be relevant in the context of both Syria and Bahrain, where violence can be perceived to have sectarian connotations. See supra note 96 and accompanying text; see also supra note 116 and accompanying text.

156. See supra note 35.
revolution, the more this is true.”

157 Such comments resonate, for instance, in Syria today and States, particularly Western States for which humanitarian intervention is much in focus, should exercise caution in their approach.

158. See supra note 7 and accompanying text.