‘The right to revolt under international law: determination of a societal jus ad bellum’

ALASDAIR SHAW
(10284842)

LLM THESIS

Under the supervision of

PROFESSOR HARMEN VAN DER WILT

UNIVERSITY OF AMSTERDAM
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1. Introduction

Internal uprisings against oppressive regimes have been noted throughout recorded history. They have been analysed and opined upon by many in the fields of political philosophy, sociology, history and, given recent events in the Middle East, contemporary media. However scant attention has been paid to revolution’s place within law. It may, at first thought, seem antithetical to place revolution within legal discourse at all, given its unsettling effect to the order that, in a general normative sense, law has sought to maintain; revolution goes against law’s raison d’être.

However, as will be shown, revolution has found itself at the heart of legally enshrined (historical) frameworks for order at the domestic level. It is viewed as a check against excessive executive or other authority wielding organs of the State, to be exercised in cases of emergency only. It has previously rooted itself in municipal law as a collective right, sometimes manifesting itself in a more forceful manner as an obligation upon society as a whole, a corresponding duty to act against oppression and restore a form of order that conforms to the needs of said society. Given revolution’s association with societal rights, where does it fit, if at all, within the international paradigm of universal human rights i.e. does the right to revolt exist at the supranational level? Further, why is it important to determine its existence in the realms of international law? It was with these two questions in mind that this paper was written.

As alluded to above, I was struck by the lack of literature on the subject during my research for this paper. However, I found reassurance from a quote by Tony Honoré, almost as if in direct response to my concern:

Most theorists, no doubt dismayed by the tempestuous landscape of violence, opt for the pacific pastures of the nearly just society.

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1 See, for example, M.D. Richards, Revolutions in World History (New York: Routledge, 2004); J.A. Goldstone, Revolutions: Theoretical, Comparative, and Historical Studies (Belmont, CA: Wadsworth/Thomson, 2003).

2 This paper will use the terms ‘rebellion’ and ‘revolt’ interchangeably.

As unsettling as the subject may be, I will bypass these more tranquil pastures and seek to determine the existence of a right to revolt under international law in a ‘regime change’ context.

It will be shown that under international law revolution is considered more an accepted recourse to oppression or, at best, an implicit right. Either way it will be emphasised that a clearer recognition of a revolutionary right is required, predominantly to fill the belligerency gap for those fighting against oppressive regimes at the early stages of conflict i.e. pre-civil war threshold. Further, greater clarification will flesh out the boundaries of self-determination and contribute to the ‘humanitarian intervention’ debate.

The methodology of this paper is as follows: Sections 2 and 3, right to revolt as a concept (historically) and its existence (historically) in domestic documents respectively, will help to ascertain any continuance of the right and its associated conditions in Section 4’s (contemporary) international law study. Section 5 will show the potential implications a clearer right to revolt may have in the international legal context. Finally, Section 6 will question the realistic chances of the right being developed further. The fact that even scholars, let alone States - essentially the lawmakers at the international level, are reluctant to discuss the matter does not look promising. However, international law is developing at a relatively fast pace of late and, given the prominence revolutionary recourse has had in current international affairs, States may sooner or later find themselves having to discuss the topic in more detail.

*Right to revolt for the purposes of this paper*

As will be shown below, the right to revolt in more recent history has been discussed in the context of internal uprisings against colonial regimes, fought by peoples of an identifiable ‘nation’ or ‘nation-like entity’ under sovereign control of a mother state. The ends sought by the revolt was a change in political status, be it full independence or greater autonomy as a satellite state or similar. However the context in which this paper will be discussing a right to revolt is one driven by peoples within a pre-existing state who, quite happy to be called the peoples of said state, are seeking regime change due to unbearable oppression of their sovereign. Despite these differing ends, there is a certain notable overlap between the two: failure of a sovereign to respect the
basic rights of a society, requiring the will of the people to manifest itself through force in order to bring about a situation satisfactory to their needs. This key trait shared by both types of movements will allow for certain texts concerning colonial oppression to have relevancy in this study. Further, this paper will flesh out the notion of self-determination - something normally associated with colonial and national liberation movements - to show its applicability in this study’s right to revolt context.

2. Right to revolt as a concept

*What will a conceptual study enable us to do?*

The purpose behind a conceptual study is two-fold: One will be to lay the groundwork and introduce the themes of a right to revolt which may allow us to determine it’s existence in contemporary law i.e. do any aspects of the concepts discussed permeate in modern legal instruments or judgements? The concepts discussed within the descriptive analysis will also aid in the following prescriptive discussion: given that various theories inspired revolutions in the past, how fitting are these theories in today’s international legal context? Is it prudent to maintain a right to revolt in our contemporary international legal order?

Dialogue concerning the right to revolt was present in the political theories of the Greeks and Romans, as well as in Germanic folklore and the legal traditions of Medieval Europe. However this paper, for want of space, will limit its conceptual study to a time frame starting from the 16th century.

*John Calvin*

John Calvin, figurehead of the Protestant Reformation and theologian, held a ‘theory of resistance’ in his writings that focused on acts of defiance by magistrates or estates,

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exercised in order to “oppose the violence and cruelty of kings.” Such defiance was permitted on the grounds that the sovereign in question, “by the ordinance of God”, was required to protect their subjects, had failed this task. As Calvin’s writings progressed, this duty owed by a sovereign to their subjects shifted its grounding from God’s ordinance to the “laws of a country formed by a system of agreements” i.e. to a more positivist than naturalist existence of this key link. As a way to “keep the prince to his duty” “the specified organs of the community might have to disobey in order to preserve order.” In sum, Calvin’s “remedies against tyranny”, exercised ideally by a select few persons within society, were justified based on a Sovereign’s breach of duty and the need to restore the situation back to the normal status quo through alternative, forceful means.

John Locke

John Locke’s focus on “revolution as a social act” was a turning point in revolutionary concepts. Previous philosophers in the 16th century, such as Calvin supra, had always placed revolutionary power and might (even responsibility) in the hands of specific institutions i.e. magistrates or estates. Locke’s empowerment of the people as a collective unit was manifest through his opinion that that the “proper umpire” to determine whether the ruler had abused his position was the “body of the people”; a change from his original view that “everyman is judge for himself”. For Locke, only when “the inconvenience is so great that the majority feel it, and are weary of it, and find a necessity to have it amended” should revolt be deemed an appropriate exercise; this ‘last resort’ consideration is key to prevent the right to

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5 S.S. Wolin, Politics and vision: continuity and innovation in Western political thought (London: Allen and Unwin, 1961) 188.
6 Ibid.
7 Ibid.
8 Ibid.
9 Id., at 189.
10 Id., at 188.
11 Id., at 338
12 Ibid.
revolt becoming “a perpetual foundation for disorder”.\textsuperscript{13} On the collective determination of a government’s violation of trust owed, the power once conferred to the sovereign entity reverts back to society in order for them to “act as supreme and continue the legislation … or erect a new form, or under the old form place it in new hands …”\textsuperscript{14} Revolution as a means of regime change, rather than a tool to maintain the old, stable order, is also a novel insight brought about by Locke’s deliberations on the subject.

\textit{Thomas Hobbes}

Hobbes touches upon revolt as a self-defence mechanism when stating, “the rhythm would be sustained as long as the sovereign did not touch the raw nerve of self-preservation and force the subjects to lash back to protect themselves.”\textsuperscript{15} Reference to notions of ‘self-preservation’ and ‘protection’ convey revolution as some form of inherent societal reflex in response to repression, which could justify its existence in the natural law sphere.

\textit{William Blackstone}

The unique nature of revolution as a recourse is asserted by famous English jurist, William Blackstone:

\begin{quote}
[T]he power of the crown would indeed be but a name and a shadow, insufficient for the ends of government, if, where it's jurisdiction is clearly established and allowed, any man or body of men were permitted to disobey it, in the ordinary course of law: I say, in the \textit{ordinary} course of law; for I do not now speak of those \textit{extraordinary} recourses to first principles, which are necessary when the contracts of society are in
\end{quote}

\textsuperscript{13} J. Morsink, \textit{The UDNR: Origins, Drafting, and Intent} (Philadelphia: University of Pennsylvania Press, 1999) 308
\textsuperscript{14} Wolin (n 5), at 308.
\textsuperscript{15} Id., at 284.
danger of dissolution, and the law proves too weak a defence against the violence of fraud or oppression.\textsuperscript{16}

From this extract, Blackstone emphasises that a legal recourse to revolution within the normal structure of the law would undermine the operational stability of government – it may be used to circumvent and frustrate its ability to effectively rule. However he recognizes situations where current legal protections are insufficient in restraining a government bent on tormenting their citizens to the extent that the whole societal structure between government and man is on the brink of collapse. ‘First principles’, presumably those of survival and a corresponding defence mechanism as noted by Hobbes, can be permissively sought through revolutionary conduct.

Blackstone establishes a two-pronged test as a cautionary measure against unwarranted revolt: “resistance is justifiable to the person of the prince when the being of the state is endangered, and the public voice proclaims such resistance necessary”.\textsuperscript{17} As to who determines such endangerment (and how such is defined) is not elaborated upon, however it is clear that the will of society as a whole or, at least according to Locke, the majority of the community\textsuperscript{18}, has the final say in the appropriateness of resorting to revolution. Too liberal a notion of revolution, such as allowing “every individual the right of determining this experience, and of employing private force to resist even private oppression”, would be counter productive, producing “[a] doctrine … of anarchy, and (in consequence) equally fatal to civil liberty as tyranny itself.”\textsuperscript{19}

\textit{Algernon Sidney}

Sidney, a 17\textsuperscript{th} century republican theorist and, to some, a martyr against royal tyranny, reflects and elaborates upon certain points concerning the conceptual right to

\textsuperscript{17} Ibid.
\textsuperscript{19} Blackstone (n 16)
revolt as discussed by the aforementioned jurists. On the breach of trust placed in the sovereign, Sidney pens, “[h]as every man given up into the common store his right of avenging the injuries he may receive, that the public power, which ought to protect or avenge him, should be turned to the destruction of himself, his posterity, and the society into which they enter, without any possibility of redress?”20 Redress through revolt is seemingly extra-legal or, in keeping with Blackstone’s terms ‘extraordinary’, as “[e]xtrajudicial proceedings, by sedition, tumult, or war, must take place, when the persons concerned are of such power, that they cannot be brought under the judicial.”21 When the ordinary restraints of law are fallible in the face of administrative excess then resort to armed force and revolution is accepted. Sidney also questions the applicability of ‘the ordinary course of law’ in times necessitating revolutionary conduct: “Shall the laws that solely aim at the prevention of crimes be made to patronize them, and become snares to the innocent, whom they ought to protect?”22 The domestic criminal law that aims at restricting the use of force within a community during times of ‘normalcy’ should not be applicable and should not restrict a communities use of force against a repressive sovereign.

Positivism and Naturalism

From the brief discussion of revolutionary concepts above, it is possible to elicit a few key or recurrent themes. I will categorize the following themes into two categories:

A) More legalistic/positivist concepts

B) More naturalistic concepts

The use of violence against ones own ruling authority (government, king etc.), normally prohibited, is grounded in:

A) More legalistic/positivist concepts
i) A breach of the sovereign’s duty to protect.
ii) Sovereign rule placed temporarily back in the hands of a civil society.

20 T. Becket et al (eds), The works of Algernon Sydney (London: Strahan, 1772) 194.
21 Ibid.
22 Ibid.
iii) Severe repression to the extent of societal collapse, including the erosion of normal institutional safeguards, only apt circumstances for revolutionary recourse with determination of such held by civil society acting as a whole.

B) More naturalistic concepts
i) Revolt as a self-defence mechanism.
ii) Implemented due to man’s longing for safety and stability; the need to restore order.

The next section will aim to discern how many of the theories and concepts posited above came to influence the legal instruments emanating from two of the arguably most well known revolutions in (contemporary) history, the American and French Revolutions of the late 18th century. In his letter to U.S. Senator Daniel Webster, former President of the United States James Madison wrote, “[t]he latter [the right of seceding from intolerable oppression] is another name only for revolution, about which there is no theoretic controversy.”23 This may be a true conclusion from our conceptual analysis of a right to revolt thus far, however, this paper aims primarily to study its existence (if at all) in international law. As will become apparent, this determination in contemporary law proves less certain compared with its theoretical counterparts of legal and political philosophy.

3. Historical origins in domestic law

Analysing how various domestic legal systems have, in the past, made a legal construction of the right to revolt may also aid our main analysis: determining if and how the right is formulated in the international setting; are there any traits of the domestic legal texts, influenced by the concepts purported by the intellectuals discussed in the previous section, in the international context?

Luis Kutner, co-founder of Amnesty International, once proclaimed, “the dominant characteristic of the contemporary world has been revolution”, citing the

roots of such in the American and French Revolutions\(^{24}\). In a similar vein, Goertzel speaks of the right to revolution being recognized in American, French and German systems “in part because many governments base their legitimacy on a revolutionary past.”\(^{25}\) This section will proceed with an overview of the related instruments of these three states that enshrine the right to revolt into law.

*US*

According to Sumida, John Locke’s theorizing and advocacy of the right to revolt “became the principal justification for the American Revolution.”\(^{26}\) Once free from the restrictive shackles of Westminster rule, state representatives of the Continental Congress produced a declaratory document affirming their newly established independence and associated general principles of governance. One of the key sections of this declaration read as follows:

> [W]henever any Form of Government becomes destructive of these ends [Life, Liberty and the pursuit of Happiness], it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.\(^{27}\)

From this powerful statement we can discern the following: There are certain ends to which the establishment and corresponding duty of government owe to the people. If these ends are intentionally violated by those charged with their upkeep, the people as a whole have the right to re-establish a governing system that will uphold these ends – be it through alteration or abolishment of the current regime. As to the nature of this right, it has been purported by some to be natural, inherent in man’s

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\(^{26}\) Sumida (n 4), at 134.

\(^{27}\) American Declaration of Independence 1776, para. 2.
desire and strive for stability\textsuperscript{28}. If the ends to which he seeks by virtue of his being are not satisfied or are abused, he must be able to remedy this. However, others have contested this assertion, grounding the will of the people, something actively exercised in forming government, as giving the right to revolt a more positivist legal existence. In short, without the authority of ‘the people’, there can be no government in the first place. Therefore the positivist authority of the people is key to the removal of said government.

The Constitution of Maryland (1776) enshrined the right under the following terms:

[W]henever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old or establish a new government. The doctrine of non-resistance, against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

What is of interest in the Maryland text is how it stresses the importance of a right to revolt through denouncing its antithesis – a doctrine of ‘non-resistance’. To embrace anything other than the right to revolt against oppression is nonsensical and an ultimate hindrance to society’s well being. The recurring themes of revolt are also apparent: it’s suitability only as a ‘last resort’ in response to a situation of chaos brought about by a government’s failure to respect civilian rights; and that such action is grounded in a societal right.

\textit{France}

The 1793 French Declaration of the Rights of Man and the Citizen proclaims:

When the government violates the rights of the people, insurrection is for the people and for each portion of the people the most sacred of rights and the most indispensable of duties.\textsuperscript{29}


\textsuperscript{29} Emphasis added.
The sanctity of the right to revolt is again stressed, to the extent that it also encompasses a duty of implementation – society is compelled to exercise this right should the situation arise. It has been claimed that the text of the French Declaration enshrined a new concept of revolution, one that “gave rise to a concept of popular insurrection that made possible deliberate and concerted uprisings”. Previously, “a revolution was something that happened to the state - it was unpredictable, a kind of chance occurrence that was bound to happen now and again, but not something that could be foreseen and planned for.”\(^{30}\) The taking of the Bastille and the removal of the King from Versailles to Paris in 1789 were considered “quite unplanned; they were revolutions in the old sense.”\(^{31}\) This transition from spontaneous to concerted uprising may have been reason to cement revolutionary recourse into law – that it be a prescribed tool in the arsenal of the people against repression.

\(\textit{(West) Germany}\)

Under the ‘Constitutional Principles’ heading of the Basic Law for the Federal Republic of Germany (Grundgesetz, GG), it proclaims:

\[
\text{All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available.}\(^{32}\)
\]

The importance, at least in principle\(^{33}\), of this provision as an underlying facet of German civil society is exemplified through the perpetual guarantee clause of


\(^{31}\) \textit{Ibid.}


\(^{33}\) Commentators have also been skeptical as to its practical effect, noting that the Widerstandsrecht has been cited by some to justify retaliations against seemingly non-serious threats and its improper application more generally. See, for example, D.C. Large, ‘Normifying the Unnormifiable: The Right to Resistance in West German Constitutional History’, in Hahn \textit{et al.}, \textit{Cornerstone of Democracy: The West German Grundgesetz, 1949–1989} (Wahsington, D.C: German Historical Institute, 1995) 89-90, available at \texttt{http://www.ghi-dc.org/publications/ghipubs/op/op13.pdf} (last visited 15 July 2012).
Article 79(3) that prevents constitutional principles, such as the Widerstandsrecht (right to resistance) above, from being subject to prospective legislative amendment.\textsuperscript{34} The predominant reason to include the Widerstandsrecht into the Basic Law was to secure some provision capable of counter-acting any potential abuse by the executive of the new emergency laws being pushed through Parliament at the time.\textsuperscript{35} It is questionable whether an express principle of the sorts would have rallied the German people against Nazi regime excesses, however lawmakers in Germany felt some form of overt recognition of a right to revolutionary recourse was appropriate alongside the new executive emergency powers.

It is worth questioning, however, whether these historical rights might be considered historical for good reason: are they required in the contemporary world? Do we have sufficient legal mechanisms in place to bring about the same end? Are there contemporary means in the domestic and international realms to replace what revolution was once used for? Further, given the right’s historic prevalence in the Western world, is it purely a creature of this tradition? Justice Black remains convinced of the timeless and universal nature of the right in stating, “I venture the suggestion that there are countless multitudes … all over the world, who would join [the] belief in the right of the people to resist by force tyrannical governments”.\textsuperscript{36} The preceding section of this paper will determine whether or not the suggestion ventured by Black is evident in international law. The final section will outline the importance of making such a determination in practice, as well as its conceptual validity in law as a right rather than a mere accepted recourse.

4. Right to Revolt Under Current International Law

In determining the existence of a right to revolt under international law, a chronological study of international legal instruments will be made. Ascertaining the right through customary international law i.e. a study of state practice and \textit{opinio juris}

\begin{itemize}
  \item \textsuperscript{34} Art. 79(3) Basic Law for the Federal Republic of Germany.
  \item \textsuperscript{35} Large (n 33), at 89.
  \item \textsuperscript{36} In re Anastaplo, 366 U.S. 82, at 113.
\end{itemize}
would make for an interesting study but one that unfortunately cannot be covered in this short piece of writing.

Ascertaining a right to revolt under international law is not easily done; one cannot point to a specific article in a treaty or judgment by a court to find a conclusive answer. Rather, it requires an over-arching analysis of inter-related instruments in order to extract “principles, embodied in documents, which members of that community have endorsed”37.

The Universal Declaration of Human Rights (1948)

The first port of call in this international legal study is the Universal Declaration of Human Rights. The third recital of the Preamble reads as follows:

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

This is an interesting proclamation and one that might satisfy some as to deciding that a right to revolt exists purely by virtue of its inclusion in one of the very first international efforts to codify fundamental human rights. However more scrutiny must be given to this extract, and how it came to existence, in order to determine the purpose of its inclusion and its status under international law.

This provision began life within the UDHR regime as an article in its own right during negotiations. Expressly enshrining this right was advocated mainly by the Chilean and Cuban delegates, however doing such was met with certain hostility from many Western representatives. The US delegate, Eleanor Roosevelt, was extremely concerned, stating:

[R]ecognition in the Declaration of the right to resist acts of tyranny and oppression would be tantamount to encouraging sedition, for such a provision could be interpreted as conferring a legal character on uprisings against a government which

37 Honoré (n 3), at 43.
was in no way tyrannical. It would be better to not enter upon the dangerous subject of particular doctrines which could easily be abused.  

The UK delegation also expressed concerns that recognition of the right may run the risk of inciting anarchy. Further, who was and how to judge a sufficient level of tyranny and oppression remained uncertain, making the official codification of the right risky. However, he was not against rebellion in general; rather, according to Danchin, “[i]n his opinion it was not a right, but a last resort and what was to be aimed at first of all was the establishment of a system of rules of conduct which would ensure the abolition of oppression and tyranny.” The Russian delegate, Demchenko, took the tacitly permissive stance of rebellion one further in stating that the express recognition of rebellion, was very important and should be incorporated in the declaration. It was impossible to speak of human rights without referring to the right to rebel against tyranny and oppression. It had been suggested that the right to rebel could be abused. … [S]uch fears were unjustified on the grounds that where no tyranny or oppression existed there was no danger of incitement to revolt.

Demchenko’s trust in the right being exercised only in ‘just’ circumstances, so as to prevent unwarranted internal disturbances, reflects Locke’s almost pre-emptive reassurance to hesitant delegates when stating that no one should think prescribing a right to revolt “lays a perpetual foundation for disorder: for this operates not, till the inconvenience is so great that the majority feel it, and are weary of it, and find a necessity to have it amended.” However, uncertainty remained between delegates as to whether an express recognition of the right would lead to repercussions in practice. What did receive a wider breadth of support was the proposal to maintain the concept of revolt in some form within the Declaration; the Preamble being the most suitable

39 Ibid.
40 Ibid.
41 Ibid (emphasis added).
42 Morsink (n 13), at 308
location within the instrument. In fact, of the several drafts before the Committee on the Preamble of the Third Session, the French submission, the only one containing any recognition of revolution, was taken forward\textsuperscript{43}. The notion of rebellion as a possible right should not be discounted on account of its transfer to the Preamble. On the contrary, one author notes that the Preamble specifically “merits attention and reflection” within the UDHR regime.\textsuperscript{44} The basis for such a comment comes as “the Preamble was dealt with at the end of the various sessions and it thereby had instilled into it the essence of the drafters’ substantive reflections”\textsuperscript{45}. As to the nature of rebellion’s existence within the Preamble, it remains uncertain as to whether it has a greater grounding as a right rather than a mere permissive action of ‘last resort’, as initially held by the UK delegate. For example, in determining the wording of the recital, the US suggested the more normative inclusion of “to have \textit{recourse}, as a last resort, to rebellion”, in place of the more passive “to fall back on”.\textsuperscript{46} This may show a slight warming to the idea of an active right of rebellion, the term ‘recourse’ entailing a more concrete change of form. However, the US delegate also stated “it would be unwise to legalize the \textit{right} to rebellion” for fear of its abuse; but simultaneously noted that “[h]onest rebellion against tyranny was \textit{permitted} by the Declaration”.\textsuperscript{47} Is this permission by right or by mere \textit{Lotus} principle standards – so long as it is not expressly prohibited under international law it is allowed? Commentators studying the \textit{travaux preparatoires} tend to opt for the former but label it as a “submerged right to revolt and rebel.”\textsuperscript{48} The lack of an express recognition in the Declaration is understandable as “[i]t is one thing to implicitly acknowledge the right and quite another to advertise it publicly.”\textsuperscript{49} Further, Honoré proclaims, “[s]urely the implication must be that the citizens to whom human rights are conceded and whom UDHR says may be \textit{compelled} as a last resort to rebel are not merely to be excused

\begin{footnotes}
\item[43] \textit{Ibid.}
\item[45] \textit{Ibid.}
\item[46] Morsink (n 13), at 312.
\item[47] Danchin (n 38) (emphasis added).
\item[48] Morsink (n 13), at 329.
\item[49] \textit{Id.}, at 309.
\end{footnotes}
when their patience snaps but are justified in rebelling.”^50 This talk of rebellion as a form of self-defence, as is apparent in Hobbes’ writings, and the accompanying right to safeguard one’s own interests, is reflected in a right to rebel. This notion of justification also conveys acting out of right; under domestic criminal law, the killing of another is justified when acting out of self-defence, whereas killing out of provocation is not - there exists no right as such to retaliate out of anger of this sort. On the subject of justification and its relevance to right, Supreme Court Justice Jackson once admitted, “we cannot ignore the fact that our own Government originated in revolution, and is legitimate only if overthrow by force may sometimes be justified.”^51 If revolution may sometimes be ‘justified’ then the ability to do so is grounded in right i.e. a right to revolt.

From the above, it may be said that the express inclusion of a right to revolt within the main body of the text was not widely supported by delegates, for fear of its abuse in practice. In principle, however, many delegates agreed that some abstract right to revolt was important within the overall human rights regime, for it was seen as a self-help measure should state authorities fail their citizens in upholding the basic rights enshrined in the Declaration.

General Assembly Resolutions

Discussions concerning the right to revolt under international law became prevalent during the mid to late 20th century where increased attention was given to the struggles of colonial societies seeking to achieve independence. Often secessionist movements would resort to violence in a bid to free themselves from either colonial oppression or restriction, whereby representatives or sympathisers of said societies attempted to legally legitimize such conduct to the world forum. The notion of a ‘right to self-determination’ grew out of these struggles and related discussions and is where we may find traces of a right to revolt for the purpose of this study. Ascertaining a right to revolt within the boundaries of self-determination and the human rights framework more generally has been considered more prudent than looking to other facets of international law. For example, a right of self-defence under Article 51 of

^50 Honoré (n 3), at 43 (emphasis in original).
the Charter is only applicable should said attack be made “against a Member of the United Nations” i.e. States; regardless of who may enjoy such a right, be it States or collective individuals, an attack on the latter is not covered by Article 51. As a result, a right to self-defence under the UN Charter cannot be re-packaged as a right to revolt in the internal conflict context.\(^{52}\)

However, it is also apparent that the Charter doesn’t specifically prohibit the use of force by non-state entities such as a rebel movement. The prohibition of armed force under the UN Charter applies to States only, as can be seen in Article 1 of the Definition of Aggression Resolution adopted by the GA in 1974. As is stated by Kamto, “it seems fairly clear, in fact, both in view of the interstate nature of the Charter and the tenor of Article 2, paragraph 4, that the rule prohibiting the use of force does not extend to non-state actors.”\(^{53}\)

If the UN Charter does not prohibit non-state actors from using force the door is therefore open for other instruments to permit such i.e. endow non-state groups such as rebellion movements with a \textit{jus ad bellum} platform. The following analysis will show that rebellion may indeed be read into the permitted recourses under self-determination, however it remains a sensitive issue, preventing an outright declaration of its existence.

The UN Principles of International Law\(^{54}\) and its corresponding provisions on self-determination is a landmark instrument. Before it’s implementation, many instruments that had sought to establish a right to self-determination and any associated rights e.g. to be free from governmental interference in pursuance of the former, to receive external help from the international community etc, “had more the effect of shouting in air than of creating legally binding norms, because of the simple reason that the Western States have consistently refused to endorse it.”\(^{55}\)

\(^{52}\) An interesting argument is put forward by Fletcher and Ohlin concerning the use of force by nations or peoples under the self-defence banner of Art. 51 UN Charter. It will be considered in greater detail below but is ultimately dismissed.


the UN Principles were accepted unanimously, marking a resounding endorsement of what lay within its text, including the following provisions concerning self-determination. The most pertinent in terms of rebellion is Article 5(5) that reads:

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action 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.

This provision contains many important implications in the exercise of a right to self-determination however for present purposes, it is of interest that mention is given to ‘actions against, and resistance to’ a regime forcibly oppressing peoples in their right to self-determination. From this, several questions have to be answered: what does the right to self determination entail and, if that right is being oppressed, what do ‘actions against’ and ‘resistance to’ mean in the context of combating such i.e. can revolution fall within these definitions?

As to defining self-determination, the instrument broadly shapes it as the right of all peoples “freely to determine, without external interference, their political status and to pursue their economic, social and cultural development”. Reference to political status automatically gives rise to self-determination’s applicability in cases of national liberation movements where independence is sought rather than a change in the current regime. Textually speaking however it may be possible to construe the struggle of a society seeking to depose a tyrannical government as an act of self-determination. The society concerned is still pursuing economic, social and cultural development by means of ousting the current regime that is preventing them from said development through non-violent channels. Further, it is worthy to note that the Article 5(5) extract above separates ‘self-determination’ from the right to ‘freedom’ and ‘independence’, showing that self-determination is not exclusively and intrinsically designated to serve the purposes of national liberation movements; self-determination may also be applicable in other contexts – potentially the one this paper is scrutinizing. A comparative analysis of the UN Principles with an earlier resolution

56 Art. 5(1).
that speaks of self-determination highlights that the latter spoke only of said right being exercisable by “peoples under colonial rule”\textsuperscript{57}. However, the UN Principles recognizes self-determination as a right for “all peoples”, perhaps signifying a broader application. In their commentary of the UN Charter, Simma \textit{et al.} posit the notion of ‘internal self-determination’, enshrined within Article 1’s general principle of self-determination. According to them it “deals with the fact that a people, having organised into a State, [are] free to decide on a form of government and may prohibit any intervention in this respect.”\textsuperscript{58} The ‘intervention’ spoken of by the authors refers to external interference preventing peoples of a sovereign State from determining their own government. This is understandable given the horizontal State-to-State orientated nature of the Charter. However, what if the ‘intervention’, so to speak, came internally i.e. what if the current domestic regime, not a foreign one, prevented the will of the people from shaping those who govern them? Regardless, this notion of ‘internal self-determination’ extends beyond the colonial and national liberation movement context with a focus towards regime change within a state. Friedlander notes that self-determination, post-UN Charter, has been predominantly applied and focused to anti-colonial movements but it may also be applicable to a broader spectrum of civil struggles with notions of “a right to internal revolution” and “recognition per se as a human right”\textsuperscript{59}. Honoré also perceives self-determination, and the possible right of revolt in the realization of such, expanding beyond a narrow interpretation in stating, “[t]he right of a former colony to independence is a striking, but not the only, instance of a just claim which will in a proper case yield a right to rebel.”\textsuperscript{60} This leads on to the second question, can the permitted ‘action against, and resistance to’ oppression encompass a right to rebel?

Honoré is of the belief that the drafters of the UN Principles and those affirming it in the GA intended to implicitly approve of revolutionary recourse: “[i]n plain words, which, to avoid embarrassment, the document sedulously avoids, the

\textsuperscript{57} Third Recital, Strict Observance of the Prohibition of the Threat or Use of Force in International Relations, and of the Right of Peoples to Self-Determination, GA Res 2160 (XXI), 30 Nov. 1966.

\textsuperscript{58} B. Simma \textit{et al.}, \textit{The Charter of the United Nations: A Commentary} (2\textsuperscript{nd} ed.) 1 (New York: Oxford University Press, 2002) 56, para.32


\textsuperscript{60} Honoré (n 3), at 44.
right of self-determination can be vindicated by rebellion.\(^{61}\) Of interest, a subsequent GA resolution reaffirms the UN Principles denouncement of colonial oppression and clarifies the permitted means of recourse at the disposal of those repressed when stating, “colonial peoples have the inherent right to struggle by \textit{all necessary means} at their disposal against colonial Powers and alien domination in exercise of their right of self determination”.\(^{62}\) Despite this instrument being directed specifically at colonial struggles, it would be seem strange to deny a civilian population equally as repressed the right to ‘all necessary means’ i.e. resorting to revolt, just because of the non-colonial nature of their repression.

The Declaration on the Definition of Aggression also refers to the right of self-determination as outlined in the UN Principles and that such is not to be prejudiced by the definition of aggression conveyed; in particular, “the \textit{right of these peoples to struggle to that end} and to seek and receive support”.\(^{63}\) The use of ‘struggle’ is similar language to the UN Principles’ ‘actions against, and resistance to’ oppression, both in terms of its ambiguity and its suggestiveness of a forcible reprisal against a repressive regime. As noted by Wilson, the wording of this provision was “sufficiently ambiguous to receive consent without vote from the Western States who generally opposed the legitimization of the use of force by national liberation movements; yet it was specific enough to be a great victory for the Third World States. The legal issue was still not settled definitively, but the political victory was substantial.”\(^{64}\) The provision plays well with the subjectivity of its reader, however something more concrete may be needed to affirmatively determine that these GA proclamations either establish (in positive law) or recognize (in natural law) a right to revolt at the international level.


\(^{61}\) Ibid.


\(^{63}\) Art. 7 Definition of Aggression, UN GA Res. 3314 (XXIX), 14 Dec. 1974 (emphasis added).

One of the more contemporary documents containing an interesting insight on a potential right to revolt is the African [Banjul] Charter on Human and Peoples' Rights. Article 20(2) of said instrument, which is part of the section on self-determination, reads as follows:

Colonized 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.\(^{65}\)

Clarification is made from the outset that the right to self-determination outlined in the previous sub-section, one that effectively mirrors the text of the UN Principles article, applies to all oppressed persons, not just those that fit within the colonial category. Notably the means in which to realize the right i.e. ‘those recognized by the international community’ is left purposefully open. It is arguable that rebellion is indeed a means to realize such, given what is held in the UDHR and the previous UN GA resolutions above. However recognition of this right, as also stated above, may be subjectively tinged under the self-determination context; can these potential inferences to accepted revolutionary recourse amount to recognition by the international community? Recognition does not necessarily have to be express, similar to the ‘submerged right to revolt’ under the Universal Declaration. Even if recourse to revolt as a right is, at best, submerged, it will need to be lifted out the murky waters of subjectivity and elaborated upon more in the international legal context for it to have any meaningful effect. The importance of it having a more visible existence under international law will be dealt with in the next section.

**Summary**

In piecing together the various international instruments concerning self-determination and human rights more generally, a right to revolt starts to take shape under international law. Given its recognition of repressed peoples struggling to take back control of how they operate within a societal system, the right to self-determination may be a safe heading under which to derive a right to revolt for the

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purposes of this paper. However, as it stands, current international law may need to be clearer in order to substantiate this claim.

5. Importance of determining it (in a clearer fashion) as a right

As it stands, the existence of a solid right to revolt outside the colonial or NLM context is up in the air and can fall on either side of the yes/no fence depending on which way the winds of subjectivity are blowing. Wilson portrays the sense of ambivalence international law holds on the matter quite nicely:

Because international law neither condemns nor condones revolution within an established State, some claim that there is a right of revolution. This idea, at least as old as the French Revolution, is somewhat misleading. There is no rule of international law prohibiting revolution, and, if a revolution succeeds, there is nothing in international law that prohibits the acceptance of the outcome even though it was attained by the use of force. To that extent international law accepts revolution. Although this is sometimes characterized as a ‘right’, it can more accurately be described as a passive ignorance of actions considered to be beyond the bounds of the law. There is no right of revolution and there is no prohibition of revolution as revolution has not been part of international law.66

Contrary to Wilson’s view that no right to revolution exists, this paper has attempted to show that revolt is currently grounded somewhere within the international human rights regime. Regardless, there remains a need to frame international law’s acceptance of revolution as a right in greater detail, at least more than some lesser measure of recourse as was held by the British delegation during the UDHR negotiations.

Safeguard those movements that fall short of belligerent status (for want of control over set territories as yet)

There is a need to determine a jus ad bellum for internal revolts specifically. The need to determine a right to use force by oppressed peoples is not so much to permit them

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66 Wilson (n 64), at 22-23.
to do so; at the very least, international law tacitly does this already, albeit not as a right *per se*. Further, peoples oppressed to breaking point will most likely revert to armed retaliation naturally\(^{67}\), determination of a right will not necessarily open their eyes to a new channel of recourse. Rather, recognition of a right will be important in sparking external considerations, such as the loss of a tyrannical regime’s *de jure* ability to repress a movement and the possibility for third state intervention. These will be discussed in greater detail below.

The majority of legal, scholarly and practical attention has been focused on the traditional *jus in bello* considerations, in particular the determination of a situation of a sufficient qualitative and quantitative nature as to be considered a non-international armed conflict, giving rise to the initiation of humanitarian law protections. Any *jus ad bellum* considerations seem lost or disregarded; overlooking an internal *jus ad bellum* component also overlooks the plight of revolutionary movements that may, at the time, fall short of belligerency, especially in light of the following comment by Novogrod:

> [O]nce the conditions of belligerency are fulfilled — *conditions which serve as workable indicia of the degree to which the insurrection is popularly supported* — the ends of self-determination are fulfilled by insuring the legal right to recognition of the belligerent status of the insurgents.\(^ {68}\)

However the conditions of belligerency as set out by Protocol II of the Geneva Conventions reads:

> [D]issident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.\(^ {69}\)

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\(^{67}\) Large (n 33), at 84.


\(^{69}\) Art. 1(1) Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.
To Novogrod, the *jus in bello* is an acid test for the legitimacy component of revolution, however there are clearly situations of morally justified rebellions or where recourse to rebellion is accepted under international law that falls short of the conditions set out above, especially at the beginning stages of such movements. Lacking territorial control, as required by Protocol II, by no means negates a rebellious movements popular support. In response to the lacuna left by the protocol, Dunér notes, “only traditional civil war situations are regulated, leaving out a wide array of other violent situations, where the rebels do not have sustained territorial control or are waging unconventional war, such as urban guerrilla warfare … [t]he remaining … cases … would be a matter of national criminal law.”70 If a right to rebellion was more clearly defined under international law, the plight of those oppressed who take forcible action will be safeguarded by international, rather than domestic, law – the latter most likely modified to come down hard upon any ‘seditious’ movements within a State. The possible advantages offered by regulating rebellion within the realm of international law will be discussed, not before a conceptual clarification of a right to rebel is stressed so as to tighten the risk of its abuse.

**Conceptual Affirmation**

Any clarification of a right to rebel (for our circumstances) should be done in a manner that reflects the *sui generis* or specific nature of the right. Doing so will hopefully prevent its abuse in unwarranted circumstances, something that the eminent scholars emphasized at the beginning of this paper, as well as quelling the concerns held by the delegates to the UDHR negotiations.

As stressed by Morsink, the right is not an individual one, it is societal i.e. a collective right in the pursuance to bring about authoritative change.71 As this right should be embodied by society as a whole any right to revolt in this context appears to place it beyond minority groups acting alone, “on the argument that this respects the wishes of as many people as possible.”72

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71 Morsink (n 13), at 307.

72 Goertzel (n 25), at 4.
The right also has an essential aspect of conditionality, effective only in the event of other serious rights abuses. As stated by Honoré, “[t]he right to rebel, however, must be a secondary rather than a primary right. It exists only when a wrong has been committed.” This but only reflects the ‘last resort’ nature of the right’s applicability as stressed by scholars such as Locke; where a cascade of severe rights violations are felt by society without avenues of redress, then “[r]ebellion is the ultimate sanction for the violation of other rights, but to rebel is to play the last card.”

Another interesting consideration of a right to revolt under contemporary legal standards was highlighted by Carrera Andrade, the Ecuadorean delegate to the UDHR negotiations, who wondered how “resistance [could] be made legal when it was necessarily illegal in character?” What gives it this tinge of illegality is domestic law norms; however if the right were to be more expressly recognized internationally, resistance would have a legal character at the supranational level, provided the means of rebellion were consistent with *jus in bello* standards. It is to these supranational considerations and implications that we now turn.

*Restrain Government*

It is possible that a clearer recognition to a right of revolt may restrain, at least *de jure*, a tyrannical regime’s legitimacy to suppress a rebellious movement that falls just short of belligerency status.

The relevant section of the commentary on Common Article 3 of the Geneva Conventions and its inclusion that “[t]he application of the preceding provisions shall not affect the legal status of the Parties to the conflict”, states that: “the fact of applying Article 3 does not in itself constitute any recognition by the de jure

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73 Honoré (n 3), at 38.
74 *Id.*, at 41.
75 Of interest is the discussion that current principles of humanitarian law are unsuitable for rebellious movements but they should strive, as far as is possible, in upholding them – see Goertzel (n 25), at 10.
76 Note that in most cases the *means* of repression will, by their very nature, be contrary to international law.
Government that the adverse Party has authority of any kind; it does not limit in any way the Government’s right to suppress a rebellion by all the means – including arms . . .”\textsuperscript{78} If the rebellion to which the government in question attempts to suppress is shrouded in right, it may weaken or even negate the repressive government’s own right to quell the uprising under law. In a similar vein, claims of derogation from supranational human rights instruments may also be barred if the rebellious movement’s actions are effected as a matter of right under international law. For example, Article 4 of the International Covenant on Civil and Political Rights\textsuperscript{79} allows member state parties to deviate from certain human rights provisions in cases of public emergency “provided that such measures are not inconsistent with their other obligations under international law”. Any derogation sought in an attempt to suppress a legitimate rebellion grounded in right would therefore bar any effective derogation claim.

Defining more precisely a right to rebel under international law may also bar any claim by a repressive government for external help to quell the uprising, especially if such a right can be seen to be encompassed under or considered an extension of the right to self-determination. The UN Principles requires this right to be exercised “without external interference” and that “every State has the duty to respect this right in accordance with the provisions of the Charter.”\textsuperscript{80} Therefore, should the decision by a civil society to rebel against oppressive governance be recognized as an exercise of a right to revolt under the banner of self-determination, their struggle must not be impeded by increased pressure from outside allied forces assisting the repressive regime in question.

\textit{Aid Rebels}

Establishing a more visible right to revolt under international law may not only act as a legal shield against a tyrannical government, it may also take shape as a sword to be yielded in an attempt to bring said regime under control.


\textsuperscript{79} International Covenant on Civil and Political Rights (1966).

\textsuperscript{80} Art. 5(1) UN Principles.
Under the self-determination provision of the UN Principles stated above, persons subject to the ‘forcible action’ of an oppressive regime “are entitled to seek and to receive support in accordance with the purposes and principles of the Charter”81 in ‘their actions against, and resistance to’ such oppression. In other words, if a right to revolt (in our context) can be seen as a manifestation of self determination, then action against a repressive government in the exercise of said right via revolt may be aided; but in what way and by whom remains a major unresolved issue. An objection may be raised that internal intervention by another state in aiding a rebel movement is a violation of the tyrannical state’s sovereignty and will constitute an act of aggression, both being breaches of the UN Charter’s fundamental principles. The only permitted recourse to armed force by a State against another is through either Security Council permission in its exercise of Chapter VII powers or through a right to self-defence under Article 51 of the Charter.

In relation to the latter point, it has already been clarified that the use of armed force under a right to self-defence, even if collective in nature, is permitted only where the victim is another Member of the UN i.e. a State. This widely held understanding is challenged by Fletcher and Ohlin who consider the ‘victim Member status’ textual clarification of self-defence as applying to the use of force by States only – self-defence by non-State entities i.e. peoples or nations, remains untouched.82 Why this clarification only has specific application to States remains unexplained, which ultimately detracts from the weight of their argument as a whole. The construction of their argument is, however, worthy of note, at least to show that the seemingly conflicting prescriptions of the Charter require clarification – something a greater determination of a right to revolt might achieve. The premise of their argument is that the ‘peoples’ or ‘nations’ that make up States hold an inherent right to self-defence, retained even when they decided to conduct their international affairs through the medium of statehood within a Westphalian structured system.83 Analogies are made with the individual right to self-defence within domestic systems, kept by man despite attempting to break away from the state of nature through social

81 Art. 5(5) UN Principles.
83 Id., at 146.
contract. Note this is also reflected in the works of Hobbes and Sidney above. To Fletcher and Ohlin, the French translation of Article 51 encapsulates the true nature of the right to self-defence, stating its existence as “au droit naturel” (in natural law). For them, mention to this and to the recognition of self-determination in Article 1(2) is suffice to back up the inherent use of self-defence by peoples within the four corners of the UN Charter. However their own construction of how the article is to be read, at the convenient exclusion of explaining why the drafters of the Charter would direct the ‘victim Member status’ textual clarification at States only, cannot be overcome by the ‘because I say so’ effect permeating their argument.

Returning to alternative channels for third party involvement, the de facto unlimited power of the Security Council to permit the use of armed force under its Chapter VII powers, in the name of maintaining international peace and security, has already condoned multi-state intervention to quash tyrannical regimes and indirectly aid rebel forces. However use of Chapter VII for this purpose has been uncommon. The most notable example would be the no fly zone implemented over Libyan territory in response to Colonel Gaddafi’s attempt to suppress his people’s recourse to rebellion; as stated by Daboné, “the intervention of other states, and later NATO, in Libya in 2011 is too recent to draw any final conclusions”. The Security Council is notorious for failing to permit intervention or take action when required, however if a clearer right to revolt against similar tyrannical regimes in similar circumstances as with Libya were established, the arguments against intervention by the usual suspects within the P5 may be greatly diminished.

There exists a major inconsistency within the UN Charter’s discourse on providing aid to repressed peoples that needs to be solved. Establishing a clearer right to revolt under international law may help towards this. It is claimed by some that a third exception to the prohibition on the use force in international relations exists: “national liberation wars in which a people is fighting in the exercise of its right to

84 Ibid.
85 Id., at 145.
86 Id., at 146.
87 Daboné (n 78), at 402.
self-determination”. This opinion can be grounded in what is stated above in the UN Principles, along with a reading of the Declaration on the Definition of Aggression that states:

Nothing in this definition [of aggression] … could in any way prejudice the right to self-determination … nor the right of these peoples … to seek and receive support, in accordance with the principles of the Charter and in conformity with the abovementioned Declaration.

One possible reading of this provision would convey that if a state were to provide support to a rebel movement within a state of another then such conduct would fall outside the general prohibition on the use of force under the Charter. If a right to revolt for our purposes can be encompassed under self-determination as per the UN Principles, the above may be applicable by way of extension. However a reading of the preceding article in the Definition Declaration gives rise to the inconsistency mentioned above:

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

If the Declaration is not to be read as to extend the permissible uses of force under the Charter, then the potential 3rd way extracted by some from the aforementioned text may be a non-starter. However the uncertainty still remains – what sort of support is permitted in accordance with the Charter? Does this only leave support in the hands of the Security Council? If a right to rebel were more clearly

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90 Art. 7 Definition of Aggression (emphasis added).
91 Art. 1 UN Charter. Note that ‘other breaches of the peace’ are prohibited alongside aggression however those following the line of reasoning above would most likely consider the intervention as a means to restore peace.
92 Art. 6 Definition of Aggression.
defined, questions as to external help in the pursuance of such a right will hopefully be clarified. As highlighted by Honoré:

In the end the only guarantee of human dignity is that we would, if pressed too far, be prepared to rebel, and, if we did so, would have right on our side. It would then be the duty of other members of our community to support us.\(^93\)

**Summary**

Once the plight of oppressed persons struggling through rebellion is lifted from the confines of domestic into international law, such movements may benefit from the greater humanitarian consensus found within the latter. It has been noted that unlike municipal systems, “[t]he international order, though based on state sovereignty, is less constrained … [m]ore broadly, it sees a link between the denial of human rights and rebellion.”\(^94\) Leaving legitimate revolt to the mercy of domestic systems, especially those that have sparked its own citizens to revolt in the first place, seems unduly burdensome on those seeking greater respect for their basic human rights. Sidney was of the opinion that the ordinary domestic laws of a state cannot be used against its society should the latter have to take forceful action against the sovereign; such laws were built to protect man, not tie his hands in the face of tyrannical oppression by the very institution entrusted to respect and enforce his rights.

A clearer definition must also be determined in order to help fill the belligerency gap within the Geneva Convention regime. Admittedly, a more definitive definition of the right may only legally restrain a repressive government’s ability to suppress a warranted uprising; such legal restraints might not permeate in the practice of a tyrannical regime. However, any elaboration on the rights existence may have some practical effect in building upon arguments to be used against chronic Security Council hesitancy to utilize its Chapter VII powers to aid the rebels. It may also help flesh out arguments on the permissive use of force under the Charter and where revolution fits into the context of self-determination, given the ambiguity of the respective aforementioned international instruments.

\(^{93}\) Honoré (n 3), at 54.

\(^{94}\) Id., at 42.
6. A Look to the Future

Despite outlining the implications a more clearly defined right to revolt may have on the international legal stage, a pinch of realism is required in order to give this paper some grounding. As it stands, States are the main legislative body within international law – their standing on issues of international concern are important in the creation of (positive) international law. Unfortunately for the right to revolt, armed groups are not necessarily favoured by States, which is understandable. As expressed by Daboné, “[a]rmed groups are the enemy of the state, which holds the upper hand when it comes to the development of international law.”\(^95\) According to Reisman, States feed off something he describes as a “war system”, a self-created and perpetuated atmosphere of anxiety, which filters down to the citizens of nation states, where the latter can then impose itself as the guardian of the former from the ever-present threat of violence.\(^96\) The notion of private armies challenges the state institution’s power base or status of being the protective organ required to safeguard citizens. This may be why international law – something predominantly determined at the end of the day by States – prohibits or limits the existence and conduct of said entities. Despite sounding too conceptually Hobbesean to reflect the entire truth of the matter, Reisman’s ‘war system’ reflects the fear held by current holders of power i.e. States concerning the instability brought about by rebellious movements. During self-determination negotiations before the UN Principles were established, many Western states argued that no legal system could enshrine a right to rebel as it would provide for the potential destruction of the system itself.\(^97\) As noted by Wilson in 1988, “[t]raditional international law favoured repression over revolution” in an attempt to maintain stability. However, she stresses the past-tense nature of this assertion in preceding to state, “[t]his predisposition has been seriously challenged in the last forty years.”\(^98\) It is true that international law has become slightly less State-centric and has begun to fix its gaze in a more vertical direction towards natural legal persons within

\(^95\) Daboné (n 78), at 397.
\(^97\) Gorelick (n 55), at 82.
\(^98\) Wilson (n 64), at 33.
States, especially with the adoption of various human rights instruments post-1945. If humanitarian concerns start to take greater precedence over the trust States place in their counterparts to uphold human rights instruments and the continued internal instability that is caused by their abuse, then a right to revolt may eventually find a more definitive place in the international legal realm. Instability and revolt are not necessarily synonymous, as is recognized by Reisman when stating, “[a]lthough we almost instinctively characterize a private army as ‘disruptive,’ it may, in fact, be a force for order in a community system of anarchy or stabilized disorder.”

Even if consensus grows at the international level as to the importance of enshrining revolt as a right more clearly, a major issue remains: how should it be formed textually. During a UNESCO conference entitled ‘Violations of Human Rights: Possible Rights of Recourse and Forms of Resistance’, a general report from one of the participants notes that, “although there was a certain consensus with respect to recognition of a right to resist oppression, ‘problems arose as soon as there was any question of defining its content, determining its subject, specifying ways and means of applying it or fixing its limits and scope’.”\cite{99} Despite these difficulties, components of legitimate revolt are ascertainable. Even within the bounds of this small piece of writing, aspects that could find relative acceptance have been outlined. If a dedicated study were to be launched on the matter, focusing purely on this right, then revolt may start to take a clearer form at the international level. Fear that any express provision will be abused may not be tenable; as mentioned above, recourse to revolt is not necessarily hinged on it existing in law – mass retaliation is natural should sovereign oppression become unbearable and un-actionable through normal legal or political channels. The need to better define its existence under international law is to safeguard those who have been legitimately driven to such action.

7. Conclusion

There remains great uncertainty over what form rebellion takes under international law. The ‘Conclusions and Recommendations’ of the ‘Conference on Terrorism and

\footnote{Reisman (n 96), at 7.}
\footnote{Dunér (n 70), at 262.}
Political Crimes’, headed by Mahmoud Cherif Bassiouni, declared that “[l]egitimate resistance to oppression and tyranny is an internationally recognized right as a ‘last resort’ when political and juridical avenues of redress have been exhausted.”

Others, such as Friedlander, consider “[r]ebellion and revolution [to be] recognized remedies in international law, provided that the modalities of revolt are not violative of established norms.” Whereas some, like Kutner, believe “[n]o international right to revolt exists as such.”

Given the tacit acknowledgement of revolution as a permissible recourse in response to severe oppression, coupled with progressive glimmers of its applicability within self-determination and the human rights regime more generally, I would opt for those who label it a ‘submerged right’. Like the hesitant theorists referred to by Honoré at the outset of this paper, it may seem more convenient and feel more comfortable for States to put the blinkers on when it comes to discussing legal recognition of revolt. However the ‘pacific pastures of the nearly just society’, as envisaged in the prescriptions of international and regional human rights instruments, are not always maintained by States in practice. As once stated by J.F. Kennedy, “those who make peaceful evolution impossible make violent revolution inevitable.” Unfortunately, it is important for international law to prepare for the inevitable, to acknowledge and respond to the uncomfortable occurrences of rebellion in the hope that ‘peaceful evolution’ of the peoples concerned may continue.

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101 Bassiouni (n 24), at xxi (emphasis added).
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