

INTRODUCTION TO THE SPECIAL ISSUE ON THE ARAB SPRING

AYODEJI K. PERRIN*

What quickly became known as the “Arab Spring” is a series of protest movements, reform movements, and revolutions (some bloody and some relatively “bloodless”) that has been ongoing for more than two years in the majority-Muslim world of the Middle East and North Africa. Arab Spring recalls both the European Revolutions of 1848, dubbed the “Springtime of the Peoples,” as well as the Prague Spring of 1968. And the events have drawn comparisons to the post-Soviet revolutions of 1989. The compilation of essays contained in this Special Issue of the *Journal of International Law* reflects on these events from a variety of academic and policy perspectives, and grows out of the *Journal’s* November 2011 symposium entitled “Democracy in the Middle East.”

1. THE ARAB SPRING: DEFINED

In December 2010, high unemployment, food-price inflation, political corruption, and suppression of freedom of speech and other civil and political liberties precipitated mass unrest in Tunisia. Sparked, literally and tragically, by the self-immolation of Mohammed Bouazizi in a desperate plea for reform, the Tunisian Revolution, also known as the Jasmine Revolution or the Sidi Bouzi Revolt, in a mere twenty-eight days, achieved the resignation of President Zine El Abidine Ben Ali after twenty-three years of heavy-handed rule.

Oppressive regimes in Egypt, Libya, and Yemen were next to fall. Ben Ali’s capitulation on January 14, 2011 was followed on

* Editor-in-Chief, Volume 34, *University of Pennsylvania Journal of International Law*; J.D., 2013, University of Pennsylvania (expected); M.A., 2006, Columbia University; B.A., 2001, Tufts University. The *University of Pennsylvania Journal of International Law* extends its appreciation to Jenny Chung, a 2012 graduate of the University of Pennsylvania, whose press coverage of the Symposium contributed greatly to the preparation of this Introduction.

January 25 by Egyptians taking to the streets to protest the authoritarian rule of Hosni Mubarak, a rule embodied in the interminable state of emergency law which supposedly justified police brutality and suppression of civil and political liberties. Much like his fellow head of state, Mubarak capitulated in the face of some three weeks of public unrest, resigning on February 11.

In Libya, Colonel Qaddafi attempted to extinguish the revolutionary spark before its flames could engulf his four-decade rule by depicting his opponents as having al-Qaeda roots and ties. On February 15, in Benghazi, Qaddafi's troops fired mercilessly on protestors, only fanning the flames Qaddafi had hoped to douse. During the civil war that followed, the U.N. Security Council adopted Resolution 1973 (March 2011) to assist the Libyan rebels by enforcing a no-fly zone over the country. The conflict finally ended on October 20 when rebels seized Sirte, the town where Qaddafi had attempted to establish a new capital after Tripoli had fallen into rebel hands. Qaddafi was killed in the process.

In Yemen, protests against economic conditions, proposed constitutional reforms, and corruption that began on January 27 (just two days after those in Egypt) matured into a demand for the resignation of beleaguered President Ali Abdullah Saleh and a series of protests and skirmishes between pro- and anti-government groups. After Saleh reneged several times on signing a Gulf Cooperation Council (GCC)-negotiated arrangement to cede power in exchange for immunity, a failed assassination attempt on June 3 forced Saleh into exile in Saudi Arabia. Saleh returned to Yemen on September 23, signed the GCC initiative on November 23, making way for elections, and formally ceded power to his elected successor on February 27, 2012.

The Arab Spring is broader than these overthrows. In December 2010 and January 2011, shortly after the protests in Tunisia began, a sudden spike in staple food prices and a wave of self-immolations prompted mass protests in Algeria. On the same day that Ben Ali resigned in Tunisia, Jordanians took to the streets to protest unemployment, inflation, corruption, and to demand a real constitutional monarchy. The conflagration spread to Oman, with protests over depressed wages, unemployment, and government corruption beginning on January 17. Protests in Iraq over national security, corruption, and the country's poor economic conditions began on February 12, 2011, occurring just after Mubarak's resignation in Egypt and just before the conflict in Libya began. Protests in Bahrain, initially calling for greater

respect for human rights and eventually demanding an end to the Bahraini monarchy, began on February 14. On February 19 in Kuwait, protests against the statelessness and denial of citizenship rights of Kuwait's Bedoun population were part of a series of protests demonstrating growing dissatisfaction with the government. Protests in Morocco began the day after protests in Kuwait, orchestrated primarily by the 20 February Youth Movement. While King Mohammed appointed a commission to amend the constitution to permit multiple political parties, further concessions to constrain the crown and establish rule of law were not forthcoming as the king maintain authority over the judiciary and the security forces.

Most notably, in Syria, protests that began on March 15 calling for an end to Ba'ath Party rule, by July 2011 had turned into a civil war that continues to rage while President Bashar al-Assad clings to power. The war has resulted in the deaths of sixty to seventy thousand, including thirty thousand civilians. More than one million Syrians have been displaced within the country, and another one million refugees have fled Syria, crossing into Turkey and Jordan. Meanwhile, tens of thousands are reported to be imprisoned and suffering torture and other human rights abuses at the hands of the Syrian government. Government forces have repeatedly fired on unarmed protestors and civilians; while rebel group violations of international humanitarian law have also been reported. Though the Syrian conflict at first overlapped with and drew comparisons with the conflict in Libya, to which the Security Council responded by authorizing the use of force; Russia and China have effectively vetoed efforts to authorize the use of force in Syria. The latest news emerging from the conflict concerns the possible use of chemical weapons by Assad, which might be enough to finally bring about a multilateral intervention to end this humanitarian crisis.

As the Arab Spring has evolved into the Arab summer, fall, and winter, it continues to warrant commentary and comparison. What caused the Arab Spring? What is its scope? And what perpetuates it? Just as the moniker Prague Spring partly obscures what was in some ways the domestic front of a transnational reaction to communist ideology, rhetoric, and policy; so too does the moniker Arab Spring obscure. The Arab Spring is more than a protest movement of ethnic Arabs or movements in Arab countries, and the moniker obscures the role that ethnic and religious groups have played in these social

movements—Jews in Tunisia, Coptic Christians in Egypt, Berbers in Libya and Morocco, Kurds in Iraq, Bedouin in Kuwait, Arabs in Iran, black Africans in Mauritania, and even Tuaregs in Mali. And, as Princeton University's professor of Near Eastern Studies Mirjam Künkler explained during the *Journal* Symposium, some even speculate that the very *roots* of the Arab Spring lie not in Tunisia or any one Arab country but in the failed "*Persian Awakening*" or "*Green Revolution*" of June 2009, protesting the tainted re-election of demagogue Mahmoud Ahmadinejad to the Iranian presidency, and then protesting the suppression of election protesters by the Ahmadinejad regime.

And what of the Arab Spring's consequences? Will democracy take hold? Or will military tyrants simply be replaced by Islamist tyrants in some circumstances? Will "cells" of the Muslim Brotherhood allow the group to assert transnational influence that comes to dominate in the region? Will Gulf countries align themselves to resist the spread of the Muslim Brotherhood? Will forging a unified policy to counter the Muslim Brotherhood bring the Gulf countries closer together and turn the Gulf Cooperation Council into a more forceful economic and security regime? Will Iran, in its support of regimes in Syria and elsewhere facing domestic social pressure to reform or resign, align itself against Gulf countries and the Arab League?

2. DEMOCRACY IN THE MIDDLE EAST: A SYMPOSIUM

These are among the questions addressed during the *Journal's* November 2011 Symposium, organized in association with Penn Law's International Human Rights Advocates, and comprised of two keynote lectures and three high-level panel discussions featuring experts in Islamic law, Middle East politics, democratization, international communications, and human rights. For example, the final panel discussion was entitled "*The Post-Revolutionary Middle East: A Realistic Picture*," moderated by Penn political scientist and constitutional advisor to Kurdistan and Iraq, Brendan O'Leary. During the panel, Adnan Zulfiqar, Nabeel Khoury, and Lina Khatib discussed the role of Islamic law in post-revolution politics. Zulfiqar, an expert on Islamic law, is the Law & Public Policy Fellow at the Annenberg Center for Global Communication Studies, a doctoral candidate in Near Eastern Languages and Civilizations, and an alumnus of Penn Law. Dr. Khoury is a Minister Counselor in the U.S. Foreign Service and

formerly Director of the Near East South Asia Office of the U.S. State Department's Bureau of Intelligence and Research. And Dr. Khatib is co-founder and manager of the Program on Arab Reform and Democracy at Stanford University's Center on Democracy, Development, and the Rule of Law.

Zulfiqar urged the audience not to take an ahistorical or non-contextual approach to the events in the region. On the one hand: "It's difficult to dissociate religion from the law when religion has a prominent place amongst the constituency." On the other hand: "[Avoiding] the tendency to consider the relationship between religion and politics as uniform across the Muslim world" is just as critical, because the role of Islamic law will vary in each country, as many citizens view Islam as inherently oriented toward social justice, and have therefore come to associate Islam with democracy and as a counterbalance to authoritarian regimes. Thus, while in all likelihood "Islam will be central to the construction of these democracies because it is central to the lives of the people for whom these democracies are being constructed," Islamic law in the post-revolutionary Middle East will be "subject to the court of popular opinion." (Zulfiqar's premonitions were proven warranted when, in June 2012, seven months after the Symposium, Egyptians elected Islamist and Muslim Brotherhood luminary Mohammed Morsi to the presidency. Though Morsi attempted to assuage Egyptian fears of partisanship by resigning from his official positions with the Muslim Brotherhood and its political wing—the Freedom and Justice Party, the Islamist trajectory is clear.)

Dr. Khoury focused his commentary on what the Arab Spring portends for regional cooperation and international politics. Khoury observed that "the tradition has always been for international actors to compete and regional actors to align." While the 1950s through 1970s witnessed contestation among Arab countries as to the ideal political systems and international alliances to adopt, Khoury recalled the deliberate efforts to minimize ideological differences in order to collaborate on economic, political, and security issues in the wake of the Arab-Israeli War of 1973. While the 1970s and beyond were defined by the decline of Soviet influence and the ascendance of Islam as a unifying force, the real meaning of the Arab Spring, from the U.S. foreign policy perspective, is that as "[t]raditional axes in the region are being reshaped[,] U.S. alliances in the region will look

must strike a balance between assisting

the transition and keeping good relations with Gulf Cooperation Council (GCC) countries knowing our perspectives are diverging more and more and there will be tensions and problems.” Like Zulfiqar, Khoury noted that Islamist parties were seizing power in the post-revolution moments. “These Islamist parties [. . .] have values and priorities that may differ from the pro-Western regimes that preceded them, but in the end they’re willing to compromise and negotiate in the international arena.”

Dr. Khatib predicts that democracy will have exercised an overall “positive effect” on the countries that experienced some taint of the Arab Spring. “Even if the coming period sees a regression, we can say the status quo and the region has definitely changed, and there is no turning back.” As Khatib intimates in the essay published here, entitled *Political Participation and Democratic Transition in the Arab World*,¹ which expands on her Symposium presentation, change can be attributed, at least in part, to the convergence of formal and informal spheres of political participation, such as the growth of Tunisian political parties after the revolution. Democratic ideals, however, are insufficient for lasting democracy, she told the audience. Instead, “organization, leadership, program, strategy, coalitions, and resources” are the six essential factors that will make lasting democracy a true possibility. Because formal political space has become progressively more accessible to citizens, and a gradual “institutionalization of opposition” is also foreseeable (in contrast with the prior tendency of authoritarian regimes to forbid and eliminate opposition parties), there is reason for hope.

Dr. Khaled Abou El Fadl, a Penn Law alumnus who is Omar and Azmeralda Alfi Distinguished Professor in Islamic Law at the UCLA School of Law and holds the Chair in Islam and Citizenship at the University of Tilburg, The Netherlands, concluded the Symposium with an address entitled “Is Liberty God’s Law? *Shari’a*, the Military and the Arab Revolutions.” In his remarks, reproduced here as *The Praetorian State in the Arab Spring*,² Dr. Abou El Fadl called for increased scholarship concerning the sociological and political catalysts of revolutions in “subaltern or

¹ Lina Khatib, *Political Participation and Democratic Transition in the Arab World*, 34 U. PA. J. INT’L L. 315 (2013)

² Khaled Abou El Fadl, *The Praetorian State in the Arab Spring*, 34 U. PA. J. INT’L

postcolonial” states. While Zulfiqar and Khoury discussed the role of the Islamic religion in post-revolution politics, and Khatib noted the growth of formal political parties and the inclusion of informal political networks in the policy-making process, Abou El Fadl addressed a third variable – the military.

Turning to Egypt as a case study, Abou El Fadl discusses the “militarization of the state” as one of the key factors shaping the Middle Eastern revolutions. When the members of the army, who view themselves as indispensable to society, populate the ranks of government *and* the private sector, “[t]his [becomes] part of the reality that revolutions—whether in Egypt, Tunisia, Syria or Yemen—have to confront and deal with” for democratization to be possible. As Abou El Fadl explains, the military ideology is only partly rooted in the Islamic culture shared by the rest of society. Military ideology is also rooted in the notion that the military should not only defend territory but should control political society. In spite of participants in the Egyptian revolution invoking such slogans as “the army and the people are one hand” in hopes of neutralizing the potential for military repression, the schism dividing the military and civilian consciousness is evinced in military attacks on praying citizens and bombardment of religious buildings. Thus, Abou El Fadl asks, “What does it mean to speak of a democratic revolution in a state where the military has become its own monstrous interest?”

3. THE ARAB SPRING AND INTERNATIONAL LAW: LIBERTY, EQUALITY, SECURITY?

The conversation continues and expands beyond those addressed at the Symposium. In the essays included in this special issue, Lama Abu Odeh and Ann Elizabeth Mayer focus their comments on the cases of Egypt and Libya. In *Of Law and Revolution*,³ Professor Abu Odeh argues that Egyptian factions engaged in contestation over the nation’s future chose law as the forum for the conflict: constitutional amendments and declarations, parliamentary laws and legislative amendments, military decrees, presidential decrees, emergency laws rescinded and reissued, court trials, and constitutional court decisions. Meanwhile, even the judiciary has entered the fray with its statements in the media. To Abu Odeh, the public reliance on law

and courts and the public criticism of the judiciary's actions (or inactions) represent the citizenry's revolutionary attempts to define the concept "rule of law." These attempts to define rule of law for Egypt, since the judiciary seems unable or unwilling to do so, are revolutionary because they contravene social hierarchical norms that would normally exclude the masses from such a project.

Professor Mayer also examines the rule of law project, considering the potential for Libya after the revolution. In *Building the New Libya: Lessons to Learn and Unlearn*,⁴ although Mayer suggests that, in the aftermath of the Libyan Revolution, it is possible to observe the potential that living under the Qaddafi regime and "revulsion at Qaddafi's excesses instill[ed] a determination to ensure a future when criminal justice would adhere to international rules and when respect for human rights would be secured," she points out that there is much evidence to suggest that the contrary norm of brutality has been instilled among Libyans after four decades of Qaddafi's repressive rule. For example, the manner in which Libyans—young rebels fighting in militias—captured Qaddafi, beat him, summarily executed him, and then placed his festering corpse on display in a meat locker in Misrata, instead of handing Qaddafi over to the International Criminal Court which had issued an indictment and arrest warrant for Qaddafi in July 2011. Consider also the indefinite and incommunicado detention of Saif al-Qaddafi and the team of attorneys that the ICC sent to represent him. Meanwhile, rival armed militias, parroting the brutality of the Qaddafi regime, face no restraint from any formal military (Qaddafi had enfeebled the military during his rule in order to avert coup attempts), thus the terrorist attacks on international agencies, aid workers, and U.S. and British embassies and officials. In short, Mayer remarks that the post-revolutionary environment in Libya is one of "lawlessness" in contrast to the dilemma that Abou El Fadl observes in Egypt—the "Praetorian" or militarized state. On the other hand, Libya, like Egypt, is also witnessing the rise to prominence of Islamists and continued resistance to women's rights.

Meanwhile, although the protest movements that typify the Arab Spring did not result in (or devolve into) civil war in most

⁴ Ann Elizabeth Mayer, *Building the New Libya: Lessons to Learn and Unlearn*, <https://scholarship.law.upenn.edu/jil/vol34/iss2/8> (2013).

cases, Amit Chhabra, Amos Guiora, and Jordan J. Paust nevertheless address the most pressing security issues that arise from the Arab Spring. Professor Chhabra takes our conversation from the domestic rule of law considerations to the question of what the Arab Spring portends for U.S. foreign policy in the region. In *Autumnal Rage: Playing with Islamic Fire*,⁵ Chhabra revisits the notion that the outcome of the Arab Spring might be Islamicization of Muslim society (as Zulfiqar and Khoury similarly had noted), and ponders the consequences of that ideological shift for use of force rules, counterterrorism cooperation, and human rights in the region and in light of customary international law on humanitarian interventions. Where Mayer hints at the anti-U.S. tenor of events subsequent to the revolutions as a symptom of lawlessness, Chhabra uses these developments—the death of Ambassador Stevens in the Benghazi attacks—as the focal point of his inquiry into the role that Islam will play in continued U.S. engagement in the “Muslim world.”

Amos Guiora also picks up the security thread in *Humanitarian Intervention and Sovereignty under the Umbrella of Geo-Politics*,⁶ describing the triangular relationship between these three factors as shifting after the Arab Spring, requiring foreign policy makers to consider whether their bureaucratic orientations and practices are sufficient to address the evolving dynamic among these concepts. While there are echoes here of (and explicit reference to) the ongoing discussion of the doctrine known as the Responsibility to Protect (R2P or RtoP), Professor Guiora’s central point is how that “responsibility” will be met given well-entrenched public policy positions, new leadership to engage, or new socio-political norms in Muslim countries. Guiora contrasts the geopolitical circumstances of Syria with Libya to challenge the conventional stories regarding the inactivity of the international community despite mounting death tolls in Syria and the tired rhetoric of “never again.”

If Guiora is in part addressing the use of force of foreign powers within a country facing a human rights or humanitarian crisis; in *Use of Force in Syria by Turkey, NATO, and the United*

⁵ Amit Chhabra, *Autumnal Rage: Playing with Islamic Fire*, 34 U. PA. J. INT’L L. 389 (2013).

⁶ Amos Guiora, *Humanitarian Intervention and Sovereignty under the Umbrella of Geo-Politics*, 34 U. PA. J. INT’L L. 411 (2013).

States,⁷ Jordan Paust is addressing the legality of the use of force when internal turmoil threatens either international peace and security or the national security of a neighboring state. In both cases, there are international rules, including the U.N. Charter, that govern whether states and regional organizations may use military force on the territory of another state. But, while Guiora's question is, for example, whether human rights abuses may justify intervention to spare Syrian civilians from the atrocities of the Assad regime, Professor Paust's question is whether there are legal justifications for the use of force in Syria.

For example, do refugee flows and skirmishes that spill over Syria's borders into Turkey justify Turkey and others to use force to bring about an end to the Syrian conflict? Examining the constitutive charters of NATO, the Organization of American States, the African Organization for African Unity/African Union, and the League of Arab States, as well as the legal posturing of the OAS during the Cuban missile crisis and NATO during the war in Kosovo, Paust concludes that border skirmishes and other threats to international peace and security can give rise to armed conflict which would justify Turkish use of force in self-defense. Paust's position, which captures one perspective among international lawyers, offers a view of the security concerns that arise out of the Arab Spring, where, at any moment, it seems, an internal conflict might morph into an internal *armed* conflict, which might morph into an *international* armed conflict. Given the presence of U.S. personnel in Jordan, counterterrorism concerns of al Qaeda obtaining Syrian chemical and biological weapons, and U.S. recognition of the Syrian opposition, the use of force in Syria by the United States, Jordan, Turkey, or NATO could be in the future, and could be lawful.

4. BEYOND THE ARAB SPRING?

So many questions remain. Whither Israel? If anarchy prevails in some Arab Spring countries, will the inability, for example, of Egyptians to control the Sinai, and of Jordanians and Syrians to exercise effective control of their territories, turn parts of these countries into miniature Afghanistans—new training grounds for terrorists, and justifying the use of force against these states or

⁷ Jordan J. Paust, *Use of Force in Syria by Turkey, NATO, and the United States*, 34 U. PA. J. INT'L L. 431 (2013).
<https://scholarship.law.upenn.edu/jil/vol34/iss2/8>

against the non-state actors residing in their territory? Will Israel's attacks in Palestine against Hamas rejuvenate the Arab-Israeli conflict given Hamas' links to the Muslim Brotherhood in Egypt and other countries? Will the Muslim Brotherhood's electoral success encourage the group to play the role of peace-maker between Israel and Hamas, as it did in December 2012? Or will Egypt's support of Fatah-Hamas reconciliation only antagonize Israel and further stall the Arab-Israeli peace process?

Whither Africa? While the Arab Spring began in and spread quickly to the majority-Arab and Muslim countries of North Africa—Tunisia, Algeria, Egypt, Libya; the contagion seemingly spread east (to Syria, Jordan, Iraq, Yemen, Kuwait, Oman, Bahrain, the UAE), rather than south and west to black Africa. With some notable exceptions.

Protests in Mauritania began January 20, 2011 after the self-immolation of Yacoub Ould Dahoud (modeled on the December 2010 self-immolation of Mohammed Bouazizi that had sparked unrest in Tunisia), with complaints including black market slavery and racist census-taking. In Sudan, Al-Amin Moussa Al-Amin set himself on fire on January 23, 2011. Demonstrators invited their Sudanese compatriots to act in solidarity with the movements in Tunisia and Egypt, but the regime of infamous war criminal and *genocidaire* Omar Hassan Al-Bashir was generally able to suppress the small protests. Bashir seems to have escaped the contagion of the Arab Spring with his regime intact. Protests in nearby Djibouti began on January 28, 2011. They were increasingly violent, with the government of Ismail Omar Guelleh using batons and tear gas, mass arrests, the detention of protest leaders, torture, and shows of police force against the stone-throwing demonstrators to stamp out the nascent movement, which fizzled and died by April of that year.

In Mali, Tuareg fighters, returning from the Libyan conflict, fueled an ethnic separatist conflict in the Azawad region, resulting in the March 2012 coup d'état that ousted President Amadou Toumani Touré, and the April 6 declaration of Azawad independence from Mali by the National Movement for Liberation of Azawad (MNLA). In the months that followed, Islamists factions prevailed in their the internecine conflict with the MNLA; the military intervention of France and the African Union on behalf of the Mali government in January 2013 resulted in the return of Azawad to Malinese control. Have the Tuareg rebels and the Arab

West Africa, reminiscent of colonial-era control over African politics and security and post-independence meddling by the former colonial power in African affairs?

The conversations might just be beginning regarding the implications of the revolutionary moments in the Muslim World that began in January 2011. Conflict and instability continues to typify life in Syria, Egypt, Mali, and elsewhere in the region. How the Arab Spring will impact Israel, Iran, counterterrorism, U.S. foreign policy, and the development of international humanitarian law – rules regarding the use of force, humanitarian intervention, and the responsibility to protect – remains to be seen. The *Journal of International Law* is proud to have chosen to address these topics in its 2011 annual symposium, and to present this Special Issue on the legacy of the Arab Spring.