

PROTECTING ONLINE POLITICAL DISCOURSE: AN INTERNATIONAL APPROACH

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ABSTRACT

Developing nations, autocratic states, and conflict zones have a precarious history with the internet. During times of political turmoil, these countries often block access to the internet to quell protests. This practice has become so commonplace that it occurred once more in Iran during the time of writing this comment. Governments often use national security as a justification for blocking the internet, but their motive is clear: suppress political dissent to remain in power. Egypt is a prime example of this government action and a perfect case study when researching the effect of online discourse during times of political turmoil. During the Arab Spring, the Egyptian Government blocked all access to the internet. The Government was transparent about its motive: quell dissent. However, the internet block was ineffective and soon backfired on the government. Perfecting this case study is Egypt's unique history with the internet. When the internet was introduced, the Egyptian Government instituted programs to increase public internet access; however, these programs soon morphed into a surveillance state, sowing distrust of the internet among the public. The events in Egypt, along with the similar events in Ukraine and elsewhere, proves that the only way to protect access to the internet during times of political upheaval is through the implementation of an international system of governance that ensures citizens' ability to access the internet.

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INTRODUCTION AND THESIS

On December 17, 2010, Mohamed Bouazizi, a 26-year-old Tunisian man, set himself on fire in front of a government building in Tunisia after being slapped by a police officer in the street.¹ Bouazizi set himself on fire in protest of the government, and, within hours, Tunisian citizens rose up in protests against the government.² Videos of these protests circulated widely on the internet and sparked further protests throughout the region.³ Within a month, the Tunisian President fled the country.⁴

Soon after, in 2011, protests erupted across Egypt demanding democratic elections and the removal of the Egyptian President from power.⁵ Hundreds of people were injured in these protests and the military was mobilized to quell unrest.⁶ Eighteen days

1. Hanaa Hasan, *Remembering Mohamed Bouazizi and the Start of the Arab Spring*, MIDDLE E. MONITOR (Dec. 17, 2018, 10:22 AM), <https://www.middleeastmonitor.com/20181217-remembering-mohamed-bouazizi-and-the-start-of-the-arab-spring/>; NPR Staff, *The Arab Spring: A Year of Revolution*, NPR (Dec. 17, 2011, 6:02 PM), <https://www.npr.org/2011/12/17/143897126/the-arab-spring-a-year-of-revolution>.

2. NPR Staff, *supra* note 1 (recounting the protests that began that day in Sidi Bouzid, the city where Bouazizi's self-immolation occurred).

3. *Id.* (discussing recordings of the protests that sprung up in response to Bouazizi's self-immolation, which were circulated on social media, before sparking parallel protests across the country).

4. *Id.*

5. Ahmed Aboulenein & John Davison, *Major Events in Egypt Since Arab Spring Uprisings*, REUTERS (Mar. 26, 2018, 5:39 AM), <https://www.reuters.com/article/us-egypt-election-timeline/major-events-in-egypt-since-arab-spring-uprisings-idUSKBN1H217Y>; see also David Cutler, *Timeline: 17 Days of Protests Against Hosni Mubarak*, REUTERS (Feb. 10, 2011, 3:33 PM), <https://www.reuters.com/article/us-egypt-protests-events/timeline-17-days-of-protests-against-hosni-mubarak-idUSTRE7197R920110210>.

6. Aboulenein & Davison, *supra* note 5.

after the protests began, the Egyptian President resigned and the military took control of the government.⁷ Before the protests were over, the Egyptian Government blocked access across the country to Facebook and Twitter, eventually blocking access to the entire internet; it did not take long for hackers to find ways around those blocks.⁸

The Bouazizi protest videos are considered to be a causal link for the Egyptian protests.⁹ Because the protests were sparked via a viral video circulated online, a logical conclusion is that if the people within the region did not have access to the internet, then the protests would never have begun.

The internet is fundamental to the ability of Egyptians to engage in political discourse. Therefore, it is fundamental that all Egyptians have access to the internet. Due to the international history of blocking internet access during times of political protests, international governance is required to protect citizens in warzones and developing nations from an overarching government banning the internet.

This comment begins by analyzing the impediments to accessing the internet in Egypt at the time of the Arab Spring, then compares those impediments to other countries' broadband network access, namely Ukraine's broadband access, to determine whether the Egyptian ban on the internet during the Arab Spring could occur elsewhere again. This comment will then conclude by proposing the most effective regulatory regime that will best foster social and political discourse within countries like Egypt and will best protect peoples' right to internet access.

7. *Id.*

8. *Arab Spring Anniversary: When Egypt Cut the Internet*, AL JAZEERA (Jan. 25, 2016), <https://www.aljazeera.com/indepth/features/2016/01/arab-spring-anniversary-egypt-cut-internet-160125042903747.html> (explaining that hackers used proxy computers in other countries to beat government censors placed in January 2011, creating a major rise in online engagement concerning Egypt during the uprising).

9. See NPR Staff, *supra* note 1 (describing how the momentum of a martyred young Tunisian man "set off uprisings across the Middle East that became known as the Arab Spring").

I. COUNTERARGUMENTS TO RECOGNIZING INTERNET ACCESS AS A HUMAN RIGHT

This comment concludes by proposing that internet access should be recognized as an international human right. Prior to reaching that conclusion, it is important to discuss the negative externalities resulting from recognition of the right to internet access, as well as address the most significant counterarguments to recognizing this as a human right.

First, one might argue that a broad interpretation of recognizing internet access as a human right would require governments to supply computers to their citizens to effectuate internet access.¹⁰ That interpretation is not the proposal of this comment. This comment recommends the international adoption and enforcement of the United Nations Human Rights Council (UNHRC) resolution that recognizes internet access as a human right.¹¹ This resolution only requires that governments remove institutional barriers to access to the internet—it does not require that the government completely ensure internet access to all citizens.¹² Therefore, a fear that the government would be required to nationalize internet service providers (ISPs) and computer hardware companies is unfounded.

Second, it could be argued that ISPs would be required to ensure an unreasonable level of internet availability—beyond what is economically or commercially feasible. This concern is also unfounded. As proposed in *Access to the Internet is a Human Right*, a U.S. regulation prohibiting access discrimination via

10. *Contra* Stephen B. Wicker & Stephanie M. Santoso, *Access to the Internet is a Human Right*, COMM'NS OF THE ACM, June 2013, at 46 (“[W]e must avoid the hyperbole that may ensue from a rights discourse; there will be no suggestion here that the U.S. government should hand out computers while requiring that ISPs provide their services for free.”).

11. *See generally* Human Rights Council Res. 32/13, U.N. Doc. A/HRC/RES/32/13 (July 1, 2016); *see also* Human Rights Council Res. 38/7, U.N. Doc. A/HRC/RES/38/7 (July 5, 2018) (reaffirming that the same rights people have offline must also be protected online).

12. H.R.C. Res. 32/13, *supra* note 11, ¶¶ 8–10, 12 (calling upon states “to ensure protection of freedom of expression, freedom of association, privacy, and other human rights online” while condemning measures that intentionally prevent or disrupt these fundamental freedoms on the internet).

price or quality would ensure quality access without putting an ISP in a commercially unviable state¹³—a similar interpretative international rule included in the UNHRC resolution would promote quality access regardless of content.¹⁴ This rule would also ensure that an ISP is not in violation due to an internet outage.

In the article, *Internet Access is Not a Human Right*, the author discusses a convincing criticism of recognizing internet access as a human right,¹⁵ specifically that: “[t]echnology is a means of enabling freedom, not an end in itself.”¹⁶ This argument is easily dismissed by reference to the below discussion on the necessity of internet access to protest a government. As technology progresses, it is increasingly clear that people are unable to adequately assemble, and online discourse is an increasingly more common venue for political protests.¹⁷ Moreover, many human rights are facilitators of other human rights—that fact does not make those rights any less significant.¹⁸

Lastly, an argument against the resolution is that recognizing internet access as a human right would limit states’ sovereignty.

13. Wicker & Santoso, *supra* note 10, at 46 (recognizing that a right to internet access includes a general common carrier rule to prevent price or quality discrimination).

14. *See id.* (asserting the ISP as a fundamental good under a human rights framework and advocating for elimination of the cable/DSL duopoly to ensure access to fair prices and quality service for all users).

15. Vinton G. Cerf, *Internet Access is Not a Human Right*, N.Y. TIMES, Jan. 5, 2012, at A25, PROQUEST, Doc. No. 1705748412.

16. *Id.*

17. *See, e.g.*, John T. Jost et al., *How Social Media Facilitates Political Protest: Information, Motivation, and Social Networks*, 39 ADVANCES IN POL. PSYCHOL. 85, 89–91 (2018) (expanding on the use of social media in protests in Moldova, Iran, Turkey, and Ukraine and addressing their shortcomings).

18. *See generally* G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). Article 16 of the U.N. Resolution recognizing the first internationally adopted human rights recognizes family as a fundamental human right. *Id.* art. 16, ¶ 3. Article 25 guarantees mothers and children to special treatment under the law. *Id.* art. 25, ¶ 2. These two articles do not cross-reference each other but entitling mothers and children to special protections effectuates the fundamental right to a family. *Id.* Therefore, accepting the author’s assertion that internet access should not be a human right because it is a mere means to access other rights would mean that the original human rights resolution is flawed.

This is an unconvincing argument. Every human right limits state sovereignty.¹⁹

II. ACCESSING THE INTERNET IN EGYPT AROUND THE TIME OF THE ARAB SPRING

Egypt has a precarious history with the internet and allowing its citizens access to it.²⁰ The internet did not reach the Egyptian public until 1996.²¹ Once Egyptians gained access to the internet, the Egyptian Government appeared to be committed to taking an aggressive approach to providing open access to the internet.²² At the turn of the millennium, the Egyptian Government instituted programs to allow for universal broadband network access.²³ However, soon after the Egyptian Government instituted these programs, the it also instituted surveillance programs and laws that restricted internet access as an attempt to suppress freedom of speech.²⁴

19. See G.A. Res. 217, *supra* note 18 (promulgating the first U.N. human rights) (listing human rights that limit state power, such as the right to own property or the right to marriage); Douglass Cassel, *A Framework of Norms: International Human-Rights Law and Sovereignty*, HARV. INT'L REV., Winter 2001, at 60.

20. Alexandra Paslawsky, *The Growth of Social Media Norms and Governments' Attempts at Regulation*, 35 FORDHAM INT'L L.J. 1485, 1505 (2012) (recognizing that many see the government's internet initiatives as "merely 'window-dressing' [while] the Egyptian government attempted to promote its legitimacy" and not real accessibilities).

21. *Id.* at 1506.

22. *Id.*

23. *Id.* at 1506–07.

24. *Id.* at 1505 n.109, 1506. As discussed later in this comment, both the Egyptian Constitution, as well as some Egyptian statutory laws, give Egyptians the right to freedom of speech and expression. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 65. However, these protections are not enforced and—often under the guise of religion, the government passes broad laws that limit freedom of speech. See generally Asma T. Uddin, *Blasphemy Laws in Muslim-Majority Countries*, REV. FAITH & INT'L AFF., June 9, 2011, at 47, 50–51 (discussing Egyptian laws that limit freedom of speech to "prevent blasphemy").

A. *Success and Failure of Universal Access to the Internet as an Egyptian Government Policy Goal*

In 1999, the Egyptian Government established the Ministry of Communications,²⁵ a bureaucratic agency tasked with administering internet programs.²⁶ Shortly after its inception, the Ministry of Communications began administering programs aimed at increasing internet access across Egypt.²⁷ These programs, such as the Free Internet Program²⁸ and the PC for Every Home Program,²⁹ made the internet more affordable and accessible to Egyptians.³⁰

These universal access initiatives were short-lived in Egypt.³¹ As discussed in *Free Speech and Censorship Around the Globe*, Amnesty International reported that the Egyptian Government planned on implementing social media surveillance programs in 2014.³² Moreover, as discussed in Section III(b) of this comment, the Egyptian Government created regulatory requirements and legal impediments aimed at stymieing the public's ability to access the internet.³³

25. *Telecommunications*, ARAB REPUBLIC OF EGYPT MINISTRY OF COMM. & INFO. TECH., <http://www.mcit.gov.eg/TeleCommunications> (last visited Aug. 13, 2020).

26. Paslawsky, *supra* note 20, at 1506.

27. *Id.* at 1506–07.

28. Young Joon Lim & Sarah E. Sexton, *Internet as a Human Right: A Practical Legal Framework to Address the Unique Nature of the Medium and to Promote Development*, 7 WASH. J.L. TECH. & ARTS 295, 305 (2012). Although this program is named the “Free Internet Program,” it still required that users of the internet pay roughly the cost of a telephone call to access the internet; therefore, the internet via this program was not truly “free.” *Id.* The Free Internet Program is also known as the “Free Internet Initiative.” Brenda F. Abdelall, *Forging Ahead: A Contemporary Review of Egyptian Press and Media Laws*, in *FREE SPEECH AND CENSORSHIP AROUND THE GLOBE* 445, 459 (Péter Molnár ed., 2015).

29. Paslawsky, *supra* note 20, at 1506–07.

30. *Id.*

31. Abdelall, *supra* note 28 (noting that the government has used the Emergency Law to suppress internet activism and that there is “little promise for social media freedom”).

32. *Id.*

33. See, e.g., Lim & Sexton, *supra* note 28 (noting that internet café owners were required to obtain a government license to operate and were required to record customers' names and identification numbers). See generally Abdelall, *supra* note 28, at 450–56.

In addition to the legal obstacles that developed, the universal access programs were unsuccessful in achieving their goals.³⁴ The PC for Every Home Program failed to place computers in all homes, and as of 2017, internet penetration into Egypt was at 50%.³⁵ Moreover, the Free Internet Program did not make the internet free.³⁶ Instead, these programs created a vast network of hundreds of ISPs across the country.³⁷ Nevertheless, the ISPs and government programs did not achieve the goal they set out to accomplish: universal internet access.

B. Impediments to Accessing the Internet Around the Time of the Arab Spring

The Egyptian public has faced an enormous number of hurdles in accessing the internet from its introduction in 1996 to the present day.³⁸ The authoritarian regime manufactured many of these hurdles, but others—such as the English-Arabic language barrier—were systemic impediments to accessing information on the internet.³⁹ This section analyzes the major obstacles Egyptians faced and discusses the ramifications of those obstacles pertaining to the Arab Spring.

(reviewing the government's historical legal bases for censorship and other measures aimed at stifling constitutional freedoms).

34. See *Focus on Egypt*, MIDEAST MEDIA, <http://www.mideastmedia.org/survey/2017/chapter/focus-on-egypt/> (last visited Aug. 14, 2020) (stating that “[i]nternet penetration remains low in Egypt” in comparison to other surveyed countries, finding that only 50% of Egyptians had access to the internet and only 20% of Egyptians used computers to access the internet in 2017).

35. *Id.*; see also Lim & Sexton, *supra* note 28 (noting that many Egyptian internet users do not have personal computers and instead rely on internet cafés).

36. Lim & Sexton, *supra* note 28.

37. *Id.*

38. See Paslawsky, *supra* note 20, at 1506–08 (discussing the evolution of Egyptian governmental policies on internet use from 1996 onward).

39. *Id.*; see also Amir Hatem Ali, *The Power of Social Media in Developing Nations: New Tools for Closing the Global Digital Divide and Beyond*, 24 HARV. HUM. RTS. J. 185, 208 (2011) (“[L]anguage quickly became a significant obstacle to widespread adoption and use of the Internet in Egypt.”).

1. *Government Censorship and Oppression, and Public Distrust of the Internet*

Shortly after the Ministry of Communications began instituting programs to create universal internet access in Egypt, distrust began fermenting towards the internet.⁴⁰ Egyptians distrusted internet content and generally thought that the internet was a propaganda machine of the authoritarian government.⁴¹ This distrust continues today: a majority of Egyptians prefer that all of their online data be stored on servers outside of Egypt for security concerns.⁴²

In conjunction with the public's distrust of the internet, the Egyptian Government also began censoring and blocking internet access to websites critical of the authoritarian regime.⁴³ The Egyptian Government does not have a solid legal basis for this censorship. Egypt does not have the same guarantees of freedom of speech and freedom of the press as the United States.⁴⁴ The Egyptian Constitution contains protections for freedom of speech

40. See Paslawsky, *supra* note 20, at 1506–07 (noting the long-held belief by journalists that the Ministry of Communications and Technology was the propaganda arm of President Mubarak's regime and that some believed in the rumored existence of a State Security Investigation Police for Facebook).

41. *Id.* at 1507.

42. 2019 CIGI-Ipsos Global Survey on Internet Security and Trust, CTR. FOR INT'L GOVERNANCE INNOVATION, <https://www.cigionline.org/internet-survey-2019> (last visited Aug. 14, 2020).

43. Lim & Sexton, *supra* note 28, at 304. It is unclear if the censoring of the internet led to the distrust of the internet itself or if these events occurred concurrently. Some analysis shows that the distrust of the internet began prior to the major censorship of it. See Paslawsky, *supra* note 20, at 1506–07. However, for the purposes of this comment, the causal link between censorship and distrust is not relevant; the relevant inquiry is how that distrust and censorship affected the Egyptian public's use of the internet at the time of the Arab Spring.

44. See Abdelall, *supra* note 28, at 446–49 (highlighting the guarantees to freedom of speech and freedom of the press found in Egypt's constitutions). Compare, e.g., CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, arts. 70–72 (enumerating protections for the media, including establishing notification requirements for the issuing of newspapers, defining exceptions to guarantees against censorship, and referencing State-owned media), with U.S. CONST. amend. I (noting more broadly that “Congress shall make no law . . . abridging the freedom . . . of the press”).

and freedom of the press in many different provisions.⁴⁵ However, despite these many protections, the Egyptian Government has consistently eroded these freedoms to the point that they no longer exist.⁴⁶

From the time since the founding of the Ministry of Communications, leading up to the Arab Spring, the Egyptian Government enacted several laws that criminalized criticism of the government on the internet, arrested online dissidents, and banned websites that were critical of the government.⁴⁷ It is unclear from where the Egyptian Government derived the authority to enact such laws,⁴⁸ but in this author's opinion, the lack of enforced free speech protections likely enabled them, at least partially.

Not only did the Egyptian Government enact laws meant to curtail online dissent, the Ministry of Communications required that all internet café owners obtain a permit to operate their business.⁴⁹ This requirement is significant because a large portion of Egyptians accessed the internet via internet cafés while

45. *E.g.*, CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, arts. 46–48, *as amended*, 22 May 1980, 25 May 2005, 26 Mar. 2007. The newest Egyptian Constitution also contains protections for freedom of speech, writing, imagery, or “any other means of expression and publication.” CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 65.

46. *See* Abdelall, *supra* note 28, at 450–56 (discussing the numerous emergency laws and penal code provisions that have been enacted since the mid-twentieth century in Egypt that fundamentally limit, alter, and erode Egyptian's rights to freedom of speech and freedom of the press).

47. Paslawsky, *supra* note 20, at 1507–08; *see also* Abdelall, *supra* note 28, at 453–56 (discussing numerous penal code provisions illegalizing online dissent, including one provision criminalizing journalists who affront the Egyptian President); Lim & Sexton, *supra* note 28, at 299 (identifying the time period of the Arab Spring uprisings as occurring in early 2011).

48. *See* ACCESS DENIED: THE PRACTICE AND POLICY OF GLOBAL INTERNET FILTERING 276 (Ronald Deibert et al. eds., 2008) (“[N]o laws specifically empower the Egyptian government to filter Web sites”); *see also* Abdelall, *supra* note 28, at 446 (asserting that constitutional ambiguity has “allowed the Egyptian government to circumvent . . . the right to a free press”); Lim & Sexton, *supra* note 28, at 304 (noting Egypt's reliance on “extralegal enforcement”).

49. Lim & Sexton, *supra* note 28; *see also* Hannibal Travis, *YouTube from Afghanistan to Zimbabwe: Tyrannize Locally, Censor Globally*, in TRANSNAT'L CULTURE IN THE INTERNET AGE 76, 91–92 (Sean A. Pager & Adam Candeub, eds., 2012) (noting that the Egyptian Government “arrested, attacked, imprisoned, and fined bloggers and other Web users” for criticizing the government).

few Egyptians owned personal computers.⁵⁰ Along with permitting requirements, internet café owners also reported that the government would regularly request the names of the customers that regularly visited the café.⁵¹ Although the permitting and quasi-unofficial reporting requirements were not direct impediments to accessing the internet, they undeniably would have dissuaded someone who planned to be critical of the government online to use an internet café to do so.⁵²

2. *Language Barriers and the Development of Arabic Internet Content Pre-2011*

Another major impediment to accessing internet content in Egypt is the language barrier.⁵³ Only 3% of Egyptians in the early part of the twenty-first century spoke English.⁵⁴ However, a vast majority of internet content was produced in English.⁵⁵ This language barrier is rooted in technological difficulties surrounding the development of the internet⁵⁶ which will not be discussed in detail by this comment. Nonetheless, these barriers existed due to the lack of a unified, Arabic-language standard in computing, causing content developers to resort to rendering the language in images rather than text.⁵⁷ The issue resulted in a vast majority of the Egyptian population being unable to utilize content on the internet⁵⁸—even if they were able to gain access to the internet per se.

50. See *Egypt – Personal Computers (per 100 People)*, TRADING ECON., <https://tradingeconomics.com/egypt/personal-computers-per-100-people-wb-data.html> (last visited Aug. 14, 2020) (indicating that only 4 in 100 people own a personal computer in Egypt); see also Travis, *supra* note 49, at 92 (stating that 90% of Egyptian households did not have high-speed internet access).

51. Travis, *supra* note 49, at 92; Lim & Sexton, *supra* note 28.

52. See *id.* (noting that reporting requirements for internet cafés “affected the nearly 90 percent of [Egyptian] households without high-speed home Internet access.”).

53. Ali, *supra* note 39.

54. MARK WARSCHAUER, TECHNOLOGY AND SOCIAL INCLUSION: RETHINKING THE DIGITAL DIVIDE 100 (2003).

55. Ali, *supra* note 39.

56. WARSCHAUER, *supra* note 54, at 101.

57. Ali, *supra* note 39.

58. WARSCHAUER, *supra* note 54, at 102.

The language-technology impediment began to weaken as the internet became more widespread.⁵⁹ For instance, blogging platforms began allowing users to create content in Arabic.⁶⁰ This new ability to use the internet as a means of creating content and spreading ideas popularized quickly with Egyptian bloggers.⁶¹ In the short time between the growth of the internet and the Arab Spring, large amounts of bloggers began consistently criticizing the authoritarian regime—many outright demanding the Egyptian President's resignation.⁶² During this time, the number of Arabic-Egyptian blogs skyrocketed from about 40 to around 1,400.⁶³

C. Conclusion

The Egyptian Government was initially very aggressive in its approach to providing internet access to all of its citizens. However, language barriers and technological difficulties made accessing information on the internet extremely difficult for most Egyptians.⁶⁴ As the internet became more prominent worldwide, these technology and language barriers subsided and Egyptians began utilizing the internet heavily—often to voice criticisms of their government.⁶⁵ However, the same government that attempted to provide universal access began instituting

59. Ali, *supra* note 39, at 208–09 (noting the emergence and rapid growth of blogs published exclusively in Arabic beginning in the early 2000s).

60. *Id.*

61. *Id.*

62. *See id.*; *see also* Amira Al Hussaini, *Egypt: A List of Demands from Tahir Square*, GLOB. VOICES (Feb. 10, 2011), <https://globalvoices.org/2011/02/10/egypt-a-list-of-demands-from-tahrir-square/print/> (listing demands posted by Egyptian blogger Wael Khalil that were circulated online during the Tahrir Square protests in 2011); *Bloggers in Tahrir Issue Revolution Demands*, EGYPT INDEP. (Feb. 10, 2011), <https://www.egyptindependent.com/bloggers-tahrir-issue-revolution-demands/> (noting that “Egyptian bloggers issued a statement” containing demands for President Mubarak’s resignation, investigation into the violence against peaceful protesters, cessation of government interference in newspapers, television, radio and the internet, and many other demands).

63. Ali, *supra* note 39.

64. *See* WARSCHAUER, *supra* note 54, at 99–101; Ali, *supra* note 39, at 208.

65. Ali, *supra* note 39, at 208–10.

programs, regulatory regimes, and bans that inhibited the Egyptians' ability to access the internet.⁶⁶

III. BRIEF OVERVIEW OF THE ARAB SPRING AND THE EGYPTIAN GOVERNMENT'S INTERNET BAN

The internet did not cause the Arab Spring; research has shown that the protests would have likely occurred regardless of access to the internet.⁶⁷ However, the same research shows that the internet increased the speed and intensity of the Arab Spring protests.⁶⁸

The decades leading up to the Arab Spring set the stage for the Egyptian Regime's ("Regime") response to the anti-regime protestors. Egyptians did not have universal access to the internet,⁶⁹ and the Regime's programs to increase internet access were not nearly as successful as its programs to suppress online thought.⁷⁰ In spite of Egypt's historical complexities regarding internet access, Egypt has more access to the internet than other countries that also protested during the Arab Spring.⁷¹ This greater access to the internet may have allowed the public response to be initially stronger than that of other countries—increasing pressure on the Regime to respond.

Not only did the Regime have a vast array of legal tools at its disposal to suppress the protestors' online dissent, the Regime also had total control of the internet access.⁷² Initially, the

66. *Id.* at 210.

67. Mihai Burlacu & Dănuț Țigănuș, *The Role of the Internet in The Arab Spring*, 4 ANNALS: SERIES MIL. SCI. 38, 39–40 (2012) (explaining that the internet acted only as a catalyst for change).

68. *Id.* at 39–40, 43 (concluding that the internet influenced the increase in protest participation and the speed at which major protest events precipitated).

69. *Focus on Egypt*, *supra* note 34 (finding internet penetration in Egypt was fifty percent of the population).

70. Lim & Sexton, *supra* note 28.

71. *Id.* at 305–07 (discussing the limitations of accessing the internet in countries involved in the Arab Spring).

72. Lim & Sexton, *supra* note 28, at 304 (discussing how the Egyptian Government was able to unilaterally block internet access and shut down ISPs); Christopher Williams, *How Egypt Shut Down the Internet*, TEL. (Jan. 28, 2011, 11:29 PM), <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/8288163/How->

Regime began imprisoning protestors—both those that were demonstrating in person and those that were protesting online.⁷³ This tactic was apparently unsuccessful: As the protests became more intense, the Regime began to understand that it needed a more dramatic response to quell the protests.⁷⁴ On January 26, 2011, the Egyptian Government blocked access across Egypt to Facebook and Twitter.⁷⁵ The government did not stop with social media sites; two days after the initial ban, the government blocked access to the entire internet across Egypt.⁷⁶

IV. UKRAINE CENSORSHIP OF INTERNET ACCESS DURING THE CRIMEA CONFLICT AND THE EFFECT ON THE PRO-RUSSIA MOVEMENT

It may seem that blocking internet access to civilians during political protests is unusual; however, other countries, such as Ukraine, have also blocked internet access during times of conflict.⁷⁷ In the case of Ukraine, the Ukrainian Government blocked access to Russia-backed websites after Russia invaded Crimea.⁷⁸

Pro-Russia separatists heavily influenced the Crimea region.⁷⁹ Blocking websites that expounded pro-Russia

Egypt-shut-down-the-internet.html (stating that the Egyptian government was able to shut down all but one ISP, speculating the remaining ISP was allowed to continue operating due to that ISP hosting the Egyptian stock exchange).

73. Lim & Sexton, *supra* note 28, at 304–05.

74. *See id.* at 305 (noting that after the government had previously promoted access to the internet, it was now being brought down by the many people organizing online); Charles Arthur, *Egypt Blocks Social Media Websites in Attempted Clampdown on Unrest*, THE GUARDIAN (Jan. 26, 2011, 2:57 PM), <https://www.theguardian.com/world/2011/jan/26/egypt-blocks-social-media-websites> (explaining that Facebook and Twitter were cut off from Egypt to prevent protestors from instigating civil disorder).

75. Arthur, *supra* note 74.

76. Williams, *supra* note 72.

77. Natalie Holland, *Freedom of Expression and Opinion in Wartime: Assessing Ukraine's Ban on Citizen Access to Russia-Owned Websites*, 33 AM. U. INT'L L. REV. 943, 947 (2018).

78. *Id.* at 944.

79. *Global Conflict Tracker: Conflict in Ukraine*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> (last visited Nov. 16,

information or opinions likely had the same effect as Egypt's actions during the Arab Spring: the actions slowed the political movements, but the movements continued.⁸⁰ For purposes of this comment, it is important to determine the similarities between Ukrainian and Egyptian internet laws and regulations which could allow both countries to impede the rights of their citizens in pursuit of political entrenchment.

A. The Source of the Internet Block and the Source of the Authority Used to Enforce It

In 2017, the Ukrainian President issued Presidential Decree No. 133/2017.⁸¹ This decree blocked access to nearly all Russia-backed websites, including social media, news, email, and search engines.⁸² According to the Ukrainian President, the ban will remain in place for three years, expiring in 2020, or whenever the Russian aggression ends.⁸³

2019) (explaining that the capture of Crimea lead to "heightened ethnic divisions," which inspired pro-Russian separatists in the Donetsk and Luhansk regions to declare independence from Ukraine).

80. Compare, e.g., *Arab Spring Anniversary: When Egypt Cut the Internet*, *supra* note 8 (noting that in an attempt to stop the spread of protestor communications the Egyptian Government cut off access to the internet), with Holland, *supra* note 77 (expressing that the Ukrainian government banned Russian internet in response to Russian aggression toward Ukraine). See also Burlacu & Țigănuș, *supra* note 67, at 43 (concluding that the speed with which riots occurred in different countries were heavily influenced by actions facilitated by the internet).

81. Holland, *supra* note 77.

82. *Id.* at 944–45.

83. *Id.* This open-ended term for the ban is very similar to the Egyptian ban during the Arab Spring. See Williams, *supra* note 72 (comparing the Egyptian internet ban to the indefinite internet ban in North Korea). Moreover, this ban is more invasive and a more egregious violation of human rights than the Egyptian ban. Here, the ban affects citizens that are not actually a part of the separatist movement, and even the Pro-Russia separatists were not the true cause of the Crimea conflict. See Holland, *supra* note 77, at 946–47 (stating that the ban was affecting all civilians in Ukraine). Russia invaded the region and in response the Ukrainian government blocked internet to its civilians. *Freedom on the Net in 2019: Ukraine*, FREEDOM HOUSE, <https://freedomhouse.org/country/ukraine/freedom-net/2019> (last visited Sept. 5, 2020). Whereas, in Egypt the internet ban was directed at the people that were causing the political unrest. *Arab Spring Anniversary: When Egypt Cut the Internet*, *supra* note 8 (explaining that the government took away the protestors' most powerful weapon).

Just as in the case of Egypt, it is extremely questionable whether the Ukrainian President had the authority to issue and enforce the ban.⁸⁴ One member of the Ukrainian Parliament noted that the President would not have the authority to issue the ban until the Ukrainian Supreme Court issued an opinion.⁸⁵

The Ukrainian Government, without citing specific legal bases for issuing the ban, stated that national security required the ban to be in place.⁸⁶ As justification for this national security argument, the Ukrainian Government cited numerous potential ways that the Russian Government could have been interfering with Ukrainian society to influence Ukrainians into supporting the Russian-separatist movement.⁸⁷ First, the Ukrainian Government claimed that the Russian Government was stealing data from Ukrainians.⁸⁸ Second, and somewhat related to the first justification, the Ukrainian Government was concerned about cyberattacks and claimed the ban would block insecure websites.⁸⁹ Both of these concerns are somewhat uncured by the block of specific websites. Although these Russian websites could be less secure, blocking certain websites does not prevent the Russian Government from committing a cyberattack or stealing private citizens' data.⁹⁰ Research has shown that the Russian Government attempted to commit over 6,000 cyberattacks on Ukraine in 2016 alone.⁹¹

To justify the social media blocks, the Ukrainian Government claimed that the Russian social media sites were hotbeds for Russian propaganda and did not filter out anti-Ukrainian, violent posts that could furl unrest within Ukrainian society.⁹² The

84. Holland, *supra* note 77.

85. *Id.*

86. *Id.* at 948.

87. *Id.* at 948–49 (describing that the Ukrainian society could be influenced by Russian propaganda on Russian-owned sites).

88. *Id.* at 949.

89. *Id.*

90. *Id.* at 950.

91. Andy Greenberg, *How an Entire Nation Became Russia's Test Lab for Cyberwar*, WIRED (June 20, 2017, 6:00 AM), <https://www.wired.com/story/russian-hackers-attack-ukraine/>.

92. Holland, *supra* note 77, at 948–49.

Ukrainian Government also made a blanket justification claiming that the block prevented Russia from circulating propaganda.⁹³

Although these justifications likely have their grounding in traditional national security and war-powers theories,⁹⁴ it is unclear whether the Ukrainian Government has a solid legal basis for enforcing the ban.⁹⁵

B. The Effects on Ukrainian Society Caused by the Ban

Just as in the case of the Egyptian internet ban, the social media sites that were banned by the Ukrainian Government had a significant impact. However, it is unclear if the ban had the same effect on the political movement within Ukraine as the Egyptian block had on the political movement within that country.

As discussed in the previous section, the Egyptian ban on internet access during the Arab Spring did not per se cause protests.⁹⁶ Instead, the ban spurred political unrest within the country and made it more difficult for protestors to organize, while still increasing the participation of protestors in the streets.⁹⁷ In Ukraine, the effects on society seemed to be more economic than political.⁹⁸ Research has shown that the ban on Russian websites affected Ukrainians' business operations that

93. *Id.* at 948.

94. *Ukraine Bans Its Top Social Networks Because They are Russian*, ECONOMIST (May 19, 2017), <https://www.economist.com/europe/2017/05/19/ukraine-bans-its-top-social-networks-because-they-are-russian>; see also Natalia Pakhomovska & Illya Sverdlov, *President of Ukraine Approves New Package of Sanctions of NSDC*, DLA PIPER (May 18, 2017), <https://www.dlapiper.com/en/ukraine/insights/publications/2017/05/president-of-ukraine-approves-sanctions-nsdc/> (indicating the different sanctions that may be imposed on companies operating in Ukraine). Ukraine's Crimean Peninsula had been invaded and occupied by Russia during this time, and this ban was part of a broader sanctions package Ukraine passed in response to the Crimean occupation. Holland, *supra* note 77, at 944.

95. Holland, *supra* note 77, at 970.

96. See *supra* Section IV; see also Burlacu & Țigănuș, *supra* note 67, at 39–40 (explaining that the internet merely facilitated movements).

97. Burlacu & Țigănuș, *supra* note 67, at 41.

98. See Holland, *supra* note 77, at 951 (explaining that Ukrainians not based in Kiev depend heavily on Russian-made platforms; furthermore, the ban has negatively affected small businesses that are unable to develop social media software).

relied primarily on Russian social media software.⁹⁹ The same research shows that the ban caused safety issues for Ukrainian citizens living in conflict zones.¹⁰⁰ Ukrainians would often post warnings on the Russian social media websites.¹⁰¹ Banning the websites disallowed the Ukrainians from posting the security warnings, making it difficult for many people to be informed of safety risks relating to the Russian invasion.¹⁰²

C. *Potential Concerns Moving Forward: Ukraine and Egypt Compared*

There were many similarities between the ban in Ukraine and the internet block in Egypt. First, both bans were in response to conflict that posed an existential crisis to the ruling regime.¹⁰³ Second, neither country had a solid legal foundation to issue the internet blocks.¹⁰⁴ In the case of Egypt, the Egyptian Constitution seemed to provide protections that would have prohibited the block, yet years of the government eroding those rights allowed the block.¹⁰⁵ Conversely, Ukraine was able to justify the block based on national security concerns in a time of warfare.¹⁰⁶ However, at least one Ukrainian legislator has questioned whether the block was constitutional and claims that a court opinion is needed to clarify.¹⁰⁷

99. *Id.*

100. *Id.*

101. *Id.*

102. *See id.* (stating that residents and authorities rely on these posts to circulate information about the fighting).

103. Arthur, *supra* note 74; Roman Olearchyk & Max Seddon, *Ukraine Blocks Access to Russia Websites*, FIN. TIMES (May 16, 2017), <https://www.ft.com/content/118bd84c-3a39-11e7-821a-6027b8a20f23>.

104. *See* Holland, *supra* note 77, at 947 (discussing the weak legal basis for the ban and stating that a member of the Ukrainian Parliament claims there is no legal basis for the ban without a court opinion); *see also* Abdelall, *supra* note 28, at 448–49 (discussing the apparent constitutional protections that would prohibit the Egyptian Government from blocking internet access).

105. Abdelall, *supra* note 28, at 446–49. *See also* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 70–72.

106. Holland, *supra* note 77, at 948.

107. *Id.* at 947.

The similarities between the Ukrainian and Egyptian internet bans revealed an issue for the international community to address. Primarily, both countries issued these bans in potential violation of domestic law. Moreover, the bans caused security concerns for citizens and delayed political movements within the country that could have reshaped the country's entire political landscape. Moving forward, the takeaway from these two events may be that international governance is required to protect citizens in warzones and developing nations from an overarching government banning the internet.

V. RECOGNIZING INTERNET FREEDOM AS AN INTERNATIONAL HUMAN RIGHT TO INCREASE INTERNET ACCESS AND FOSTER POLITICAL DISCOURSE ONLINE

Many arguments support recognizing internet access as a human right. In the context of the Arab Spring, had Egypt had universal access to the internet, the protests would have been better organized, spread faster, and achieved their results quicker.¹⁰⁸ Many countries have adopted laws and regulations promoting internet access with goals of achieving universal access to the internet.¹⁰⁹ Most notably, the UNHRC has adopted a sweeping resolution recognizing online freedom as a human right and calling on countries to address the digital divide and achieve universal internet access.¹¹⁰

The approach suggested by the UNHRC is much more broad than the laws and regulations most countries have implemented, even countries with the most liberal approach to internet freedom.¹¹¹ Nonetheless, the potential for abuse of power and the

108. See Burlacu & Țigănuș, *supra* note 67, at 43 (stating that the speed with which antigovernment events occur in different countries are heavily influenced by actions carried out in the virtual social environment).

109. Adrian Shahbaz, *Freedom on the Net 2018: The Rise of Digital Authoritarianism*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-net/2018/rise-digital-authoritarianism> (last visited Aug. 14, 2020) (discussing the many protections that countries have and rating countries based on internet freedom).

110. H.R.C. Res. 32/13, *supra* note 11, ¶¶ 1, 3, 5, 7, 8.

111. See Shahbaz, *supra* note 109 (showing that many countries lack internet freedom and that, by and large, countries are becoming more authoritarian in their regulation of the internet—decreasing the availability of the internet).

historical digital authoritarianism within many countries warrants a policy similar to the UNHRC Resolution.

A. *Prohibiting Internet Bans*

In response to the Arab Spring protests, the Egyptian Government blocked access to the internet and shut down all news agencies.¹¹² Content and access regulation continued briefly after Egyptians ousted President Mubarak, and the military regime took power.¹¹³ After Mubarak's removal from power, internet access was eventually restored and news agencies were allowed to publish information to the public.¹¹⁴ The government, however, did require that it approve any news article pertaining to the military prior to publication.¹¹⁵

The UNHRC Resolution would have prohibited blocking access to the internet and the requirement that the news agencies obtain approval before publishing information about the military.¹¹⁶ The United Nations would likely condemn or prohibit these acts as violations of freedom of speech, freedom of expression, right to assembly, right to participate in the government, and right to vote.¹¹⁷ However, for the purposes of

112. Williams, *supra* note 72.

113. Lim & Sexton, *supra* note 28 (noting that “the same week Mubarak was arrested, blogger Maikel Nabil was sentenced to three years in prison for ‘insulting the military.’”). The Supreme Council also issued a letter to Egyptian editors ordering them to obtain advanced permission before reporting anything on the armed forces. *Id.*

114. Tiffany Hsu, *Egypt's Internet Service is Restored*, L.A. TIMES (Feb. 2, 2011, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2011-feb-02-la-fi-egypt-internet-20110203-story.html>.

115. Lim & Sexton, *supra* note 28.

116. H.R.C. Res. 32/13, *supra* note 11, ¶ 10 (condemning measures to “intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law”).

117. G.A. Res 217 (III) A, *supra* note 18, art. 18–19 (upholding a universal right to freedom of opinion and expression, which includes the “freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media”).

this comment, the only relevant UNHRC resolution is the resolution recognizing online freedom as a human right.¹¹⁸

Because the Regime's action to quell the Arab Spring occurred prior to the UNHRC Resolution and infringed on similar rights protected by the UNHRC Resolution,¹¹⁹ it almost appears that the UNHRC drafted the Resolution in direct response to the events in Egypt. For example, in the Resolution, the UNHRC expresses that it is "deeply concerned" by "measures aiming to or that intentionally prevent or disrupt access to . . . information online."¹²⁰ This could be seen as a direct response to the Egyptian Government shutting down all internet access during the Arab Spring protests.

After voicing concerns about past government action blocking internet access, the UNHRC Resolution directly prohibits the government from affirmatively blocking its citizens from accessing the internet.¹²¹ The Arab Spring would likely have been much different had the UNHRC enacted this Resolution prior to the Arab Spring and had the Regime abided by it.

B. Addressing the Class Divide and the Digital Divide

The UNHRC Resolution also requires that governments take action to fix the digital divide and provide greater access to the internet to historically underprivileged groups, such as women and those with low income.¹²² This requirement would have also

118. See generally H.R.C. Res. 32/13, *supra* note 11, ¶ 1 (stating that the "same rights that people have offline must also be protected online, in particular freedom of expression").

119. See Lim & Sexton, *supra* note 28, at 304 (recounting that in Egypt, prior to the overthrow of Mubarak, censorship, indiscriminate confiscation and forced closures were commonplace—"[f]reedom of the press and freedom of expression faced severe limits," as politically sensitive websites were blocked.). See also H.R.C. Res. 32/13, *supra* note 11, ¶ 1 (stating that "the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable . . . through any media of one's choice").

120. H.R.C. Res. 32/13, *supra* note 11, at 2.

121. *Id.* ¶ 10; See also H.R.C. Rep. of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, transmitted by Frank La Rue, ¶¶ 29, 31, U.N. Doc. A/HRC/17/27 (May 16, 2011) (expressing concern on the arbitrary blocking or filtering of content on the internet).

122. H.R.C. Res. 32/13, *supra* note 11, ¶ 6.

assisted in fostering a more robust use of the internet during the Egyptian Arab Spring. Egypt has a large economic class divide.¹²³ This divide may have impacted the participation in and overall views that Egyptians held about the protests. Although no research directly supports this currently, Gallup polling has shown that Egypt's class divide had major implications on Egyptians' views of the 2012 Egyptian presidential election.¹²⁴

The 2012 elections were the first democratic elections in Egypt.¹²⁵ These elections were a result of the Arab Spring and Mubarak's removal from power.¹²⁶ Because of the link between the two events, it is likely that the polling data revealing the views held about the election by different socio-economic classes may be indicative of the views those same classes had on the initial protests.

The Gallup research found that, beginning in mid-2011, the lower economic class had a much more pessimistic view of the elections.¹²⁷ The poorer class's 91% faith in fair election results dropped to 75% in the months leading up to the election.¹²⁸ This data shows a generally declining optimism among voters in Egypt.¹²⁹

123. See Mitchell Hartman, *One Rich and Poor in Egypt*, MARKETPLACE (Feb. 23, 2011), <https://www.marketplace.org/2011/02/23/rich-and-poor-egypt/> (discussing the class divide in Egypt at the time of the Arab Spring and its impacts on society); see also Jamal Khashoggi, *The Post-Arab Spring Class Divide*, AL ARABIYA (Aug. 11, 2013), <http://english.alarabiya.net/en/views/news/middle-east/2013/08/11/The-upper-class-and-the-mob-in-the-post-Arab-Spring.html> (discussing the Egyptian class divide after the Arab Spring and how it could impact the future of the country).

124. Mohamed Younis & Ahmed Younis, *Disillusionment in Egypt Overrides the Class Divide*, GALLUP (Jan. 3, 2012), <https://news.gallup.com/poll/151853/disillusionment-egypt-overrides-class-divide.aspx> (providing the political temperature of both those Egyptians who are "living comfortably" and those who are finding it "very difficult").

125. Ernesto Londoño & Karin Brulliard, *Islamist Wins Egyptian Presidency*, WASH. POST (June 24, 2012), https://www.washingtonpost.com/world/middle_east/morsi-named-new-egyptian-president/2012/06/24/gJQAMZaazV_story.html (discussing the first election took place in 2005 and the first presidential election relatively free from fraud took place in 2012).

126. *Id.*

127. Younis & Younis, *supra* note 124.

128. *Id.*

129. *Id.*

The data reflecting the voter's views of ousted-President Mubarak is more interesting to this comment's inquiry. The Gallup polling found a large divide between the poorer class and wealthier class when asking the question, "In your opinion will conditions for [yourself] improve . . . as a result of President Mubarak's resignation?"¹³⁰ Poorer voters were much more likely to think that their conditions were not going to improve because of Mubarak's resignation; while wealthier voters initially held the opposite view, their optimism declined in the months leading up to the election.¹³¹ Lastly, the Gallup poll found that the wealthier citizens were much more likely to vote in the 2012 elections than poorer voters.¹³²

Although it does not address the views that Egyptians had regarding the Arab Spring or their participation in it, the polling can give great insight into the thought process and the potential problems needed to be remedied to better foster political discourse within the country.¹³³ The digital divide has a strong correlation between the economic divides,¹³⁴ and the Egyptian class divide is strong.¹³⁵ This would lead to the conclusion that Egypt had a serious digital divide issue pre- and post-Arab Spring protests.

Had the Egyptian Government been required to address the digital divide prior to the Arab Spring, it is likely that the protests would have been both better organized and of greater intensity.¹³⁶

130. *Id.*

131. *Id.*

132. *Id.*

133. *See generally id.* (establishing that voters' optimism for the political system will increase with a candidate that focuses on the economy, based on polling data that focused on class division).

134. *See* Anthony M. Orum, *Inequity in the Technopolis: Race, Class, Gender, and the Digital Divide in Austin*, 23 GREAT PLAINS RES. 83, 84 (2013) (book review) (defining the "digital divide" as a "division in resources and access to the new technology among people of different . . . social classes," and labeling poverty as a disadvantage associated with access to new technology).

135. *Compare* Hartman, *supra* note 123 (discussing the "growing, 'struggling' middle" class and the "tiny, very wealthy elite"), *with* Khashoggi, *supra* note 123 (proposing a strong divide exists between the rich and poor, strengthened by the government in Egypt when state funding is used to support the "upper class" in order to serve the poor).

136. *Cf.* Burlacu & Țigănuș, *supra* note 67, at 39 (stating that internet access was a driver of change). Although the research conducted in *The Role of the Internet in The Arab*

C. *Impacts on Future Protests and the Ineffectiveness of the Resolution*

Despite taking steps to remedy the egregious actions taken during the Egyptian Arab Spring and other places, the UNHRC Resolution did not prevent future actors from impeding the internet access of civilians during times of turmoil or protest.¹³⁷

Two issues are present preventing the UNHRC Resolution from being more effective at fostering online political discourse during times of protest: (1) Few countries are signatories to this Resolution;¹³⁸ and (2) enforcing the Resolution is difficult.¹³⁹ This section will analyze both, focusing mainly on enforcement difficulties.

1. *Lack of Signatories*

Egypt is not a signatory to the UNHRC Resolution.¹⁴⁰ However, 53 countries have signed the drafted resolution in support of it.¹⁴¹ Because of the number of countries that have signed the draft resolution, it is possible that an argument to consider the Resolution to be customary international law could be made. If this argument were successful, Egypt could, arguably,

Spring did not directly address the digital divide, the research focused on the Egyptians' lack of access to the internet and how internet access directly influences a population's uniform opinion and free exchange of information. *Id.* at 44. This research leads to the inferential conclusion that, if Egyptians had greater access to the internet, i.e. no digital divide, the problems created by lack of internet access would have presented less of a barrier to overcome.

137. Holland, *supra* note 77, at 947, 955 (discussing Ukraine blocking internet access to certain critical websites during times of conflict, after the UNHRC Resolution is in effect).

138. See Human Rights Council Res. 32/L.20, U.N. Doc. A/HRC/32/L.20, at 1 (June 27, 2016).

139. Makau wa Mutua, *Looking Past the Human Rights Committee: An Argument for De-Marginalizing Enforcement*, 4 BUFF. HUM. RTS. L. REV. 211, 211–12 (1998) (discussing the ineffectiveness of the international framework of enforcement due to its reliance on the threat of military action by other members of the Human Rights Committee, rather than the “quasi-judicial to the political” actions available).

140. H.R.C. Res. 32/L.20, *supra* note 138, at 1.

141. *Id.*

be required to abide by the Resolution to avoid existing international enforcement mechanisms.¹⁴²

Even so, customary international law is ambiguous and lacks international enforcement mechanisms.¹⁴³ Because there are no international enforcement mechanisms for customary international law, the majority of it is enforced, if at all, through domestic liability.¹⁴⁴ This enforcement mechanism requires that an aggrieved plaintiff bring a cause of action against a government in a court.¹⁴⁵ Some countries, such as the United States, have domestic laws allowing foreign plaintiffs to bring action against a foreign defendant if the complaint regards a human rights violation.¹⁴⁶ However, this is an ineffective enforcement mechanism because of the difficulties surrounding bringing action in a foreign court for injuries that occurred in a foreign jurisdiction.¹⁴⁷ Lastly, because the government is the entity creating the human rights violation, it is unlikely that the government would then allow an action against them to prevail in their own court system.¹⁴⁸

Because of the lack of enforcement mechanisms for customary international law, even if other countries subjected Egypt to the UNHRC Resolution via customary international law, there would still be no concrete way to enforce the Resolution. Therefore, it is

142. See generally Ryan M. Scoville, *Finding Customary International Law*, 101 IOWA L. REV. 1893, 1895–96 (2016) (defining customary international law as a “general and consistent practice of states followed by them from a sense of legal obligation”) (citations omitted); see also M.O. Chibundu, *Making Customary International Law Through Municipal Adjudication: A Structural Inquiry*, 39 VA. J. INT’L L. 1069, 1072 n.10 (1999) (discussing enforcement of human rights through litigation between nations in a foreign jurisdiction).

143. Chibundu, *supra* note 142, at 1076.

144. See *id.* at 1075–79 (discussing the typical powers of international law and their enforcement only being respected through domestic courts and other liabilities).

145. *Id.* at 1079.

146. *Id.* at 1087–88 (discussing appellate court acceptance of the obligation to entertain complaints of human rights violations by a foreign plaintiff).

147. *Id.* at 1071, 1105, 1148 (explaining that the lack of a requisite nexus is a large hurdle for foreign nations to overcome, undermining adjudicatory legitimacy when a court relies on its own jurisdictional limits to rationalize global jurisdiction).

148. See, e.g., *id.* at 1145 (showing that countries will not typically resort to “judicially imposed accountability on their past wrongdoers”).

unlikely that Egypt will be subjected to the UNHRC resolution unless they sign it.

2. *Lack of Enforcement Mechanism*

Two traditional enforcement mechanisms exist for human rights treaties.¹⁴⁹ First, the traditional international structures, such as the United Nations, may enforce human rights treaties through political means.¹⁵⁰ Enforcing through political means requires that the United Nations investigate claims of human rights violations and then, through traditional means such as military intervention, ensure that any violations discovered are remedied.¹⁵¹ Second, individual countries find violations of human rights and individually pursue action against the violator.¹⁵² Enforcement through the second means usually entails economic sanctions, and rarely includes military intervention.¹⁵³

Both of these enforcement mechanisms are inadequate and do not lead to human rights protections for populations most at risk of human rights violations.¹⁵⁴ Prior human rights research has concluded the opposite of this comment, finding that the enforcement mechanisms are adequate.¹⁵⁵ However, the key difference between that research and the questions presented in this comment is the international acceptance of the human rights being violated. The prior research focused on rights widely accepted, such as the right to vote, whereas the right to online

149. Mutua, *supra* note 139, at 212.

150. *Id.*

151. *See id.* (explaining that the UN typically must attempt enforcement through quasi-judicial and political means which typically intertwines with the second means of enforcement, sanctions and military intervention via an individual country's actions).

152. *Id.*

153. *Id.*

154. *Cf. id.* at 220 (reinforcing that many violating nations have signed on to participate in the "fashionable discourse" due to the lack of noticeable effect on their sovereign practices).

155. Vincent Dodoo, *The Demand for Human Rights in a Diverse Socio-Cultural World Society: Approaches and Tools*, J. POL. & L., Sept. 2011, at 162, 167.

freedom is a newly recognized right with only 53 countries adopting the resolution recognizing it.¹⁵⁶

D. Final Takeaways from the UNHRC Resolution

The UNHRC Resolution made monumental progress in ensuring that everyone can access the internet in times of protest. However, the lack of enforcement mechanisms, coupled with the few signatories, makes the resolution ineffective. Moving forward, the UNHRC and the United Nations General Assembly needs to develop more effective enforcement mechanisms so that all countries must abide by human rights—not just the countries that wish to do so. Without effective enforcement mechanisms, only the countries that already abide by the Resolution will recognize it as law.

VI. CONCLUSION

Egypt and many countries like it have a history of weaponizing internet access. Egypt favored universal internet access for several years,¹⁵⁷ until critics of the government began posting online. Then, the Egyptian government took dramatic measures to ensure that no person was able to criticize the government without punishment.¹⁵⁸ Had Egyptians not had the internet, the viral video of Bouazizi would have never sparked political protests that eventually led to democratic elections. The internet is fundamental to the ability of Egyptians to engage in

156. *Id.* at 164 (focusing on rights established by the U.N. up to 1993); see H.R.C. Res. 32/L.20, *supra* note 138, ¶ 15 (deciding to include “the right to freedom of expression, on the Internet and other information and communication technology, as well as of how the Internet can be an important tool for fostering citizen and civil society participation, for the realization of development in every community and for exercising human rights”).

157. Paslawsky, *supra* note 20, at 1506 (addressing the expansion of internet access for all Egyptians the first few years after becoming public, while Egypt simultaneously criminalized freedom of expression).

158. Arthur, *supra* note 74 (purporting that Egypt blocked websites, disabled telecommunications, and arrested bloggers critical of the government); Williams, *supra* note 72 (comparing the Egyptian government shutting down the internet to North Korea’s restrictions on its own citizens).

political discourse. Therefore, it is fundamental that all Egyptians have internet access.

To achieve this universal access, all countries need to adopt and recognize UNHRC Resolution A/HRC/32/L.20.¹⁵⁹ This resolution solves the problems that allowed the Egyptian Government to ban the internet. To prevent future violations, the UN needs to revitalize its enforcement mechanisms to better pressure countries into recognizing this Resolution, as well as to dissuade countries such as Egypt from impeding internet access.

159. H.R.C. Res. 32/L.20, *supra* note 138.

