The International Journal of Not-for-Profit Law

Volume 13, Issue 4, December 2011

A quarterly publication of the International Center for Not-for-Profit Law

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In this paper, we explore the connection between new technology and fundamental freedoms, specifically the rights to freedom of association and peaceful assembly. We examine how autocratic governments are increasingly targeting Facebook groups, social networks, and online communities—in other words, associational activities occurring on the Internet. We argue that many of these groups are protected "associations" under international law. We address the physical proximity argument, demonstrating that it is not required for individuals to meet in person in order to exercise their freedom of association. We also argue that the freedom of assembly protects groups that may not technically qualify as "associations" under international law.

We recognize that this is not the first time international law has had to grapple with new technology. We consider, for example, the case of the photocopier—last century’s great innovation to spread the written word. We examine the response of the Organization for Security Co-operation in Europe (OSCE) in 1990, which provides a model for reaffirming fundamental freedoms in the digital age. We conclude by arguing that longstanding commitments require states to respect the exercise of fundamental freedoms enabled by new technologies, including the Internet, mobile networks, social media, and technologies arising in the future.

I. Introduction

Recent events in the Middle East and North Africa have highlighted the need to examine the legal protections for associations, assemblies, and dissent in the digital age. During the “Jasmine Revolution” in Tunisia, the government blocked Facebook pages that promoted demonstrations, and it reportedly hacked into Facebook accounts to steal passwords, change entries, and delete anti-government Facebook groups. At the same time, the government arrested dissident bloggers and maintained its longstanding ban on YouTube until President Ben Ali left the country.

In late January 2011, the Egyptian government imposed broader Internet restrictions. In response to anti-government protests, the government began blocking all access to Twitter, Facebook, and Google. On January 27, the government “pulled the plug” on the entire Internet, impeding access for Egypt’s 15 million Internet users.

The technological “counter-revolution” continued after President Mubarak stepped down in February. In March, after protests erupted in Bahrain and Libya, the governments in those countries started a campaign to block social networking sites, such as Facebook and Twitter, as well as any online discussions that the authorities considered subversive. Since the 2009 “Green Protests” in Iran, the government has continued to train “senior Internet lieutenants” within the armed forces whose responsibilities include “confronting Iran’s virtual enemies online” and tracking individuals responsible for “spreading lies and insults” about the regime. Restrictions are not limited to the Middle East and North Africa; numerous countries around the world have adopted restrictions on the Internet, new media, and Information and Communications Technology (ICT).

These developments have led to a vibrant discussion in the international community about online freedoms and whether “society has reached the point at which Internet access is a basic human right?” While an interesting question, it is important to recognize that Internet access is already protected under existing rights and freedoms.

Freedom of opinion and expression have been most commonly cited as the primary legal bases to combat government interference with Internet access, but Internet freedom is also integrally linked with the rights of association and assembly. As recent events around the world demonstrate, governments are specifically using Internet restrictions to impede protests (i.e., assemblies), associations, and other online connections. Terminology also illustrates this link—governments are
targeting Facebook “groups,” “social networks,” "online communities,” and other forms of associational life on the Internet.

In this paper, we explore the connection between Internet freedom and other fundamental rights and freedoms, specifically the rights of freedom of association and assembly.

II. Brief Literature Review

For at least a decade there has been considerable literature written on the link between Internet freedom and the right to freedom of expression and speech. The “International Seminar on Promoting Freedom of Expression With the Three Specialised Mandates” published a Background Paper on Freedom of Expression and International Regulation in 2001. The paper cited two sources of law to justify the Right to Internet Access. First, it cited a 1982 Declaration adopted by the Committee of Ministers of the Council of Europe stating that “Member States should seek to achieve the availability and access on reasonable terms to adequate facilities for the domestic and international transmission and dissemination of information and ideas.” Second, it cited the European Court of Human Rights’ affirmation in Autronic AG v. Switzerland that the right to freedom of expression “applies not only to the content of information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive information.” Illicit restrictions on the freedom of expression, according to the paper, were prohibitions on access to the Internet, as well as registration and licensing requirements, filtering and blocking by law, monitoring and surveillance, and encryption.

In 2001, Professor William Fisher of Harvard Law School wrote an article "Freedom of Expression on the Internet” debating whether restraints on pornography, threats, and intellectual property on the Internet violate peoples’ rights. In the same year, a Masters Degree student at the Raoul Wallenberg Institute argued in his dissertation that as a “public sphere” the Internet should receive the same level of protection provided to rights of expression in the physical world. In 2003, the World Press Freedom Committee argued that the freedoms of speech, opinion, and press must be applied to new media of the 21st century just as Article 19 of the Universal Declaration of Human Rights protected older print and broadcast media rights after 1948.

More recently, in June 2011, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, presented a report to the UN Human Rights Council in which he primarily focused on the Internet and new technologies. He stated:

The right to freedom of opinion and expression is as much a fundamental right on its own accord as it is an “enabler” of other rights, including economic, social and cultural rights, such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly. Thus, by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realization of a range of other human rights.

The following section further examines the international legal framework for the freedoms of association and assembly, and new applications of these freedoms in the digital age.

III. International Law

A. Freedom of Association

As of December 2011, 167 countries have ratified the International Covenant on Civil and Political Rights (“ICCPR”). States Parties include a number of countries that have restricted online associational life, including Egypt, Libya, Tunisia, Sudan, Iran, Syria, China, Cuba, Ethiopia, and Vietnam.
Article 22 of the ICCPR states that "[e]veryone shall have the right to freedom of association with others." In 1998, the UN General Assembly adopted a resolution elucidating this right, clarifying that it transcends national boundaries:

Everyone has the right, individually and in association with others, at the national and international levels: ... (b) to form, join and participate in non-governmental organizations, associations, or groups.19

Under international law, individuals have the right to associate without seeking governmental approval or forming a legal entity. As the OSCE/ODIHR has stated, the law should "never condition the exercise of the right to freedom of association on the acquisition of formal status."20

The Human Rights Committee of the ICCPR has recognized this principle, stating on multiple occasions that mandatory registration of civil society organizations is not permissible under Article 22 of the ICCPR.21 The Committee found, for example, that Lebanon’s de facto practice of requiring prior licensing and control before an association may operate restricted the right to freedom of association under Article 22. In addition, the Committee expressed concern over Lithuanian legislation that required associations or organizations to comply with registration requirements in order to operate.22

Accordingly, it is not necessary for individuals to receive any sort of government registration or approval to form an "association" protected under international law. Rather, a group is recognized as an "association" under international law if it meets three criteria: 1) it pursues a defined aim, 2) it has more than an ephemeral existence by possessing some "stability of duration," and 3) it has a formal or informal institutional structure that provides members with a sense of belonging.23 These requirements are met by numerous online groups.

B. Associating in the Digital Age

To make the analysis more concrete, we apply the foregoing standard to three online associations: the "April 6 Movement" that originated in Egypt; the "One Million Voices Against FARC" that originated in Colombia; and "Mir Hussein Mousavi’s" Facebook page that originated in Iran.

The April 6 Movement began when Ahmed Maher opened a group on Facebook to organize support for a workers' strike on April 6, 2007. The members of the group reported on the strike, alerted online networks about police activity, and drew attention in the online world to the strikers' efforts. The Movement continued its activities and began organizing protests against illegal government actions, such as police torture and beatings, and by March 2011 the group had more than 100,000 members.24 During the anti-Mubarak protests in February 2011, the group's promotion of a "march of millions"25 was one of the primary factors responsible for the outpouring of masses of people that flooded Tahrir Square in Cairo to call for the resignation of Mubarak. Ahmed Maher, despite having spent time in prison in 2008, remains the group’s leader.26

The One Million Voices Against FARC group was started in January 2008 by a 33-year old Colombian, Oscar Morales, who was concerned about FARC's actions and the general disregard for FARC's continuous kidnappings.27 Within one week of opening his Facebook group, it acquired 100,000 members.28 He instructed new members to take up "officer roles"29 on issues from legal reform to public relations, and he set up a coalition of community organizers, or "coordinators,"30 spanning nearly 50 countries to raise funds for the organization's advertising campaigns and to plan protests against FARC on February 4, 2008.31 Some estimates place the number of people who protested in Bogota at between 500,000 and two million.32

Mohammed Sadeghi is the founder and head administrator of Mir Hussein Mousavi's Facebook page, which he launched on January 18, 2009. Sadeghi says that Mousavi called for "citizen staffs" to become a source of fundamental change in the nation, and the Facebook page allowed Sadeghi to spread Mousavi's message into the "non-political atmosphere of social networks." According to Sadeghi, media activities in social networks provided broader accessibility to the "virtual – not
necessarily political – society inspired by the weblog movement.” After the disputed Iranian elections in 2009, the Facebook group’s horizontal network structure and minimal reliance on central leadership helped it to mobilize the membership base. The webpage created a framework for citizen journalism, which “raised awareness of the events happening in Iran, be it in terms of empowering the circulation of information or in terms of mobilizing for rallies and to reach out to international mass media both inside and outside Iran.”

The April 6 Movement, One Million Voices Against FARC, and Mir Hussein Mousavi’s Facebook page all meet the three requirements enumerated above for the freedom of association. First, they have clearly defined aims. According to its Facebook page, the April 6 Movement was formed:

to obtain what was agreed upon by all the Egyptian intellectuals and national political forces on the need for Egypt to undergo a period of transition where the public figures work for the sake of this nation and dignity is established under the principles of democratic governance.

According to the One Million Voices Against FARC Facebook page, its mission is to:

design strategies to eradicate terrorism in Colombia through the awareness and the sensitization of society to the actions committed by illegal armed groups, taking advantage of the successful social force achieved in previous citizen marches.

The purpose of the Mir Hussein Mousavi Facebook page is to “to communicate Mousavi’s messages to his Green Movement supporters and the world at large.”

Second, the three groups have stability of duration. The April 6 Movement has been active since 2007. Its popularity has increased over time, and it was considered a “catalyst of the current political upheaval shaking up the government of Hosni Mubarak.” The Facebook groups of “One Million Voices Against FARC” and Mir Hussein Mousavi are also active today – with more than 580,000 members and 220,000 members (or people who “like” them) respectively – more than two years after their founding.

Third, Ahmed Maher, Oscar Morales, and Mohammad Sadeghi have provided leadership and institutional structure to their organizations. Ahmed Maher mapped the April 6 Movement’s protest strategy with a core group of other activists in the “operations room,” and Oscar Morales delegated members in the One Million Voices Against FARC group to serve in the role of “officers.” As a former State Department official commented, “One Million Voices Against FARC is the most sophisticated 550,000 person NGO you could ever imagine.”

Mohammad Sadeghi organizes the Mir Hussein Mousavi Facebook page as an online media platform from which networks of “Green media” can extend to the real world. He has also chosen to decentralize the campaign and encourages the Green Movement to send messages in any web compatible format “in order to reach out to the world despite the desperate attempt of the coup regime to wall off Iran from the rest of the world.” The thousands of members who regularly contribute to these three web pages reflect the “sense of belonging” that members share with respect to the group’s objectives.

In summary, these and other online associations meet the three-prong test to qualify as protected “associations” under international law.

C. The Issue of Physical Proximity

Some might argue that the freedom of association requires individuals to meet in person, but participation in in-person meetings is not a requirement for individuals to exercise the freedom of association. Consider, for example, the AARP (formerly the American Association of Retired Persons) in the United States, which has more than 40 million members, or the Sierra Club, which has more than 1.3 million members. While some members in these associations may convene at specific
events, it is neither practical nor necessary for the groups to convene their entire membership in person. In other countries, the same concept applies. For example, the Russian Pensioners’ Union has 1.4 million members and the All-Russian Association of Disabled Persons has more than 2 million members but members of those associations rarely attend in-person meetings. Nonetheless, the AARP, Sierra Club, Russian Pensioners’ Union, and the All-Russian Association of Disabled Persons are clearly protected “associations” under international law.

In Golder v. United Kingdom, the European Court of Human Rights (“ECHR”) indicated that even prisoners can be members of associations while behind bars. In that case, the defendant was in prison, and the prison administration denied him access to counsel. The ECHR held that constraints on Golder’s ability to participate in the full activities of an association to which he belonged could justifiably be restricted, but imprisonment could not otherwise be:

an obstacle to his continued membership in an association and involvement in its affairs; it would be very difficult to demonstrate that a restriction on freedom of association that went beyond the inevitable impracticality of attending meetings was something really needed for the purposes of confinement.

If a prisoner can be a member of an association when he is unable to attend meetings, then certainly physical proximity is not a requirement for other individuals to exercise their right to associate.

IV. Government Interference with the Freedoms of Association and Assembly

In Egypt, the government under Mubarak intended to suppress dissent and interfere with the demonstrations. Similarly, in Bahrain the government applied the Press and Publications Law No. 47 of 2002 to prevent people from accessing anti-government websites during anti-government protests in Manama.

Recognizing that online associations are protected under international law, we examine the grounds upon which these associations may be restricted. Under international law, restrictions on the freedom of association must meet a strict test. As stated in Article 22 of the ICCPR:

No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

A. Prescribed by Law

The first requirement is that restrictions be prescribed by law. Consider Egypt, which in January 2011 blocked the entire Internet. For five days members of the April 6 Movement and other online groups were unable to communicate via their online meeting forums, message boards, and blogs, or plan activities.

Egypt’s Emergency Law (Law No. 162 of 1958) grants broad powers to the President during emergencies and has been in effect continuously from October 1981 when President Sadat was assassinated. Among other powers in the Emergency Law, the President had the “authority to confiscate, suspend or shutdown the press and all means of communication.” However, in May 2010 when Egypt renewed the Declaration of Emergency, it explicitly limited the President to use powers only “as necessary to combat terrorism or drug trafficking,” and it did not explicitly grant the President the power to impose censorship or shut down newspapers and other media outlets. Thus, there was no legislative basis for the government’s blackout.

According to the Commentary on the Declaration of Human Rights Defenders issued in July 2011, the “prescribed by law” standard requires that restrictions on the freedom of association appear in some
legislative act and not merely an executive order or decree. As stated by the UN Special Rapporteur on the situation of human rights defenders:

The term "prescribed by law" makes it clear that restrictions on the right to freedom of association are only valid if they had been introduced by law (through an act of Parliament or an equivalent unwritten norm of common law), and are not permissible if introduced through Government decrees or other similar administrative orders. It would seem reasonable to presume that an interference is only "prescribed by law" if it derives from any duly promulgated law, regulation, order, or decision of an adjudicative body.57

Because there was no legislative act in Egypt that proscribed the activity targeted by the blockout, Egypt failed to meet the "prescribed by law" standard.58

B. Justifications

Even if the "prescribed by law" threshold is passed in a particular circumstance, an interference is justified only if it is "necessary in a democratic society" in the interest of "national security" or one of the three other grounds articulated in the ICCPR, Article 22. These grounds are strictly construed. As the UN Human Rights Committee General Comment 31(6) stated:

Where such restrictions are made, states must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.59

In interpreting nearly identical language from Article 11 of the European Convention on Human Rights, the European Court of Human Rights has made clear that "only convincing and compelling reasons can justify restrictions on the freedom of association."60

C. National Security

Neither Egypt nor Bahrain could reasonably rely on "national security" grounds to provide "convincing and compelling" reasons for their restrictions on the Internet during the Arab Spring. This is also true for Iran, which in 2009 charged anti-government protestors on Facebook and Twitter with harming Iran's national security by leaving comments on opposition discussion forums.61

National security provides an extremely limited basis to justify constraints on the freedoms of association and assembly. According to the Siracusa Principles:62

A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity....

Moreover, any restriction justified on national security grounds:

must respond to a threat to the country as a whole... and the threats cannot be merely to the ruling party nor relatively isolated.63 (Emphasis added).

Accordingly, restrictions may not be invoked "in the sole interest of a government, regime or power group"64 or when the purpose is to "frustrate revolutionary movements which do not threaten the life of the whole nation."65

As summarized in the Siracusa Principles, "national security" cannot be used as a pretext:

aimed at suppressing opposition ... or at perpetrating repressive practices against its population.66
In similar fashion, the UN Human Rights Committee has held that national security and other grounds cannot justify attempts to “muzzle advocacy of multi-party democracy, democratic tenets and human rights.”

Egypt’s blockout, Bahrain’s enforcement of the Publications Law No. 47, and Iran’s charges were not necessary to protect “the existence of the nation” or the countries’ “territorial integrity.” Rather, they were imposed to “suppress opposition,” “perpetrate repressive practices against [the] population,” and “muzzle advocacy of multi-party democracy.” Accordingly, they fall afoul of international law.

D. The Scope of Violations

The foregoing discussion illustrates that violations of international law arise when governments undertake comprehensive measures, such as blocking the Internet or restricting access to Facebook or other networking sites. Violations also arise when a government undertakes targeted harassment of online human rights organizations and dissident groups. As but one example, after the Iranian Green Revolution protests in Iran in 2009, Passport Control officers in Tehran’s Imam Kohmeini Airport forced Iranians who had been living abroad to open their Facebook accounts on a laptop computer and allow the officers to examine their messages and posts with others on Facebook. Several individuals had their passports taken away after an inspection of their account history revealed that they had criticized the government on Facebook in their online messages or posts. Other Iranian protestors were reportedly beaten during interrogation and forced to reveal their Facebook passwords, which the government used to obtain information about the protestor, the protestor’s list of friends and group affiliations, and the private communications between the protestor and other Facebook users.

A host of international legal instruments protect associations, particularly those seeking to promote human rights, democracy, or a change in the way the state is organized. In addition, ICCPR Article 17 protects the right to privacy:

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

According to leading scholars, international legal claims:

- can arise against obligations to supply government authorities with (possibly) confidential data, such as names and addresses of donors of the organization, or a list of members. Obviously, obligations of this nature may be, in a climate of political unrest, particularly detrimental to organizations with (unpopular) advocacy purposes (emphasis added).

Forced disclosure of membership lists can also give rise to legal claims at the national level. For example, in 1958, the U.S. Supreme Court considered a case where the state of Alabama sought to compel the National Association for the Advancement of Colored People (NAACP) to disclose its list of members. The Supreme Court stated that, “compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association ....” Furthermore:

Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

In terms of an ICCPR analysis, actions such as those taken by Iranian Passport Officers to force the disclosure of friendship, or membership, lists and the private information of dissident Facebook users constitute a “restriction” on the freedom of association. Following the analysis of Egypt, Bahrain, and Iran highlighted above, the Passport Officers’ actions cannot be justified in the interest of “national security” or other grounds enumerated in the ICCPR, Article 22. Accordingly, they contravene international legal protections guaranteed by the freedom of association.
In summary, the freedom of association is implicated if a government blocks the entire Internet, restricts access to social networking sites, forces disclosure of membership lists or the private information of online human rights groups, or undertakes other measures that restrict the exercise of the associational rights under Article 22 of the ICCPR.

V. Freedom of Assembly

Even if a group technically fails to meet the three-part standard to enjoy protection as an “association” under international law, it may still be protected under the right to peaceful assembly.

Article 21 of the ICCPR states, “The right of peaceful assembly shall be recognized,” and Article 20(1) of the Universal Declaration of Human Rights states, “Everyone has the right to freedom of peaceful assembly and association.”

The freedom of assembly encompasses “the individual right to come together and collectively express, promote, pursue and defend common interests.” This is the precise objective of a host of online groups and social networks, and the freedom of assembly protects these sorts of connections. As U.S. Secretary of State Hillary Rodham Clinton stated, “the freedom to connect is like the freedom of assembly, only in cyberspace.”

Moreover, the freedom of assembly is linked to the ability to petition the government for the redress of grievances. In Stankov, the ECHR held that:

In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realization is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means.

Traditionally, this has occurred through in-person assemblies and demonstrations in public squares and streets. Now, however, people can collectively petition the government and seek redress for grievances online. As U.S. Secretary of State Hillary Rodham Clinton stated, “cyber space, after all, is the public square of the 21st century.” For example, in March 2010 more than 130 people signed an online petition calling for Constitutional changes and free elections in the United Arab Emirates. Five of the signers were then arrested. There is a strong argument, however, that petitioning the government online is protected under the freedom of expression, the freedom of assembly, and other international legal bases.

In addition, the Internet and other technologies are used to help organize demonstrations and other assemblies. The freedom of assembly protects not only the actual assembly but also preparatory measures to undertake an assembly. Accordingly, Internet restrictions—such as blockouts intended to impede the organization of peaceful protests—violate international law.

VI. Human Rights and New Technology

This is not the first time that international human rights law has dealt with the ramifications of new technology.

Consider the case of mass printing technology, particularly photocopiers. The mass dissemination of information was threatening to certain governments, so they sought to restrict access to this technology.

In 1990, the Organization for Security and Co-operation in Europe (OSCE) addressed this issue. Specifically, it took action to reaffirm that the freedom of expression applied to this new technology. As the OSCE stated in Article 9.1 of the Copenhagen Document:
Everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright.\textsuperscript{83}(Emphasis added.)

The Copenhagen Document recognizes that the laws governing new technologies must incorporate preexisting rights. In 1990, photocopiers and the freedom of expression were at issue. Today, we speak of social media and a host of fundamental freedoms, including the rights to freedom of expression, association, and assembly. In both cases, international law requires that individuals be able to exercise their fundamental rights and freedoms through the Internet and social media. In the words of U.S. Secretary of State Hillary Rodham Clinton, “enduring freedoms, new apps.”\textsuperscript{84}

VII. Conclusion

In summary, existing commitments require states to respect the rights of individuals to associate and assemble on land as well as online. More than two dozen countries supported this principle in a Draft Declaration on Fundamental Freedoms in the Digital Age, which was presented at the OSCE Ministerial Council in Vilnius, Lithuania, on December 6, 2011.\textsuperscript{85}

The Draft Declaration stated that “human rights and fundamental freedoms do not change with new technologies and that they extend into the Digital Age.” Moreover, it reaffirmed countries’ commitments to respect the exercise by individuals, including members of groups and organizations, of their human rights and fundamental freedoms, including through new technologies such as the Internet, mobile networks and social media tools.

The OSCE operates by consensus, and certain governments blocked the adoption of the Draft Declaration. Nonetheless, it is remarkable that over two dozen countries co-sponsored the declaration, which provides a solid foundation for future initiatives in this area.

A number of countries have already issued clear statements in defense of online freedoms. As a particularly notable example, in June 2010, the Swedish Ministry of Foreign Affairs, stated:

For Sweden, one principle is particularly fundamental: the same rights that people have in general—such as freedom of expression, including the freedom to search for information, freedom of assembly and freedom of association—must also be protected on the Internet.\textsuperscript{86}

Similarly, in December 2011, Secretary of State Hillary Rodham Clinton stated:

Fundamental freedoms ... apply as much to a Twitter conversation and a gathering organized by NGOs on Facebook as they do to a demonstration in a public square.\textsuperscript{87}

It is important that more be done to reaffirm these principles at the national, regional and global levels in order to counter the technological “counter-revolution” and to establish the basis for human rights law in the years to come. At its core, international law permits individuals to exercise their fundamental freedoms using a panorama of modalities, including cutting-edge technologies that exist today – and in the future.

Notes
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While this paper highlights restrictions on the Internet and social media, the freedoms of association and assembly also apply to other “non-computer” means of transmitting information and communicating, such as telephone wires or cell phone signals. See supra note 9 (“BART cellphone blocking raises uproar”).


OSCE/ODIHR Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations, page 5; see also U.N. Special Representative Report, page 21 (“NGOs should be allowed to exist and carry out collective activities without having to register if they so wish.”)


36 Id. http://globalvoicesonline.org/2010/05/05/iran-126000-fans-cheer-mousavis-opposition-facebook-group/.


Indeed, many associations around the world are moving to an online medium to carry out their activities. Members can obtain their “sense of belonging” to the association from the organization’s website, blogs, live-streaming programs, telephone calls, and other information and communication technology. The Sierra Club’s “Sierra Student Coalition” has an online sub-community where “where youth can connect, engage and organize around the most pressing environmental and climate issues of our time.”

The European Court of Human Rights resolves disputes brought against the European member states under the European Convention on Human Rights (“ECHR”); the Court’s decisions are considered to have global significance because the provisions of the ECHR on association and expression are virtually identical to those of the ICCPR and other conventions. We have therefore included references to the Court’s decisions where relevant.

54 During the anti-government protests in Manama when someone in Bahrain attempted to access a proscribed website the following warning appeared: “Site Blocked: This website has been blocked by the order of the Ministry of Culture and Information based on Article 19 of decree Law No. 47, 2002 regarding the organization of the press, printing and publishing in the Kingdom of Bahrain, due to the publication of prohibited content on the aforementioned site.” The authorities also used Article 47 in conjunction with Article 15 and Article 365 of the 1976 Penal Code to interrogate and prosecute more than 14 journalists as well as bloggers and website administrators.

55 ICCPR, Article 22.


58 The "prescribed by law" standard also requires that the law be accessible (published) and that its provisions be "formulated with sufficient precision to enable the persons concerned to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct (See, for example, N.F. v. Italy, no. 37119/97, §§ 26-29, ECHR 2001-IX; and Gorzelik and others v. Poland [GC], no. 44158/98, §§ 64-65, ECHR 2004-I).” If the Egyptian government did in fact have a different law that proscribed the blockout, then the government failed to make that law or regulation broadly accessible before, during, or after the blockout. After conducting research, colleagues in Egypt were unable to locate such a law. So even if a law exists, it could not be considered "accessible.”


60 See, for example, Case of Sidiropoulos and Others v. Greece, 4 Eur. Ct. H.R. 500, paragraph 40 (1998) and Case of United Communist Party of Turkey and Others v. Turkey, 4 Eur. Ct. H.R. 1, paragraph 46 (1998), both holding that only "convincing and compelling" reasons can justify restrictions on the right to freedom of association, and that the restrictions must be "proportionate to the legitimate aim pursued.”

61 Id. http://online.wsj.com/article/SB125978649644673331.html


Id. Coliver.


See supra notes 52-54.

Id. http://online.wsj.com/article/SB125978649644673331.html


The Universal Declaration of Human Rights (UDHR) employs almost identical language in its Article 12. The European Convention on Human Rights (ECHR), in Article 8, also enshrines the right to privacy: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."


357 US 449 (1958)

Article 20(1) of the Universal Declaration of Human Rights (1948)


See, for example, the Missouri Constitution, which states: "That the people have the right peaceably to assemble for their common good, and to apply to those vested with the powers of government for redress of grievances by petition or remonstrance...."

Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, nos. 29221/95 and 29225/95, § 85 in fine, ECHR 2001-IX; see also Case of Schwabe and M.G.v. Germany nos. 8080/08 and 8577/08, § 113, ECHR 2011-IX, ("There is little scope under Article 10 of the Convention – in the light of which Article 11 has to be construed... for restrictions on political speech or on debate on questions of public interest").
Remarks at the Civil Society Meet and Greet.


See, for example, Christians Against Racism and Fascism v. UK (1980) 21 DR 138, page 148

This section is based on the significant intellectual contributions of Lynne Davidson.


Most of Europe, the United States, and Canada supported the Draft Declaration. According to a Senior U.S. State Department official, “among the countries that have been really strong on [the Draft Declaration] are the Dutch, the Swedes, and the United States and Canada.” See Background Briefing on the Secretary’s Travel to Lithuania. http://www.state.gov/r/pa/prs/ps/2011/12/178297.htm. Special Briefing, Senior State Department Officials. En Route Vilnius. December 5, 2011. Accessed: December 7, 2011.
