Abhandlungen

Mapping the International Law of Peaceful Protest

Florian Kriener*
Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany
kriener@mpil.de

Abstract

The regulation of peaceful protest in international law remains a largely uncharted territory. Despite the pivotal role protests retain in societal conflicts and the implementation of international rights, the absence of explicit

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recognition and thorough examination in international treaties and legal scholarship presents a significant gap. This Special Issue on 'Protest and International Law' endeavours to bridge this gap, offering a synthesis of the emerging legal framework and jurisprudence that protect and regulate peaceful protest. By way of introduction, this article addresses the protection deficits for peaceful protests and highlights three emerging trends in this field of law. First, protests are increasingly seen as a legitimate form of participating in public affairs. Second, there is an emerging understanding that protests should receive a comprehensive protection in international law. Third, protests will produce outcomes that are eligible for international recognition. These interpretative trends could guide the integration of peaceful protests into international law in the years to come.

Keywords

peaceful protest – peaceful assembly – right to protest – Inter-American Court of Human Rights – African Union – Human Rights Law

I. An (Almost) Empty Map

Protest is not an established concept in international law – to date. As of 2026, no international treaty mentions the term 'protest'. Likewise, international legal scholarship has not engaged with the term or the concept of popular protest on a thorough level.[1] Different aspects related to protest have been under examination throughout the recent decades (or even centuries). These include the concepts of revolution or rebellion,[2] the right to peaceful assembly,[3] the role of social movements,[4] and differing conceptions

1 A notable exception being Azadeh Dastyari and Maria O'Sullivan, *International Law and the Regulation of Protest* (Routledge 2026).

2 Chiara Redaelli, 'Revolutions' in: Rainer Grote, Frauke Lachenmann and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Comparative Constitutional Law* (OUP 2021); Chiara Redaelli, 'The Right to Rebel Against Violations of Human Rights: A New Role for the Responsibility to Protect?', The Palestine Yearbook of International Law 19 (2016), 8-41; Thomas Keenan, 'The Libyan Uprising and the Right of Revolution in International Law', International and Comparative Law Review 11 (2011), 7-32 (32).

3 Art. 21 International Covenant on Civil and Political Rights; Art. 11 European Convention on Human Rights; Art. 15 American Convention on Human Rights; Art. 11 African Convention on Humans' and Peoples' Rights; Art. 24 para. 6 Arab Charter on Human Rights; Tabatha Abu El-Haj, Michael Hamilton, Thomas Probert and Sharath Srinivasan (eds), *The Oxford Handbook of Peaceful Assembly* (Oxford University Press 2025).

4 Balakrishnan Rajagopal, 'International Law and Social Movements: Challenges of Theorizing Resistance', Colum. J. Transnat'l L. 41 (2003), 397-433; Balakrishnan Rajagopal, *International Law from Below, Development, Social Movements and Third World Resistance* (Cambridge University Press 2003).

of civil resistance.[5] However, peaceful protest, which is understood as a collective, iterative and protractive form of political participation that primarily engages extra-institutional channels through nonviolent means is not fully encompassed by these discussions or legal frameworks. It is situated in a fringe position.[6]

This state of international law (and scholarship) is unsatisfying. Protests have emerged as a central form for engagement with international law, particularly through demands for the implementation of international law and the use of international legal rights. Furthermore, protests have replaced violent forms of conflict as the central form for engaging in societal conflicts.[7] Whereas the former is significantly regulated by International Humanitarian Law (IHL),[8] including in Non-International Armed Conflicts, the latter has to date only seen incipient regulation and there is a protection gap for many important aspects of protest. However, this body of law is growing. For example, in 2024, for the first time in its jurisprudence, the Inter-American Court of Human Rights recognised that 'peaceful protests' qualify as a manifestation of the rights to peaceful assembly, freedom of expression, freedom of association, and due to the circumstances of the case before it the self-determination of indigenous peoples.[9]

This Special Issue on 'Protest and International Law' seeks to synthesise this emerging field in international law. The contributors highlight the recent

5 Dorothy Estrada-Tanck, 'Civil Resistance in Public International Law', Anuario Español de Derecho Internacional 35 (2019), 373-403; Matthew Lippmann, 'The Right of Civil Resistance Under International Law and the Domestic Necessity Defense', Dick. J. Int'l L. 8 (1990), 349-373; Francis Anthony Boyle, *Defending Civil Resistance under International Law* (Transnational Publishers 1987); Frédéric Mégret, 'Civil Disobedience and International Law: Sketch for a Theoretical Argument', Can. Yb. Int'l L. 46 (2008), 143-192.

6 Florian Kriener, 'Protest Movements: On the Fringes of International Law', Proceedings of the ASIL Annual Meeting 117 (2024), 323-326; for a similar analysis see Illan rua Wall, 'The Right to Protest', The International Journal of Human Rights 28 (2024), 1378-1393 (1378-1379). There are multiple studies on protest in Comparative Public Law, which do not address protest at the level of public international law, see e. g. Katharina Braun, *Law and Protest at the Periphery of Democracy* (Nomos 2024).

7 Erica Chenoweth and Maria J. Stephan, *Why Civil Resistance Works, The Strategic Logic of Nonviolent Conflict* (Columbia University Press 2011); Erica Chenoweth, 'The Future of Nonviolent Resistance', Journal of Democracy 31 (2020), 69-84. Political scientists have identified a sharp incline in protests throughout recent years, see Sebastian Hellmeier and Michael Bernhard, 'Regime Transformation From Below: Mobilization for Democracy and Autocracy From 1900 to 2021', Comparative Political Studies 56 (2023), 1858-1890.

8 For an analysis of non-violent civil defence in IHL see Saskia Millmann and Pia Hüsch, 'Civilian Non-Violent Defence Against Russian Warfare – Eastern European Strategies and the Gap Between Civilians and Combatants in Customary International Humanitarian Law', Baltic Yearbook of International Law 22 (2023), 147, 159-162.

9 IACtHR, *Huilcamán Paillama and others v. Chile*, judgment of 18 June 2024, Series C No. 527, paras 249 ff.

developments in the different fields of international law and demonstrate how protest is slowly but gradually leaving its fringe position. The contributions will demonstrate that the normative developments in reaction to the rising importance of protests have created an emerging international legal framework to analyse and integrate human protest, both within international human rights law and beyond.

By way of introduction, this contribution will set the scene for analysing peaceful protests in international law and connect the emerging interpretative patterns that guide the integration of protest into international law. First, the concept of peaceful protest is defined and outlined (II.). Then, the structural difficulties of integrating protests within the existing framework of international law are detailed (III.). Drawing on the different contributions to this special issue and recent developments in international jurisprudence, the third section highlights how protests are currently integrating into international law (IV.). These recent developments exhibit common trends, which will be laid out in section V. First, international law recognises peaceful protest as a legitimate form of participation in public affairs. Second, international law generally allows for peaceful protest and principally forbids its suppression. Third, from the perspective of international law, peaceful protests will provoke legitimate and lawful changes within states, which are therefore eligible to recognition by other states. The following section will highlight the fields of international law that could see an integration of peaceful protests along these lines in the future (VI.). The final section underscores the mutually beneficial relationship between protests and international law (VII.).

The further contributions of the Special Issue, which are an essential foundation for the argument presented in this introduction, take a deep-dive on the regulation of protests in individual fields of international law and concerning particular dynamics. This includes the fields of Universal Human Rights Law (Maria O'Sullivan), the American Convention on Human Rights (Marcos Vela Avalos), the European Convention on Human Rights (Dmitrii Kuznetsov), and the way protests catalyse international law developments and demand the realisation of international legal norms within their societies (Zoe Tongue).

II. The Concept of Peaceful Protest

International law does not offer a conception or definition of human protest. Protest by states has been conceptualised as a statement or unilateral act by a state to remit is rejection concerning actions, claims, or statements of

a different state.[10] The International Court of Justice (ICJ) has given importance to such acts of protest when considering whether a state had acquiesced or was estopped from making claims under international law.[11] However, state and human protest differ considerably and operate within wholly different normative contexts.

Therefore, the starting point for analysing protest through the lens of international law are the numerous studies in sociology and political sciences on the topic of protest. The sociological fields that are now known as social movement studies emerged in the 1970s.[12] Before, research on political participation had focused on institutional settings, i. e. public participation in established institutions of political power, such as parliaments, courts, and the public administration. In their seminal contribution, Barnes and Kaase expanded the horizon and identified 'unconventional' participation as a central form of public participation in shaping societies and the distribution of power within them.[13] Similarly, Gene Sharp's 1973 'Politics of Nonviolent Action' theorised Mohandas K. Gandhi's and Martin Luther King's writings and practice and identified nonviolent and extra-institutional actions as a central form of waging societal conflicts.[14] In the following decades, this research field has engaged thoroughly with the functions, structure, and impact of protest.[15] Protest is now recognised and accepted as one of the means of doing politics.[16] Although the exact definition of protest is disputed in the field, authors commonly refer to protest as a collective, iterative, and protractive form of political participation that primarily engages extra-institutional channels.[17] Generally, protest will profess an alternative vision to the established paradigms within a society and provoke a societal conflict.

Importantly though, both violent and nonviolent protests qualify as protest from a sociological/political science perspective.[18] To be apt for the legal

10 Przemyslaw Saganek, *Unilateral Acts of States in Public International Law* (Brill/Nijhoff 2016), 602 ff.; Iris Breutz, *Der Protest im Völkerrecht* (Duncker & Humblodt 1997).

11 ICJ, *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* (Malaysia/Singapore), judgment of 23 May 2008, ICJ Reports 2008, 12 (paras 33-34).

12 Hank Johnston, 'Analyzing Social Movements, Nonviolent Resistance, and the State' in: Hank Johnston (ed.), *Social Movements, Nonviolent Resistance, and the State* (Taylor & Francis 2019), 1-24.

13 Samuel H. Barnes and Max Kaase, *Political Action – Mass Participation in Five Western Democracies* (Sage Publications 1979).

14 Gene Sharp, The Politics of Nonviolent Action, Part One: Power and Struggle (Porter Sargent Publishers 1973).

15 This includes specialized journals, such as Mobilization: An International Quarterly.

16 Johnston (n. 12), 2.

17 Mario Quaranta, *Political Protest in Western Europe – Exploring the Role of Context in Political Action* (Springer 2015), 24, providing an overview of the relevant discussion.

18 Quaranta (n. 17), 23.

analysis presented in this introduction and Special Issue, this definition requires a qualification. International law, and international human rights law in particular, does not protect violent behaviours by individuals and non-state collectives and is particularly critical of violent forms of public participation.[19] International law only permits violence under specific circumstances and when it emanates from state actors (e. g. using force under Chapter VII of the United Nations Charter; repressing a violent assembly in terms of Art. 21 of the International Covenant on Civil and Political Rights).[20] An inquiry into the emerging legal regulation of both nonviolent and violent protests would therefore have to be limited, considering international law's unequivocal condemnation of violent protest. To unveil the growing trends in the regulation of protest, this study must therefore restrict itself to nonviolent protests. Nonviolence is therefore added as a fourth element to the definition of protest and provokes the limitation of this inquiry to 'peaceful protest'.

Measuring and determining each of the elements of peaceful protest can prove difficult and is subject to long-standing controversies within the respective fields.[21] Instead of presenting these controversies within social movement scholarship, this paper will distinguish each of the characteristics of protest from the perspective of international law. This will demonstrate the fringe position of protests within the established categories and norms of international law.

III. Protest's Fringe Position

When humans engage in protest, some of their actions will be protected under international human rights law and democracy protection regimes, such as the African Charter on Democracy, Elections and Governance, or the

19 Wall (n. 6), 1385. See Human Rights Committee, General Comment No. 37, Article 21: right to peaceful assembly, CCPR/C/GC/37, 27. July 2020, para. 15.

20 See generally on this matter Keenan (n. 2), 31-32; Wall (n. 6), 1386. The only notable exception for legal non-state violence are self-determination struggles. Though this view is not uniform, there are numerous proponents of this view. For the general discussion see: United Nations General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, A/Res/2625 (XXV), Annex, 24 October 1970, Principle 4 (Self-Determination); Redaelli, 'Right to Rebel' (n. 2), 25; Jordan J. Paust, 'International Law, Dignity, Democracy, and the Arab Spring', Cornell Int'l. L. J. 46 (2013), 1-19 (18); Yasmine Nahlawi, 'Self-Determination and the Right to Revolution: Syria', Human Rights & International Legal Discourse 8 (2014), 84-108.

21 Quaranta (n. 17), 24; Johnston (n. 12), 3-10.

Inter-American Democratic Charter.[22] However, none of the recognised human rights encompass the four elements of peaceful protest. In particular, the right to assemble peacefully does not protect the protractive and enduring nature of protest (1.). Likewise, the right to political participation only protects institutional forms of political engagement and does not enable extra-institutional participation (2.). Furthermore, the concept of civil disobedience is limited to an individual act of resistance that does not contemplate the collective nature of protest (3.). The resulting fringe position of protests reflects the state-centric understanding of international law that was predominant during the conception of the relevant human rights and democracy protection treaties (4.). This results in a protection gap for peaceful protest (5.).

1. The Right to Assemble Peacefully

Art. 21 of the International Covenant on Civil and Political Rights (ICCPR) contains the right to assemble peacefully, which is also reflected in the regional human rights treaties.[23] In its General Comment 37, the Human Rights Committee (HRC) defined an assembly as a 'non-violent gathering by persons for specific purposes, principally expressive ones' and affirmed that '[i]t constitutes an individual right that is exercised collectively'.[24] Protests can take the form of peaceful assemblies, such as marches and rallies. Indeed, the most visible and notable form of protest are large demonstrations. However, protest goes beyond what is defined as an assembly, both in a temporal scope and in terms of nonviolence as understood by human rights bodies.

First, the right to assemble only protects a singular gathering. According to the HRC this includes all necessary steps for holding an assembly such as its organisation, announcement, travel to and departure from the gathering, and coordination among participants.[25] This shows that the protected scope of an assembly ends when the physical gathering ends and that an assembly is conceptualised as a temporally limited event.[26]

22 African Charter on Democracy, Elections and Governance, UNTS Vol. 3267, signed 30 January 2007; Inter-American Democratic Charter, signed on 11 September 2001, available at: <oas.org/en/democratic-charter/pdf/demcharter_en.pdf>, last access 7 May 2026.

23 Art. 11 European Convention on Human Rights; Art. 15 American Convention on Human Rights; Art. 11 African Convention on Humans' and Peoples' Rights; Art. 24 para. 6 Arab Charter on Human Rights.

24 Human Rights Committee (n. 19), para. 4.

25 Human Rights Committee (n. 19), para. 33.

26 William Schabas, *Nowak's CCPR Commentary* (3rd edn, N. P.Engel 2019), 926.

In turn, protest is defined by its protractive character that unites a variety of temporally dispersed gatherings. Both the protractive and iterative elements of protest do not receive protection. While this is not explicit in the HRC's decisions, this derives from its conception and definition professed in General Comment 37 and the relevant decisions on the freedom of assembly.[27] Moreover, the European Court of Human Right's (ECtHR's) case law provides evidence for this understanding.[28] In *Cisse v. France*[29] and *Nosov v. Russia*,[30] the ECtHR held that the dissolution of assemblies after a prolonged period of two months and several weeks respectively was justifiable considering that the assemblies had already been granted the opportunity to voice their concerns. The Court thus affirmed that an 'assembly' in terms of Art. 11 European Convention on Human Rights (ECHR) is a temporarily limited event. Furthermore, the Court denied protection for a protest camp and its associated infrastructure that protesters had set in place to maintain their continuous and repeating acts of protest.[31] Such protest infrastructure can be crucial to build momentum and sustain a multitude of protest events.[32] Yet, as the ECtHR case law shows, which is likewise confirmed by the General Comment 37,[33] infrastructure that enables a multitude of protest events is generally not protected under the right to assemble peacefully.

Second, the law of peaceful assembly is recurrently construed as a barrier against more confrontational forms of nonviolent protest. So-called direct action measures will generally not receive human rights protection despite being nonviolent. The term violence is defined by the General Comment 37 as 'the use by participants of physical force against others that is likely to

27 See Sarah Joseph and Melissa Castan, The International Covenant on Civil and Political Rights, Cases, Materials and Commentary (3rd edn, Oxford University Press 2013), Arts 19.02-19.12.

28 For an overview of freedom of assembly law in the ECHR states, see: Anne Peters and Isabelle Ley, *The Freedom of Peaceful Assembly in Europe* (Nomos 2016).

29 ECHR, *Case of Cisse v. France* (application no. 51346/99), judgment of 9 April 2002, para. 52.

30 ECHR, *Case of Nosov and others v. Russia* (application nos 9117/04 and 10441/04), judgment of 20 February 2014, para. 60.

31 ECHR, *Case of Frumkin v. Russia* (application no. 74568/12), judgment of 5 January 2016, para. 107; ECHR, *Case of Razvozzhayev v. Russia and Ukraine and Udalstov v. Russia* (application nos. 75734/12 and 2 others), judgment of 19 November 2019, para. 285.

32 Gavin Brown, Anna Feigenbau, Fabian Frenzel and Patrick Mc Curdy, *Protest Camps in International Context, Spaces, Infrastructures and Media of Resistance* (Oxford University Press 2018).

33 Human Rights Committee (n. 19), para. 58: 'Assemblies may entail the *temporary* erection of structures, including sound systems, to reach their audience or otherwise achieve their purpose.'.

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result in injury or death, or serious damage to property'.[34] This physical definition of violence is likewise applied in the regional human rights regimes[35] and can thus be used to define the term peaceful protest. In accordance with the physical definition of violence, so-called direct action measures, such as road blocks and sit-ins in public or private spaces are considered peaceful.[36]

However, the ECtHR considers these means of protests to be 'reprehensible'[37] and has an elaborate case law in which state intervention and criminal prosecution of such 'direct action' measures was considered proportionate and therefore justified.[38] Although the General Comment 37 suggests more openness with regard to direct action measures,[39] the HRC's subsequent application of General Comment 37 has neither given more detail on this issue nor clarified when direct action can accrue protection under Art. 21 ICCPR. More confrontational forms of protest must therefore be considered outside of the protection of human rights law.

Therefore, significant elements of peaceful protest are not protected under the human right to assemble peacefully. Most importantly, the iterative and protractive character of protest do not conform to the temporarily limited character of an assembly in terms of human rights law. Furthermore, more confrontational, but nonviolent protest measures can be subject to measures of state repression. The right to assembly thus covers important aspects of protests, but leaves several aspects unprotected.

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34 Human Rights Committee (n. 19), para. 15.

35 IACtHR, *Huilcamán Paillama* (n. 9), para. 259; ECHR (Grand Chamber), *Case of Kudrevičius and Others v. Lithuania* (application no. 37553/05), judgment of 15 October 2015, para. 101.

36 ECHR, Kudrevičius and Others (n. 35), see further Florian Kriener, Proteste und Intervention – Die staatliche Unterstützung gewaltfreier Protestbewegungen im Völkerrecht (Nomos 2024), 239-240.

37 ECHR, *Kudrevičius and Others* (n. 35), para. 101.

38 ECHR, *Drieman and Others v. Norway* (application no. 33678/96), decision of 4 May 2000, 8-10; ECHR, *Lucas v. United Kingdom* (application no. 39013/02), decision of 18 March 2003, 9; ECHR, *Steel and Others v. the United Kingdom* (application no. 24838/94), judgment of 23 September 1998, paras 90-93; ECHR, *Barraco v. France* (application no. 31684/05), decision of 5 March 2009, para. 46; Helen Fenwick and Gavin Phillipson, 'Direct Action, Convention Values, and the Human Rights Act', Legal Studies 21 (2001), 535-568; Kriener, *Proteste und Intervention* (n. 36), 239-240.

39 Human Rights Committee (n. 19), para. 16.

2. The Right to Political Participation

Likewise, the human right to political participation principally enshrined in Article 25 ICCPR and reinforced by regional human rights treaties[40] and democracy protection regimes[41] does not protect protest. Art. 25 lit. b and c ICCPR protect the right to vote and be-elected and the equal access to public office. Accordingly, they enable participation within the structures developed and provided by a state. This extends to exceptional forms of public participation such as referenda and public votes to adopt or reform a constitution.[42] Crucially, however, Art. 25 ICCPR does not convey an individual right to call for an election or a referendum.[43] In its case law, the Human Rights Committee has therefore restricted its understanding of participation in public affairs in terms of Art. 25 lit. a ICCPR to institutional forms of participation.[44] This is mirrored by democracy protection regimes. They safeguard institutional forms of democratic participation and most importantly, prohibit violent breakdowns of the democratic order, i. e. through coups d'état.[45] However, popular forms of political participation are not contemplated.[46]

In turn, protests seek extra-institutional forms of influencing public decisions.[47] They frequently oppose participation forms that are opened up (and controlled) by state institutions. Boycotts of elections or other forms of public participation are a common form of protest.[48] These actions, alongside other explicitly extra-institutional methods of public influence, are therefore not protected through the right to political participation in international human rights law.

40 Art. 23 ACHR; Art. 13 ACPHR; Art. 3 AP 1 to ECHR.

41 Art. 1 Inter-American Democratic Charter; Art. 3 para. 7, Art. 4 para. 2 African Charter on Elections, Democracy, and Human Rights; Art. 3 Additional Protocol I to the European Convention on Human Rights.

42 Human Rights Committee, General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), CCPR/C/21/Rev.1/Add.7, 12.6.1997, para. 6.

43 Schabas (n. 26), Art. 25, para. 16.

44 See Joseph and Castan (n. 27), Arts 25, 22.16.

45 Art. 9 OAS Charter; Art. 23 ACDEG; see Erika de Wet, 'The African Union's Struggle Against "Unconstitutional Change of Government": From a Moral Prescription to a Requirement Under International Law?', EJIL 32 (2021), 199-226.

46 Kriener, *Proteste und Intervention* (n. 36), 196 ff.

47 Sharp (n. 14), 11.

48 Sharp, The Politics of Nonviolent Action, Part Two: The Methods of Nonviolent Action (Porter Sargent Publishers 1973), 303 ff.

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3. Civil Disobedience or Civil Resistance

Concepts of civil disobedience or civil resistance have recurrently surfaced in international legal scholarship throughout the past decades.[49] Although different authors employ varying definitions, at their core they follow a Habermasian understanding of civil disobedience.[50] Civil disobedience presupposes the violation of a national rule enshrined in positive law to protest the unjust character of that specific law or the entire legal order.

Civil disobedience thus centres on an individual decision to violate a rule. In turn, protests do not necessarily rely on the violation of (national) laws. The vast majority of nonviolent protest measures will remain within the confines of national laws. Moreover, the collective nature of protest is not adequately conceptualised within the framework of civil disobedience. These scholarly endeavours, though valuable in their particular fields and contributions, do not capture the essence of protests that is central to this Special Issue.

4. The Structure of International Law

The fringe position of protests in international law is not surprising when one takes the state-centric conception of international law into account that was particularly predominant during the codification of international human rights law in the 1960s.[51] Mass movements were only recognised within international law when they pursued the establishment of statehood (i. e. national liberation movements),[52] thus reinforcing the state-centric paradigm. This also holds true for human rights regimes. It is best illustrated by the debates concerning a right to resistance during the elaboration of the Universal Declaration of Human Rights (UDHR).

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49 Mégret (n. 5); Saskia Stucki, 'In Defence of Green Civil Disobedience', Verfassungsblog, 30 October 2020, available at: <https://verfassungsblog.de/in-defence-of-green-civil-disobedience/>, last access 7 May 2026; Estrada-Tanck (n. 5); Peter Ackerman and Hardy Merriman, *Preventing Mass Atrocities: From a Responsibility to Protect (RtoP) to a Right to Assist (RtoA) Campaigns of Civil Resistance* (ICNC Press 2019); Lippmann (n. 5).

50 Jürgen Habermas, 'Ziviler Ungehorsam – Testfall für den demokratischen Rechtsstaat' in: Peter Glotz (ed.), *Ziviler Ungehorsam im Rechtsstaat* (Suhrkamp 1983), 29-53; see Mégret (n. 5), 147.

51 See Tom Sparks and Anne Peters, 'Introduction: The History and Theory of the Individual in International Law' in: Tom Sparks and Anne Peters (eds), *The Individual in International Law* (Oxford University Press 2024), 6 ff. for a reflection on the discussion of a 'humanisation' of international law; Rajagopal, 'International Law and Social Movements' (n. 4), 401.

52 Rajagopal, 'International Law and Social Movements' (n. 4), 416.

The UDHR's preamble[53] only recognises the potential necessity of rebellion when a society is subject to tyranny and oppression.[54] It does not recognise a right to revolution or resistance nor does it detail the conditions when a rebellion would be necessary. This exclusion was deliberate.[55] Many states feared that a right to revolution would incite anarchy and endanger the stability of state institutions. This foundational decision regarding the UDHR precipitated to the subsequent human rights treaties at the universal und regional level. The only exception to this development is the African Charter on People's and Human Rights that enshrines the right to resist colonial oppression in its Art. 20 para. 2.[56]

The omission of a right to resist conforms to the widely held opinion at the time of drafting of the human rights conventions that protest and other nonconventional forms of public participation were illegitimate and should be contained. Despite the successful nonviolent campaign for Indian independence led by Gandhi in the first half of the century, nonviolent protest only received significant attention and (scholarly) recognition from the late 1960s onwards. Even during the negotiations for the African Charter on Democracy, Elections, and Governance in the early 2000s, nonviolent protests and nonviolent revolutions were not contemplated as a possible form of public participation or change in government.[57] From the perspective of the majority of drafters of these conventions, peaceful protest was not a legitimate form of engaging in public affairs.

53 United Nations General Assembly, Universal Declaration of Human Rights, A/RES/3/217 (A), 10 December 1948. The relevant preamble reads: 'Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.'

54 I thank Arnold Vardanyan for highlighting this aspect during the workshop on Protest and International Law held on 2-3 November 2023, in Heidelberg, Germany.

55 Jaime Oraá and Felipe Gómez Isa, *La Declaración Universal de los Derechos Humanos, Un breve comentario en su 50 aniversario* (Universidad de Deusto, Bilbao 1997), 54; Jan Martenson, 'Preamble' in: Asbjørn Eide and Gudmundur Alfredson (eds), *The Universal Declaration of Human Rights: A Commentary*, (Scandinavian University Press 1992), 17-29 (22); Kriener, *Proteste und Intervention* (n. 36), 68 ff.

56 The African Commission and Court have never found a violation of Art. 20 para. 2 ACPHR in their jurisprudence, see Pacifique Manirakiza, 'Towards a Right to Resist Gross Undemocratic Practices in Africa', Journal of African Law 63 (2019), 81-105; Shannonbrooke Murphy, 'Unique in International Human Rights Law: Article 20(2) and the Right to Resist in the African Charter on Human and Peoples' Rights', African Human Rights Law Journal 11 (2011), 465-494.

57 Solomon A. Dersso, 'The Status and Legitimacy of Popular Uprisings in the AU Norms on Democracy and Constitutional Governance', Journal of African Law 63 (2019), 107-130 (109); Kriener, *Proteste und Intervention* (n. 36), 199 ff.

5. A Protection Gap

As a result, peaceful protests sit on the metaphorical fence of international law. While significant forms of protest are protected through international human rights law, important aspects of protest do not receive protection. Accordingly, there is a protection gap: First, peaceful protesters can only seek limited protection from international law, and international human rights bodies in particular, to guarantee their peaceful protest. Second, states can invoke international law to quash peaceful protest. For example, member states of the Council of Europe can invoke the ECtHR's concept of 'reprehensibility' and 'temporal limitation' to end protests and prosecute the participants of protests that engage in more confrontational forms of protest or for a prolonged time period.[58] Another example is the common practice to limit peaceful protests in front of embassies and consulates under reference to Art. 22 of the Vienna Convention on Diplomatic Relations.[59] Due to a limited protection of protest in international law, the inviolability of diplomatic premises is frequently considered to trump the rights of protesters and thus legitimises their restriction. These protection gaps could be closed if international law were more inclusive to peaceful protest.

IV. From Fringe to Centre: Recent Developments in the Law of Peaceful Protest

Recent developments point to a changing conception of peaceful protests in international law. International law has undergone a progressive development throughout the last decades, giving rise to an increasing 'humanisation' of international law and moving away from the state-centred paradigm.[60] This development is particularly apparent in the increasing role that protests retain in shaping international law and the integration they have found within some international legal fields. Each of the contributions to this Special Issue will engage with these developments in a field or vis-a-vis a particular phenomenon. This introduction will therefore restrict itself to a summary of these developments that illustrates how protest is jumping the fence and

58 ECHR, *Kudrevičius and Others* (n. 35); ECHR, *Cisse* (n. 29); ECHR, *Nosov* (n. 30); ECHR, *Drieman* (n. 38).

59 Kai Budelmann, 'Protecting the VIP (Very Important Premises) at All Costs: and Trumping Human Rights in the Process?', Völkerrechtsblog, 8 July 2025, doi: 10.17176/20250708-143032-0.

60 Sparks and Peters (n. 51); Anne Peters, *Beyond Human Rights* (Cambridge University Press 2016).

retaining a position within positive international law. I will touch upon the developments in Inter-American Human Rights Law (1.), Law of the Sea (2.), the African Union's Democracy Protection Law (3.), and the evolving understanding at the universal human rights level (4.). These developments show common features that I will highlight afterwards (V.).

1. Inter-American Human Rights Law

Protests have been a recurring theme at the IACtHR throughout the last years. In its recent jurisprudence, the Court has dealt with frameworks for police repression against protesters,[61] protests by marginalised groups,[62] and is currently hearing a case on the use of tear gas to disperse protests.[63] Marcos Vela Avalos will highlight the standards that the Court has elaborated in this jurisprudence and outline the parallel structure to its standards on freedom of expression.[64] In this introduction, I will highlight that the Court has managed to integrate protest as a form of political participation covered by human rights, in both 'ordinary' and 'exceptional' circumstances.

In its 2024 judgment in *Huilcamán Paillama v. Chile*, the Court detailed the role and protection of protests in a democratic society.[65] The case concerned a group of leaders of the Mapuche people, an indigenous people residing in the territory of the Chilean state. In the early 1990s marking the 500th anniversary of the 'discovery' of the Americas, several communal leaders united to form the Council of All Lands (Consejo de Todas las Tierras / Aukiñ Wallmapu Ngulam).[66] The Council issued demands for the redistribution of lands in Chile, which they considered to belong to the Mapuche indigenous people and called for the recognition and facilitation of their traditional way of life. To this end, the Council created parallel structures to state institutions, including a system of adjudication, a radio station, a newspaper, an own 'national' flag, and contacted international organisations and other states to raise awareness for their cause.[67] Furthermore, the Council

61 IACtHR, *Tavares Pereira et al. v. Brazil*, judgment of 16 November 2023, Series C No. 507, 32 ff.

62 IACtHR, *Huilcamán Paillama* (n. 9), paras 249 ff.

63 IACtHR, *García Romero v. Ecuador*. Order of the President of the IACtHR of 17 December 2024, available at <https://jurisprudencia.corteidh.or.cr/en/vid/1061858368>, last access 1 June 2026.

64 Marcos Antonio Vela Ávalos, 'The Right to Protest in the Inter-American Human Rights Framework', HJIL 86 (2026), 541-569.

65 IACtHR, *Huilcamán Paillama* (n. 9), paras 249 ff. The Court built on its jurisprudence established in the previous cases.

66 IACtHR, *Huilcamán Paillama* (n. 9), paras 51 ff.

67 IACtHR, *Huilcamán Paillama* (n. 9), para. 240.

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called for public assemblies, including several instances, in which members of the Mapuche people entered privately owned land, raised the Mapuche flag and banners, and peacefully occupied the land until their nonviolent removal through security forces.[68]

The members of the council (including Mr. Huilcamán) were prosecuted and convicted under Chilean criminal law that prohibited 'illicit associations'. Moreover, those that had occupied private land temporarily were convicted for 'usurpation'.

The Court held that both types of convictions violated, inter alia, the rights to assemble peacefully, to freedom of thought and expression, the freedom of association, and the right to self-determination of indigenous peoples.[69] It qualified the actions taken by the Council of All Lands and the associated protesters as peaceful social protest that was grounded in a variety of overlapping rights.[70] In the view of the IACtHR, the addition of these rights add up to more than their sum and therefore ensure a comprehensive protection of peaceful protests. This understanding was contested by the minority on the bench that argued against an amalgamation of rights to guarantee acts of protest.[71] However, the majority doubled down on the importance of peaceful protest within a democratic society and the disturbances caused by protests that a society must tolerate:

> '[…] the exercise of peaceful protest requires, in the context of a democratic system, in which pluralism and respect for the ideas, opinions and forms of expression of others reigns, a degree of tolerance that allows the mutual exercise of the rights of others, of society in general and of those who may be disturbed in their tranquility or legitimate interests.'[72]

Particularly, against the backdrop of longstanding marginalisation and very limited recognition of the grievances of the Mapuche people, the Court upheld the importance of engaging in social protest to express demands and provoke a societal change.[73] The Court thus argued that based on a variety of human rights, protests must be allowed even within a democratic society as long as they remain nonviolent.[74] This translates to a recognition of peaceful protest as a legitimate way to participate in public affairs.

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68 IACtHR, *Huilcamán Paillama* (n. 9), paras 57-65.

69 IACtHR, *Huilcamán Paillama* (n. 9), para. 258.

70 IACtHR, *Huilcamán Paillama* (n. 9), para. 258.

71 IACtHR, *Huilcamán Paillama* (n. 9), Partially Dissenting Opinion by President Nancy Hernández López, para. 13; Partially Dissenting Opinion by Judge Humberto Sierra Porto, para. 9.

72 IACtHR, *Huilcamán Paillama* (n. 9), para. 263, Author's translation from Spanish.

73 IACtHR, *Huilcamán Paillama* (n. 9), paras 258, 260.

74 IACtHR, *Huilcamán Paillama* (n. 9), paras 251, 259.

This alone is a significant development, considering that the ECtHR has a long-standing jurisprudence condoning direct action methods, including the temporary occupation of privately held land and the general disregard of protest as a legitimate method of public participation.[75]

However, the IACtHR's jurisprudence is not limited to the role and function of protests within a functioning democratic system, which is presupposed by the American Convention on Human Rights (ACHR).[76] In its 2015 judgment concerning *López Lone v. Honduras*, the Court likewise detailed the role of protests in overcoming democratic ruptures.[77] The case is set in the aftermath of the 2009 coup d'état in Honduras. Multiple judges, including Mr. López Lone engaged in protest against the democratic rupture by participating in demonstrations, writing opinion pieces, and issuing public statements through an association of judges.[78] In reaction, the responsible ministry solicited the disposition and demotion of various judges, which was later confirmed by the Supreme Court of Honduras.[79] Both the ministry and the Supreme Court argued that the judges had violated their obligations of neutrality by engaging in anti-governmental protest.

The IACtHR, in principle, agreed with the notion of judicial neutrality, which generally prohibits judges from participating in protests. However, the Court argued that against the backdrop of the breakdown of democratic order in violation of the inter-american democratic standards, those limitations would not be applicable.[80] It derived this line of reasoning from the importance of peaceful protest in overturning democratic breakdowns.[81] In the Court's view, the suspended judges were engaging in their right to defend democracy, which would allow for the temporary transgression of limitations that are applicable during ordinary periods.[82]

In its jurisprudence, the IACtHR therefore has two approaches to protests. First, it considers protests as a legitimate form of participation in public affairs that must be viable and allowed in all of the ACHR's member states to the extent that the methods of protest remain nonviolent. Organising protest through associations as well as nonviolent forms of occupation are essential for protest and should therefore be permitted within the framework of hu-

75 See n. 35.

76 The IACtHR has affirmed that ACHR member states must be democracies. Recently in IACtHR, *Capriles v. Venezuela*, judgment of 10 October 2024, Series C No. 541, para. 95.

77 IACtHR, *López Lone et al. v. Honduras*, judgment of 5 October 2015, Series C No. 302, paras 148 ff.

78 IACtHR, *López Lone et al.* (n. 77), paras 4, 22.

79 IACtHR, *López Lone et al.* (n. 77), paras 34-47.

80 IACtHR, *López Lone et al.* (n. 77), para. 152.

81 IACtHR, *López Lone et al.* (n. 77), para. 148 ff.

82 See IACtHR, *López Lone et al.* (n. 77), para. 160 ff.

man rights laws. Second, protests retain an important function in cases of democratic breakdowns. They elicit the public's rejection of anti-democratic means and thus fulfil an essential role in securing human rights and democracy. Therefore, protests are not only allowed and protected under the ACHR in these circumstances. Ordinary restriction on participation for judges are lifted. This understanding of protests in the context of democratic breakdowns can allow protests to overcome generally permissible restrictions. For example, assembly rights may be restricted during a state of emergency.[83] However, if the state of emergency is used as a tool to debilitate a democratic system, protests could defy such generally permissible limitations and proceed legally.

Within the Inter-American Human Rights system, protests have thus jumped the fence and found their role (and protection) among the rights to association, assembly, expression, and indigenous self-determination, both under 'ordinary' and 'exceptional' circumstances.

2. Law of the Sea

The right to protest has likewise been recognised by an Arbitral Tribunal under the framework of the Permanent Court of Arbitration concerning the Law of the Sea.[84] In its judgment rendered in the Artic Sunrise Arbitration (*Netherlands v. Russia*), the Arbitral Tribunal held the actions taken by Greenpeace activists on an oil platform in Russia's Exclusive Economic Zone (EEZ) as an expression of the right to protest.[85] Greenpeace activists had tried to board an oil platform and raise a banner against the exploitation of oil reserves in the Arctic Circle. The tribunal argued that such acts of protests were a legitimate exercise of the freedom of navigation,[86] considering that states had to tolerate a certain level of nuisance within their EEZ.[87] Therefore, Russia's detention and arrest of the activists and their ship 'The Arctic Sunrise' violated the Law of the Sea. Due to jurisdictional limitations, the

83 See Art. 27 ACHR; Art. 15 ECHR.

84 Maria Chiara Noto, 'The Arctic Sunrise Arbitration and Acts of Protest at Sea', Maritime Safety and Security Law Journal 2 (2016), 36-56; Joanna Mossop, 'Protests Against Oil Exploration at Sea: Lessons from the Arctic Sunrise Arbitration', The International Journal of Marine and Coastal Law 31 (2016), 60-87.

85 Permament Court of Arbitration (PCA), Case Nº 2014-02 in the Matter of the Arctic Sunrise Arbitration before an Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea (Kindgom of the Netherlands v. Russian Federation), Award on the merits of 14 August 2015, para. 227.

86 PCA, *Arctic Sunrise* (n. 85), merits, para. 227.

87 PCA, *Arctic Sunrise* (n. 85), merits, para. 328.

Arbitral Tribunal did not apply the ICCPR or other human rights treaties.[88] In determining the contents of the Law of the Sea in relation to protest it only had regard to general international law in relation to human rights.[89]

Although the Arbitral Tribunal was not called upon to decide on a fully-fledged protest campaign, but rather on an individual act of protest, its finding shows the acceptance of protest as a form of engagement and interaction, not only within the terms of a human rights, but even within the Law of the Sea. Moreover, the specific form analysed by the Arbitral Tribunal falls into the category of direct action[90] because the protesters tried to interfere with the operation of the oil platform. This too departs from a more restrictive reading of protest in international law.

3. African Union's Democracy Protection Law

Another international organ that had to integrate protests within its normative framework is the African Union's Peace and Security Council (PSC). Among other functions, the PSC is the warden of the African Charter on Democracy, Elections and Governance (ACDEG).[91] It is called upon to suspend member states of the African Union (AU) in response to unconstitutional changes in government.[92] Art. 23 ACDEG lists different examples of unconstitutional changes in government, including coups d'état. However, the text is unclear with regard to peaceful revolutions that are a product of wide-spread nonviolent anti-government protests.

In the wake of the so-called Arab Spring, the PSC was therefore called upon to decide, whether a change of government provoked by peaceful protests qualified as an unconstitutional change of government in terms of Art. 23 ACDEG or not.[93] On the one hand, peaceful revolutions are generally not contemplated in constitutions and therefore in principle unconstitutional. Yet, starting with the Egyptian revolution in 2011, the PSC developed

88 PCA, *Arctic Sunrise* (n. 85), merits, paras 197-198.

89 PCA, *Arctic Sunrise* (n. 85), merits, para. 197.

90 PCA, *Arctic Sunrise* (n. 85), merits, para. 84. See the self-description by the Greenpeace activists.

91 Art. 7 Protocol relating to the Establishment of the AU PSC.

92 de Wet (n. 45).

93 Dersso (n. 57), 108; Ndubuisi Christian Ani, 'Coup or Not Coup: The African Union and the Dilemma of "Popular Uprisings" in Africa', Democracy and Security 17 (2021), 257-277. This was highlighted as a problem by the PSC in African Union Peace and Security Council, Press Statement 432nd meeting, PSC/PR/BR.(CDXXXII), 29.4.2014; African Union Peace and Security Council, Press Statement – 871st Meeting, PSC/PR/BR.(DCCCLXXI), 22 August 2019.

a consistent framework to accept such peaceful revolutions as democratic and accordingly not to suspend states that had undergone a peaceful revolution.[94] Through this practice, the PSC recognised the importance of protests in extraordinary circumstances as a means to fulfil the democratic spirit and mandate contained in the ACDEG.[95] Importantly, it did not qualify protests and peaceful revolutions as phenomena on the margins of the law, but accorded them with an important role in the realisation of the regional democratic principle. The PSC has accordingly also brought protests into its democracy protection and regional security framework.

4. Universal Human Rights Law

At the universal level, human rights bodies are more cautious in accepting peaceful protests. The already mentioned General Comment 37 of 2020 restricts the understanding of an assembly in a temporal scope and with regard to guaranteed methods of protest with limited openness to broader conceptions of protest (see section II. 1.). While the more recent reports of the respective Human Rights Council's Special Rapporteur on Freedom of Assembly and Association do not fundamentally depart from this conception, there is a growing understanding that protest will generally qualify as an exercise of multiple protected human rights.[96] Citing multiple historic protest movements, the 2022 thematic report by Special Rapporteur Clément Voule details how protest movements used human rights to successfully advance fundamental questions of social justice.[97] In her contribution to this Special Issue, Zoe Tongue develops this interrelationship in the field of reproductive rights and illustrates how protests in Ireland and Argentina were instrumental to bringing those states to comply with international legal requirements in

94 Florian Kriener and Elizabeth Wilson, 'The Rise of Nonviolent Protest Movements and the African Union's Legal Framework', ESIL Reflection 10 (2021), 1-10 (8-10); Florian Kriener, 'Gewaltfreie Protestbewegungen als Legitimitätsquelle? Eine Replik', ZaöRV 80 (2020), 881-911.

95 African Union Peace and Security Council, Communiqué – 260th Meeting, PSC/PR/COMM.(CCLX), 16 February 2011; African Union Peace and Security Council, Press Statement – 268th Meeting, PSC/PR/BR.2(CCLXVIII), 23 March 2011; African Union Peace and Security Council, Communiqué – 465th Meeting, PSC/PR/COMM.(CDLXV), 3 November 2014; African Union Peace and Security Council, Communiqué 840th Meeting, PSC/PR/COMM.(DCCCXL), 15 April 2019.

96 Human Rights Council, Protection of Human Rights in the Context of Peaceful Protests During Crisis Situations – Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clément Nyaletsossi Voule, A/HRC/50/42, 16 May 2022.

97 Human Rights Council, Report of C. Nyaletsossi Voule (n. 96), para. 14.

this field.[98] Maria O'Sullivan approaches this relationship through climate protests, highlighting their invocation of international law to legitimise their protest.[99] As both Tongue and O'Sullivan detail, protests are generally recognised to have a catalysing effect for the realisation of human rights, particularly of under-represented and marginalised groups.

This is likewise acknowledged at the level of the Human Rights Council. In a 2014 resolution it held that 'peaceful protests can be an important form of exercising the rights to freedom of peaceful assembly, of expression, of association and of participation in the conduct of public affairs', and recognised 'that peaceful protests can make a positive contribution to the development, strengthening and effectiveness of democratic systems and to democratic processes'.[100] In this line, the different Rapporteurs that held the Special Rapporteur position since its inception in 2010,[101] have continuously focused their ad hoc advocacy and reporting on large protest movements and their respective repression.[102]

V. An Emerging Legal Framework

The foregoing section has shown the continuous development and integration of protest into various fields of international law. As the reader will have noticed this is not a uniform process and the different institutions that have

98 Zoe Louise Tongue, 'Protest as Counter-Hegemonic Human Rights Work: Lessons from Abortion Rights Movement', HJIL 86 (2026), 605-631.

99 Maria O'Sullivan, 'Climate Protest and the Right of Resistance in International Law', HJIL 86 (2026), 511-538.

100 Human Rights Council, The Promotion and Protection of Human Rights in the Context of Peaceful Protests, A/HRC/Res/25/38, 11 April 2014.

101 United Nations Human Rights Council, The Rights to Freedom of Peaceful Assembly and of Association, A/HRC/RES/15/21, 6 October 2010, OP 5.

102 OHCHR, 'Kazakhstan: UN Experts Condemn Lethal Force Against Protesters, Misuse of Term "Terrorists"' (11 January 2022), available at: <https://www.ohchr.org/en/press-releases/2022/01/kazakhstan-un-experts-condemn-lethal-force-against-protesters-misuse-term>, last access 7 May 2026; OHCHR, 'Venezuela Must Respect Right to Peaceful Protest and Democratic Dissent as New Presidential Term Begins: UN Experts' (10 January 2019), available at: <https://www.ohchr.org/en/press-releases/2019/01/venezuela-must-respect-right-peaceful-protest-and-democratic-dissent-new>, last access 7 May 2026; UN News, 'Violence Can "Never Be the Answer": UN Rights Experts Condemn Excessive Force During Chile Protests' (1 November 2019), available at <https://news.un.org/en/story/2019/11/1050311>, last access 7 May 2026; OHCHR, 'Ecuador: UN Experts Concerned by Security Response to Protests' (14 October 2019), available at: <https://www.ohchr.org/en/press-releases/2019/10/ecuador-un-experts-concerned-security-response-protests>, last access 7 May 2026; UN News, 'USA: Rights Expert Decries Wave of Anti-Protest Laws "Spreading through the Country"' (27 April 2021), available at: <https://news.un.org/en/story/2021/04/1090722>, last access 7 May 2026.

dealt with the role of protest addressed wholly different legal questions. Beyond international human rights law, which would be the most obvious regime to engage with protests, international legal regulation is emerging in the Law of the Sea, the peace and security framework of the African Union, and other fields of international law. This diverse engagement of international law with protests is a result of the increasing number of protests worldwide. Protests, which are now a central form of waging societal conflict, have emerged so ubiquitously that they have touched upon a wide array of different legal regimes, provoking the normative answers to the corresponding question.

This process is comparable to the regulation and integration of non-state armed groups into international humanitarian law. Whereas the 1949 Geneva Conventions apart from Common Article 3 related to inter-state uses of force, Additional Protocol No. 1 of 1977 expanded the possible actors in an international armed conflict to 'peoples […] fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination'.[103] As Jochen von Bernstorff has pointed out, the recognition of self-determination movements as participants to an international armed conflict was a result of a decisive campaign on behalf of the Group of 77 (G77) and a reaction to the frequency of national liberation movements, which called for an adequate regulation within IHL.[104]

Similarly, the recent developments in diverse fields of international law, provoked by the rising importance of protests, now evince an interpretative shift in relation to peaceful protest. In other words, we are seeing the emergence of an International Law of Peaceful Protest. To this end, this section rationalises the identified legal material and identifies the interpretative shift of the rules applicable to protests. The following section (VI.) argues in favour of the transferability of these interpretative patterns and illustrates what this transfer could look like in other fields.

Before I proceed, a brief reflection on prior endeavours is in order considering that this is not the first attempt to incorporate nonconventional public participation within international law. Balakrishnan Rajagopal's scholarship centres on the role of social movements in international law.[105] Writing in 2003, he set out the following research agenda: 'the central focus of the inquiry here must be: how does one write this resistance into international

103 Art. 1 (4) Additional Protocol No. 1 to the Geneva Conventions, 1125 UNTS 3.

104 Jochen von Bernstorff, 'The Battle for the Recognition of Wars of National Liberation' in: Jochen von Bernstorff and Philipp Dann (eds), *The Battle for International Law, South-North Perspectives on the Decolonization Era* (Oxford University Press 2019).

105 Rajagopal, 'International Law and Social Movements' (n. 4); Rajagopal, *International Law from Below* (n. 4).

law?'[106] His ensuing research coined as 'international law from below' has inspired many scholars and highlighted the inconsistencies produced by international law for marginalised groups, alongside the productive functions of social movements for the realisation of international law's highest aspirations.[107]

My approach to incorporate protests within international law differs in two decisive points. First, Rajagopal's theorisation is based on a deconstruction of the sources of international law and a profound critique of international human rights law.[108] This does not translate to a rejection of international law as a whole,[109] but Rajagopal acknowledges that his conceptualisation of social movements conflicts heavily with the structures of international law. In contrast, my approach is rooted in positivism. It draws on the established sources of international law and shows how protests can be integrated into the structures of international law. Second, Rajagopal's analysis parted from the premise that 'much of what occurs in extra-institutional spaces in the Third World remains invisible to international law'.[110] This has changed throughout the last decades. In particular, organs of the African Union and the Organization of American States (OAS) have pioneered the integration of protests as a nonconventional participation form into legal frameworks. Building on this evidence, three interpretative trends can be identified and structurally integrated into international law as a whole.

1. Peaceful Protests Are a Legitimate Form of Participation in Public Affairs

First, international law recognises peaceful protest as a legitimate form of participation in public affairs. Whereas Art. 25 lit. a ICCPR's guarantee of participation in 'public affairs, directly or through freely chosen representatives' is conventionally understood in a restricted sense and presupposes state action to enjoy this right, we are currently seeing an expanding conception of legitimate participation in public affairs. Legitimacy, as it is understood here, is different from legality. It is a precondition for legality as it describes the general acceptance of the social practice of peaceful protesting irrespective of the question whether peaceful protest falls within a formal legal category.

106 Rajagopal, 'International Law and Social Movements' (n. 4), 400.
107 Mégret (n. 5), 143-144.
108 Rajagopal, 'International Law and Social Movements' (n. 4), 402, 406.
109 Rajagopal, 'International Law and Social Movements' (n. 4), 432.
110 Rajagopal, 'International Law and Social Movements' (n. 4), 406.

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The African Union's PSC showcases this understanding most clearly by qualifying peaceful revolutions as a lawful and democratic way to transition power. The PSC does not decide upon the legality of individual protests and focusses primarily on the legal quality of the change in government produced by protest. However, it accepts that these protests are a legitimate form of engagement in public affairs and can therefore function as a precursor for lawful change in government. This is mirrored by the recent trends in universal human rights law. Although there has not yet been a decisive shift in extending legal protections to peaceful protests under universal human rights law, a shift on the level of legitimacy is discernible. The recent developments demonstrate a deep appreciation for the role of peaceful protests in shaping societies and public affairs. They underscore the significant role that protests play. This equates to an understanding that protests are a legitimate form of shaping public opinions and weighing in on public issues.

Identifying the legitimacy of peaceful protest as an emerging trend provokes the counter-question: can there be illegitimate peaceful protests that have to be distinguished from legitimate protests? Considering that peaceful protest is a form of engaging in public affairs, the primary determinant for this question will be whether a protest maintains the appropriate form, i. e. remains nonviolent (see section II). However, the analysed material also indicates that there can be more conditions towards evaluating whether a peaceful protest is a legitimate form of engaging in public affairs. In all of the surveyed examples in which international organs positively integrated peaceful protests into the respective legal regimes, the peaceful protests advocated in favour of rights and principles enshrined in international law. These included self-determination of indigenous peoples (IACtHR, Huilcamán), recovery of democracy (IACtHR, López Lone), environmental protection (Arctic Sunrise), and promotion of democratic governance, anti-corruption, and improved human rights (AU PSC).

Yet, peaceful protests can also advocate strongly against human rights, democracy, and international law.[111] However, it is not surprising that a positive reception by legal bodies occurred only when peaceful protesters advocated in favour of issues rooted in or compatible with international law. This stems from the structure of international human rights law. In order to qualify as a legitimate form of engaging in public affairs in terms of Art. 25 lit. a ICCPR, peaceful protests must not be at odds with other fundamental provisions of the Covenant. Art. 5 ICCPR stipulates that

111 Hellmeier and Bernhard (n. 7), 1873-1875. Hellmeier and Bernhard find that 'mobilizations for autocracy' occur significantly less in comparison to 'mobilization for democracy' and primarily within 'electoral autocracies' and 'closed autocracies'.

'Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein […]". Based on this provision, the Human Rights Committee has denied human rights protection to neo-fascist parties[112] and the ECtHR has denied protection under a similar provision to parties seeking to establish a dictatorship or other anti-rights forms of governance[113] and assemblies spreading 'war propaganda'.[114] If advocacy for fascism, dictatorship, or an anti-rights based system is illegitimate even if conducted through political parties and within the formal political process, a systemic logic would likewise predicate this treatment for peaceful protests.[115] It can therefore be assumed that protests will only be legitimate if they do not seek to comprehensively eliminate individual human rights and systems that support these. This exception has to be construed very narrowly because – as stated above – peaceful protests are a form for underrepresented groups to participate in public affairs.

Although this reasoning is specific to the human rights fields, it will likely guide other international bodies engaging with peaceful protests. All fields of international law surveyed in this introduction that positively integrated peaceful protests started from the baseline that this practice is rooted in human rights law, even if they do not apply human rights law directly.[116] A coherent treatment of peaceful protest across different fields of international law can therefore be assumed (which is also one of the main arguments this introduction seeks to make).

To summarise the first point, there is an emerging trend to see peaceful protests as a legitimate form of participation in public affairs. This departs from the conventional understanding that public participation is conditioned on acts of states that specifically allows for popular participation. Legitimacy is principally tied to the nonviolent form of protest. However, the legitimacy

112 Human Rights Committee, *M. A. v. Italy*, Communication No. 117/1981, 21 September 1981, A/39/40 at 190, 10.4.1984, 1-2.

113 European Commission of Human Rights, Decision by the Commission on the Admissibilty of Application No. 250/57, Application No. 250/57, 20 July 1957; ECHR (Grand Chamber), *Refah Partisi (the Welfare Party) v. Turkey* (application nos 41340/98, 41342/98, 41343/98, 41344/98), judgment of 13 February 2003, paras 123 ff.

114 ECHR, *Rodina and Borisova v. Latvia* (application nos 2623/16 and 2299/16), judgment of 10 July 2025, para. 119.

115 ECHR, *Rodina and Borisova* (n. 114), para. 116. The ECHR affords higher protection to political parties in comparison to other associations or assemblies.

116 PCA, *Arctic Sunrise* (n. 85), merits, para. 197; African Union Peace and Security Council, PSC/PR/COMM.(CCLX), paras 2 and 3.

of protests will be lower if peaceful protests advocate for fascism, aggression, or anti-rights forms of governance.

2. Peaceful Protests Are Permitted, Subject to Narrow Restrictions

Considering that peaceful protests are a legitimate form of engaging in public affairs, they should be permitted under international law. This is confirmed by the surveyed fields. The IACtHR details that peaceful protests rely on an amalgamated reading of international human rights law that draws on multiple human rights. Taken together, these rights add up to more than their sum and create a comprehensive protection of protests. The IACtHR extended the temporal limitations in place for peaceful assembly and assumed that direct action measures would fall under the protection. The Arbitral Tribunal in Arctic Sunrise likewise included direct action methods within the protected scope of protests. Furthermore, the AU PSC believed that the changes provoked by protests in Sudan in 2019 continued to be legitimate despite a months-long protest camp in Khartoum.[117] It held that the dispersal of that protest camp was wrongful.[118] The emerging interpretative trends thus expand the existing limitations to the protection of protest and form the baseline for a comprehensive protection of protest.

As a flip side, states cannot leverage international law for the suppression of peaceful protests except for reasons that are necessary and proportionate. These must be narrowly construed and allow for a certain degree of interference with the activities of others. The IACtHR and the Arbitral Tribunal in Arctic Sunrise both held that a nonviolent interference with property rights in itself would not suffice to justify repression against peaceful protests. Protest related interferences with other rights must meet a heightened threshold in order to justify the limitation of protests. This departs from the ECtHR's jurisprudence on 'reprehensiveness' of direct action methods.

The emerging interpretative trend thus indicates that protests receive more extensive protection in international law than previously assumed. This translates to stricter limitations on possible restrictions of protesters' rights.

117 African Union Peace and Security Council, PSC/PR/COMM.(DCCCXL).

118 African Union Peace and Security Council, Communiqué 854th Meeting, PSC/PR/COMM.(DCCCXLIV), 6 June 2019, paras 2-3.

3. Changes Provoked by Peaceful Protests Are Eligible for Recognition

The third emerging pattern derives from the first and second. If peaceful protests are a legitimate form of engaging in public affairs and therefore principally legal, the outcomes they produce should likewise be qualified as legitimate and lawful. Accordingly, the outcomes resulting from peaceful protests are eligible to recognition from the perspective of international law.

States are generally free to recognise situations, governments, or states.[119] However, this liberty is qualified with regard to situations that arise from the violation of international law. With regard to the recognition of governments, Art. 2 para. 4 United Nations Charter (UNCh) impedes the recognition of governments that are a direct result of a foreign military intervention that imposes this government.[120] This follows from their ascent to power in violation of international law. A similar argument can be made for governments arising from peaceful protests that provoke an unconstitutional (revolutionary) change in government.[121] If a state in which such change in government occurs is subject to international democracy protection treaties, the change could qualify as a violation of international law due to its unconstitutionality. If this were the prevailing understanding of revolutionary governments, then it could be argued that their ascent to power in violation of international law would oppose their recognition of the new government.

However, the African Union's Peace and Security Council has developed a template to recognise changes in government through peaceful revolution. This will be the case, if the toppled government has lost its governmental legitimacy to a significant extent because of widespread human rights violations or a democratic breakdown and the protests are inclusive and representative of the population as a whole.[122] Although this doctrine is based on the African Charter for Democracy, Elections and Governance, the relevant provisions have similarity to other democracy treaties.[123] Therefore, these

119 Stefan Talmon, 'Recognition of Opposition Groups as the Legitimate Representative of a People', Chinese Journal of International Law 12 (2013), 219-253, para. 16; Justin Cole, Alaa Hachem and Oona A. Hathaway, 'Recognition Rules: The Case for a New International Law of Government Recognition', New York University Law Review 100 (2025), 785-866 (801).

120 Jochen A. Frowein, 'Recognition' in: Anne Peters (ed.), *MPEPIL* (Oxford University Press 2010), para. 15; Cole, Hachem and Hathaway (n. 119), 853.

121 See Frowein (n. 120), para. 15.

122 Kriener and Wilson (n. 94), 901-909.

123 Similarly to Art. 23 ACDEG, Art. 9 OAS-Charter prohibits the overthrow of a constitutional government. For further examples from the Commonwealth and the International Organisation of the Francophonie see Jean d'Aspremont, 'Responsibility for Coups d'État in International Law', Tul. J. Int' l & Comp. L. 18, 453-475 (456-463).

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developments can be seen as an emerging pattern to interpret democracy treaties in light of a changing perception of peaceful protests. Importantly, this does not translate to an obligation to recognise the outcome of peaceful protests. Rather, it shows that peaceful revolutions building on peaceful protests will not produce illegal outcomes that could be subject to an impediment against recognition.

VI. Future Integration of Peaceful Protests Into International Law

According to the emerging trend, peaceful protests are a legitimate form of participation in public affairs. They are principally permitted under international law and their outcomes are eligible to recognition. Building on these three elements, this section will provide some thoughts on the future integration of peaceful protests into other fields of international law.

First, and foremost, the identified trends could provoke a shift in regional and universal human rights law. While the ECtHR's approach to protests emphasises some protections for protests, it deems other forms of protest as 'reprehensible' (section II. 1. and 2). Drawing on the more recent jurisprudence of the IACtHR, it could expand this understanding in temporal and organisational aspects as well as in relation to direct action methods.[124] These forms of influence on each other's jurisprudence have become a recurring practice for both tribunals.[125] In its more recent jurisprudence, the ECtHR has shown certain openness to understand protests as an exercise of human rights. Both in *Navalnyy v. Russia*[126] and *Kavala v. Turkey*[127] the Court held that the participation in large protests and their organisation through leading figures was protected by the ECHR and qualified state repression against these protest leaders as a violation of the Convention. Building on these developments and the IACtHR case law, it is conceivable that the ECtHR would change its jurisprudence on direct action methods and the temporal limitations of freedom of assembly.

124 IACtHR, *Huilcamán Paillama* (n. 9); IACtHR, *Tavares Pereira* (n. 61).

125 Anna Maria Lecis and Tania Groppi, 'The Constitutional Dialogue Between the Inter-American and the European Courts of Human Rights: Toward an Increasing Influence of the Inter-American Jurisprudence?' in: Johanna Fröhlich (ed.), *Constitutional Reasoning in Latin America and the Caribbean* (Bloomsbury 2024), 389-406; see ECHR, *Case of Opuz v. Turkey* (application no. 33401/02), judgment of 9 June 2009, 85 ff., 189 ff.

126 ECHR, *Case of Navalnyy v. Russia* (applications nos 29580/12 and 4 others), judgment 15 November 2018, paras 65-66.

127 ECHR, *Case of Kavala v. Turkey* (application no. 28749/18), judgment of 10 December 2019, paras 49 ff.

Shifting from human rights law to the prohibition of the use of force, the repression of protests through foreign militaries has developed into an increasing practice and has been described as an element of 'Authoritarian International Law'.[128] As Leonie Brassat and I argue elsewhere, states may not use force to quash peaceful protests in another state.[129] When protests evolve into the only accessible form of public participation, international law cannot facilitate their repression through outside forces as this would violate both the rule of self-determination and international human rights law.[130]

Likewise, governments that come into power through nonviolent protests should be recognised as the legitimate governments by states and international organisations.[131] The African Union has pioneered this legal development, but revolutionary governments have come into power in many regions of the world, frequently sparking controversies regarding their recognition.[132] Governmental legitimacy is generally assessed against the backdrop of a government's constitutional legality. However, if a constitutional system does not allow for effective public participation, which is the reality in many autocratic states, constitutional legality cannot be considered the sole indicator for a government's legitimacy. Governance regimes, including the OAS or the European Union could move to accept changes effected by nonviolent protests and not dismiss them as a violation of the democratic principles enshrined in their founding treaties.[133]

Moreover, funding and supporting protests abroad is likewise affected by these developments.[134] As I discuss in depth elsewhere, the application of the prohibition of intervention to support for peaceful protests is highly contested.[135] State practice is divided and solid doctrinal arguments exist

128 Tom Ginsburg, 'Article 2(4) and Authoritarian International Law', AJIL Unbound 116 (2022), 130-134.

129 Florian Kriener and Leonie Brassat, 'Quashing Protests Abroad: The CSTO's Intervention in Kazakhstan', Journal on the Use of Force and International Law 10 (2023), 271-298. See generally on restrictions for intervention by invitation: Anne Peters, 'Introduction: Principle and Practice of Armed Intervention and Consent' in: Dino Kritsiotis, Olivier Corten and Gregory Fox (eds), *Armed Intervention and Consent* (Cambridge University Press 2023), 1-25.

130 Kriener and Brassat (n. 129), 289 ff.

131 Kriener and Brassat (n. 129) and Wilson (n. 94), 901 ff.

132 Frowein (n. 120), para. 15; A. C. Bundu, 'Recognition of Revolutionary Authorities: Law and Practice of States', The International and Comparative Law Quarterly 27 (1978), 18-45.

133 Florian Kriener, 'Nonviolent Movements and the Recognition of Governments: What Implications for International Law?', Minds of the Movement Blog, 2. March 2021, available at: <https://www.nonviolent-conflict.org/contributor/florian-kriener/>, last access 6 May 2026.

134 Elizabeth A. Wilson, 'International Legal Basis of Support for Nonviolent Activists and Movements' in: Matthew Burrows and Maria J. Stephan (eds), *Is Authoritarianism Staging a Comeback?* (Atlantic Council 2015), 159-180.

135 Kriener, *Proteste und Intervention* (n. 36), 595 ff.

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both for the prohibition and permissibility of support to protests. Views opposing support to protests are premediated on the assumption that these are not protected by international law and that international law does not consider these to be legitimate. A shift in this assumption can therefore also change and unify the views on foreign support to protests among states.

Furthermore, the role of transnational media and social networks is particularly important. On the one hand, authoritarian regimes frequently employ internet and media shutdowns to counter protests and limit information flows.[136] Large social networks therefore retain an important function for protests. Assuming that multinational social networks coordinate their community standards in compliance with international human rights law,[137] the emerging trends on peaceful protests could require that social networks expand their accessibility to the largest extent possible during protests. This would provide a wide basis of communication for this legitimate form of participation in public affairs.

These few examples illustrate where the rules of international law will interact with peaceful protests throughout the next years and decades. Their rising importance and ubiquity will contribute to developments in various fields of international law. This Special Issue and, in particular, this introduction seek to give guidance for navigating those future developments.

Of course, the interpretation of recent developments offered here is not unchallenged. A wide array of states continue to consider protests as harmful and leverage international legal rules to suppress all forms of protest. In his contribution, Dmitrii Kuznetsov highlights how Russia limited its citizen's freedom of assembly from 2010 onwards based on the ECHR and the ECtHR judgments against Russia.[138] Although Russia's legal restrictions qualify as a bad faith interpretation of the ECtHR judgments and frequently produced results that were fundamentally incompatible and in opposition with ECtHR rulings, they demonstrate a resistance towards the legal developments outlined throughout this introduction. Therefore, it cannot be assumed that a self-standing right to resistance, revolution, or protest is

136 Pegah Banihashemi, 'International Law and the Right to Global Internet Access: Exploring Internet Access as a Human Right Through the Lens of Iran's Women-Life-Freedom Movement', Chi. J. Int'l L. 24 (2023-2024), 31-49 (36-37).

137 See Meta Oversight Board Charter, 2025, available at: <https://www.oversightboard.com/wp-content/uploads/2025/07/Oversight-Board-Charter-June-2025>, last access 7 May 2026, Article 2, Section 2.

138 Dmitrii Kuznetsov, 'From Hope to Despair: The Evolution of Protest Rights During Russia's Council of Europe Membership', HJIL 86 (2026), 567-603.

accepted among states.[139] The trends highlighted in this introduction and throughout the Special Issue thus elicit an emerging regulation of peaceful protest that has not achieved universal acceptance. There are multiple fields of international law that have not adapted to the rising importance of peaceful protest and must therefore be considered as exclusive to peaceful protests – in line with the general structure of international law.

VII. Protests and International Law: A Beneficial Relationship

Peaceful protests – understood as a collective, iterative, and protractive form of political participation that primarily engages extra-institutional channels through nonviolent means – are here to stay, and international law must accommodate their existence and frequency within its frameworks. At the moment, three central trends are emerging from the practice of states, international organisations, and human rights bodies. Peaceful protests qualify as a legitimate form of participation in public affairs. Moreover, they are – as a matter of principle – permitted by international law and subject to minimal repression based on international law. Lastly, the outcomes produced by peaceful protests, in particular revolutionary governments, are eligible for recognition.

A positive integration of peaceful protests in other fields of international law would embrace these trends and provide for elevated protection of peaceful protests. Considering that many of the issues addressed and demands invoked by protests are deeply rooted in international law, this will also reinforce international law. Zoe Tongue exemplifies this dynamic in depth with regard to reproductive rights.[140]

Following Tongue's argument, expanding the protections and role for peaceful protest in international law can therefore be a tool to counter the general crisis of international law.[141] The resurgence of maximalist conceptions of sovereignty and the increasing disregard for international law raises acute concerns for the protection of individual's rights and the international

139 To illustrate this point: A handbook on 'new' human rights does not mention a right to resist, protest or revolution (or similar), see Andreas von Arnauld, Kerstin von der Decken and Mart Susi, *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric* (Cambridge University Press 2020).

140 Tongue (n. 98).

141 On the crisis of international law: Monica Hakimi and Jacob Katz Cogan, 'The End of the U. S.-Backed International Order and the Future of International Law', AJIL 119 (2025), 279-290.

legal order as a whole.[142] Peaceful protests can be a building block to reign in the resurgence of these neo-sovereigntist understandings of international law. Protests are a grass roots form of engaging with unsatisfying social, economic, and political structures. They can counter state-sponsored visions for society and contrast this vision with the lived experience within the dominant structures.[143] Historically, protests have been vital in integrating human-centred rules of international law within domestic legal orders. Moreover, protests have had an important role in the progressive development of international legal rules, particularly through their critique of international legal regimes that were perceived as unjust.[144]

In short, peaceful protests can function both as an enabler for international law and as a tool to correct unjust outcomes of international law. Both roles are highly beneficial for the international legal order as they can contribute to its compliance and progressive development. Expanding the protections for peaceful protests in international law along the three trends identified in this introduction would further enable these positive contributions. Therefore, the exclusion of peaceful protests from the protections and benefits of international law should belong to the past.

142 Anne Peters, 'International Law and Its Scholarship in the Time of Monsters', MPIL Research Paper Series No. 2025/05 (2025), 5-6.

143 See Anne Peters and Isabelle Ley, 'Freedom of Assembly: The Politics of Presence' in: Anne Peters and Isabelle Ley, *The Freedom of Peaceful Assembly in Europe* (Nomos 2016), 9-20 (12).

144 Rajagopal, 'International Law and Social Movements' (n. 4), 399.