FREEDOM OF EXPRESSION THROUGH TECHNOLOGICAL NETWORKS: ACCESSING THE INTERNET AS A FUNDAMENTAL HUMAN RIGHT

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I. INTRODUCTION

As technology has evolved, access to digital information and communication technologies[1] has greatly increased.[2] Currently, ordinary citizens in underdeveloped nations have greater access to information online than President Bill Clinton had in the mid-1990s.[3] Over the last few years, one digital technology in particular has had a profound impact on politics and civil society: the Internet, with its extensive blogging websites and its proliferating array of social-media tools such as Facebook, Twitter, and YouTube.[4] Because of the number of people now using social media and blogging websites, and the revolutionary way it allows these people to communicate with each other, "these electronic tools have provided new, breathtakingly dynamic, and radically decentralized means for people and organizations to communicate and cooperate with one another for political and civic ends."[5] In particular this technology has allowed citizens of the world expand their political, social, and economic freedom.[6]

Today, nearly one-third of the world's population has access to the Internet,[7] and that number continues to grow. Now that approximately 2.35 billion people have access to the Internet,[8] the use of social media and blogging websites has increased at astonishing rates.[9] In 2006, Facebook had twelve million world users, but that number

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1 "Digital information and communication technologies" is a term that encompasses computers, mobile phones, software, the Internet, and other networks. Larry Diamond, *Introduction*, *in* LIBERATION TECHNOLOGY ix, ix (Larry Diamond & Marc F. Plattner ed., 2012)

2 *Id.*; Larry Diamond, *Liberation Technology*, *in* LIBERATION TECHNOLOGY 3, 3 (Larry Diamond & Marc F. Plattner ed., 2012).

3 Diamond, *supra* note 1.

4 Larry Diamond, *Liberation Technology*, *in* LIBERATION TECHNOLOGY 3, 3 (Larry Diamond & Marc F. Plattner ed., 2012)

5 Diamond, *supra* note 1, at ix.

6 Diamond, *supra* note 4, at 4.

7 Sarah Joseph, *Social Media, Political Change, and Human Rights*, 35 B.C. INT'L & COMP. L. REV. 145, 149 (2012).

8 *See U.S. and World Population Clock*, U.S. CENSUS BUREAU (Nov. 19, 2012, 4:34 PM), http://web.archive.org/web/20121116105621/http://www.census.gov/main/www/popclock.html (accessed by searching for census.gov in the Internet Archive index).

9 *See infra* notes 10–17.

exploded to 100 million by 2008.[10] In 2010, the number of users on Facebook increased to half a billion, and in early 2012 it was greater than 800 million.[11] Facebook now has over one billion registered users around the world.[12] Similarly, Twitter has expanded rapidly.[13] The number of tweets has increased from 300,000 per day in 2008 to 200 million per day in 2011.[14] Additionally, Twitter now has over 500 million registered users.[15] Likewise, YouTube went from eight million views per day when it launched in 2005, to almost three billion views per day in 2011.[16] Finally, the number of blogs in the world has increased from thirty-five million in late 2006 to 181 million by the end of 2011.[17]

One reason for the increase in the use of social media and blogging websites is that nearly all of them can be used or accessed for free.[18] Although some of these websites may require the user to create an account, this is very easy to do.[19] Once the user has created an account, he or she can use the website and receive and share any information he or she desires.

Furthermore, people may prefer social media and blogging websites to prior forms of media, such as television networks and

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[10] Diamond, *supra* note 1, at ix.

[11] *Id.*

[12] Ashlee Vance, *Facebook: The Making of 1 Billion Users*, BLOOMBERG BUSINESSWEEK, Oct. 4, 2012, at 64, *available at* http://www.businessweek.com/articles/2012-10-04/facebook-the-making-of-1-billion-users.

[13] Diamond, *supra* note 1, at ix.

[14] *Id.*

[15] Lauren Dugan, *Twitter To Surpass 500 Million Registered Users On Wednesday*, ALLTWITTER (Feb. 21, 2012, 12:30 PM), http://www.mediabistro.com/alltwitter/500-million-registered-users_b18842.

[16] Diamond, *supra* note 1, at ix.

[17] *Id.*, at x.

[18] *Sign Up*, FACEBOOK, http://www.facebook.com/r.php (last visited Dec. 2, 2012) (stating that signing up for Facebook is free and "always will be"); Leslie D'Monte, *Swine Flu's Tweet Tweet Causes Online Flutter*, BUSINESS STANDARD (Apr. 29, 2009, 4:03 PM), http://www.business-standard.com/article/technology/swine-flu-s-tweet-tweet-causes-online-flutter-109042900097_1.html (stating that "Twitter is a free social networking . . . service . . .").

[19] *See, e.g., How do I sign up for Facebook?*, FACEBOOK, http://www.facebook.com/help/188157731232424/ (last visited Dec. 2, 2012) ("To sign up for a brand new account [on Facebook], enter your name, birthday, gender, and email address into the form on www.facebook.com. Then pick a password."); *How to Sign up on Twitter*, TWITTER, http://support.twitter.com/articles/100990-how-to-sign-up-on-twitter (last visited Dec. 2, 2012) (to create a Twitter account, one must go to http://twitter.com and find the sign up box. After clicking on the sign up box, one must enter his or her full name, email address, and a password. After entering that information, the potential user then has to click "Sign up for Twitter" and select a user name. Once the potential user has selected a user name he or she must click "Create my account.")

newspapers, because they have two key advantages. First, they give their users the ability to reach large numbers of people very quickly.[20] Second, they allow for "multiway" forms of communication.[21] "Multiway" forms of communication allow an individual to communicate with many people simultaneously, as opposed to two-way communications which only allow an individual to communicate with another individual.[22]

While the Internet–particularly its social media and blogging websites–has greatly affected democratic states,[23] it has played an even more important and profound role in autocratic states.[24] Because of social media and blogging websites, citizens in states where the government prohibits public gatherings and controls the media are, for the first time, able to freely post their opinions about developments in their country and throughout the world.[25] Citizens in some states have even used this media to promote political reform and, in more extreme cases, stage uprisings to overthrow their current governments, as has happened in Tunisia and Egypt.[26]

However, as much as the Internet has allowed people to express their dismay regarding unfavorable government action and encouraged the discussion of new political ideas, there is considerable debate as to how effective it actually is.[27] This is due to the significant number of authoritarian states that have tried to control and censor the Internet's content, and, in more extreme cases, block their citizens' access to the Internet entirely. While some states have not been very successful in restricting and censoring the Internet and its media, others states – like China– have.[28]

Part II of this note will explore how citizens in autocratic states have employed social media and blogging websites in order to expand their political, social, and economic freedom. Part III will investigate how and why authoritarian states are blocking and/or restricting access to the Internet, specifically, its social media and blogging websites. Part III

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[20] Diamond, supra note 4, at 4.

[21] *Id.*

[22] *See id.*

[23] *See* Diamond, *supra* note 1, at x.

[24] Diamond, *supra* note 4.

[25] Jackee Budesta Batanda, *Policing Social Media in Uganda*, TRANSITIONS: THE DEMOCRACY LAB BLOG (Oct. 18, 2012, 5:21 PM) http://transitions.foreignpolicy.com/posts/2012/10/18/policing_social_media_in_uganda.

[26] *See infra* Part II.A-B.

[27] Diamond, *supra* note 1, at x.

[28] *See infra* Part II.C.

will also explore what types of information are restricted or censored. Part IV will analyze and argue why accessing technological networks, such as the Internet and its media, is a fundamental human right as provided by the Universal Declaration of Human Rights and the International Convention on Political and Civil Rights. Finally, Part V will argue that current international mechanisms are insufficient for protecting this right and suggest changes that may help alleviate these concerns.

II. THE ROLE OF INTERNET MEDIA IN THE POLITICAL REFORM OF AUTOCRATIC STATES

One area where social media and news media have played a profound and important role is in autocratic states, during the "Arab Spring."[29] The "Arab Spring" is a term that describes the series of political revolutions that have taken place in regions of the Middle East and Northern Africa.[30] Although dissent had long existed in both the Middle East and North Africa before the Internet, dissidents had a hard time rallying together until mobile phones and the Internet were introduced to the region.[31]

A. THE EFFECTS OF SOCIAL MEDIA IN TUNISIA: BEGINNING OF THE ARAB SPRING

The Arab Spring is believed to have started in Tunisia when Mohamed Bouazizi drenched himself with paint thinner and lit himself on fire in the street.[32] Bouazizi worked as a fruit vendor so that he could feed his mother, uncle, and five brothers and sisters.[33] One day while he was working, a municipal inspector tried to confiscate his fruit.[34] He tried to take the fruit back, but the inspector slapped him across the face.[35] In addition to the fruit, two of the inspector's colleagues confiscated

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[29] *See infra* Parts II.A-B.

[30] Anahita Ferasat et al., *Middle East and North Africa*, 46 A.B.A. SEC. INT'L LAW. 601, 601 (2012).

[31] *Cf.* Phillip N. Howard & Muzammil M. Hussain, *Egypt and Tunisia: The Role of Digital Media*, *in* LIBERATION TECHNOLOGY 110, 112 (Larry Diamond & Marc F. Plattner ed., 2012).

[32] Kareem Fahim, *Slap to a Man's Pride Set off tumult in Tunisia*, N.Y. TIMES, Jan. 21, 2011, http://www.nytimes.com/2011/01/22/world/africa/22sidi.html?pagewanted=all&_r=0.

[33] *Id.*

[34] *Id.*

[35] *Id.*

Bouazizi's electronic scale.[36] Witnesses also reported that two of the inspector's colleagues beat Bouazizi.[37] After this ordeal, Mr. Bouazizi walked a few blocks to the municipal building to get his property back; however, when he arrived there he was beaten again.[38] Upon failing at the municipal building, he proceeded to the governor's office to demand an audience; nonetheless, he was refused.[39] Everyone in the marketplace had witnessed the incident, and Mr. Bouazizi was completely humiliated.[40] Later that day, he went back to the governor's office and set himself on fire in front of the governor's high gate, resulting in his death a short time later.[41]

Although this was not the first time that a young Tunisian had committed suicide by self–immolation, this time the people of Tunisia fought to get the news out about what happened, and they succeeded.[42] In one instance, a cousin of Mr. Bouazizi, posted a video of a peaceful protest led by Mr. Bouazizi's mother outside the municipality building.[43] Al Jazeera,[44] whose media team picked up the footage from Facebook, aired the video on its Mubasher channel.[45] Additionally, images of Bouazizi in the hospital spread via networks of family and friends.[46] As a result of the Internet and its media, the news traveled quickly and sparked nationwide protests.[47]

Through their sympathy for Bouazizi, networks of families and friends realized that they shared similar grievances.[48] This realization struck people as they watched videos of Bouazizi's death on YouTube and read foreign news coverage online about the abusive and corrupt

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36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 Yasmine Ryan, *How Tunisia's Revolution Began*, AL JAZEERA, http://www.aljazeera.com/indepth/features/2011/01/201112612181598548 3.html (last modified Jan. 26, 2011).

43 *Id.*

44 Al Jazeera is a small (Would you really call Al Jazeera "small"?) television network operating out of Qatar. *Al Jazeera*, CBS NEWS (Feb. 11, 2009, 9:21 PM), http://www.cbsnews.com/8301-18560_162-314278.html. It is the first twenty-four hour television news network in the Arab world. *Id.* It is also the first independent and uncensored Arab news organization. *Id.*

45 Ryan, *supra* note 42.

46 Howard & Hussain, *supra* note 31, at 112.

47 Howard & Hussain, *supra* note 31, at 111.

48 *Id.*

political state.[49] Now that the citizens of Tunisia could communicate in ways that the state could not control, they used social media to create strategies for action and to remove the current regime from power.[50] Shortly after the uprisings began, Tunisia's President Zine al-Abidine Ben Ali fled the country for Saudi Arabia.[51]

B. PROTESTS SPREAD FROM TUNISIA TO EGYPT

The success experienced in Tunisia helped inspire the protests in Egypt, a country with even more Internet access.[52] In Egypt, almost everyone has access to a mobile phone,[53] as more than 70% of the population has a mobile phone subscription.[54] Additionally, because of government initiatives in 1999, Egyptians were given free Internet access, low-cost computers, and the expansion of Internet access centers.[55] Consequently, Egypt has the second-largest Internet using population in the region.[56] Internet World States, an Internet marketing research firm, found that "in February 2010, more than 21% of Egypt's population of 80 million had access to the Internet, and more than 4.5 million used Facebook."[57] Thus, one major advantage of social media in the Egyptian revolution was its capacity for swiftly exchanging and disseminating information to millions of people inside of Egypt.[58]

Social media impacted the Egyptian revolution in multiple ways including providing many Egyptians with a means to express their views, to organize around political and social causes, and to spread information

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49 *Id.*

50 *Id.*

51 *Tunisia: President Zine al-Abidine Ben Ali Forced Out*, BBC NEWS, http://www.bbc.co.uk/news/world-africa-12195025 (last updated Jan. 14, 2011, 8:13 PM).

52 Howard & Hussain, *supra* note 31, at 113; The movement leading the protests in Egypt credited inspiration for their actions to the protestors in Tunisia. Cara Parks, *Arab Revolutions: From Tunisia To Egypt, Is This The Beginning Of A Trend?*, HUFFINGTON POST (Feb. 1, 2011 1:02 AM), http://www.huffingtonpost.com/2011/02/01/ egypt-tunisia-arab-revolution_n_816695.html.

53 Howard & Hussain, supra note 31, at 113.

54 Nahed Eltantawy & Julie B. Wiest, Social Media in the Egyptian Revolution: Reconsidering Resource Mobilization Theory, 5 Int'l J. Comm. 1207, 1212 (2011), http://ijoc.org/index.php/ijoc/article/view/1242/597.

55 Id.

56 Howard & Hussain, supra note 31, at 1213.

57 Eltantawy & Wiest, supra note 54, at 1212.

58 Id. at at 1214.

to large groups of people.[59] Moreover, with the help of a number of activists with sufficient knowledge of social media, Egyptians were able to bring the revolution to life.[60] These activists created Facebook groups, Twitter accounts, and personal blogs all to promote discussion on the conditions in Egypt.[61]

One significant Facebook group that the Egyptian activists created was "We are all Khal[e]d Said," following Said's death.[62] Like Bouazizi, Khaled Said was killed because of the actions of state officers.[63] In this case, however, Said's death was a direct result of police conduct. Said died after being brutally beaten by two police officers on a public street.[64] Some of his friends believed that the beating was in response to a video that Said posted on the Internet depicting the police officers sharing the spoils of a drug bust.[65] The group title "We are all Khaled Said" represents the idea that any citizen might face the same destiny at any point in time.[66]

In addition to using social media to generate discussion among large groups of people Egyptians began to use Facebook and other forms of social media to organize protests throughout Egypt.[67] On January 16, 2011, nine days before the revolution took place, three Egyptian teens created a Facebook page titled as "January 25: The day of revolution over torture, poverty, corruption & unemployment."[68] On this webpage, administrators posted a video through which they introduced themselves and explained their feelings of encouragement that the people of Egypt could implement a successful revolution like the citizens of Tunisia.[69] As a result of social media, tens of thousands of protestors gathered in Cairo

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59 Alexandra Paslawsky, Note, The Growth of Social Media Norms and Governments' Attempts at Regulation, 35 Fordham Int'l L.J. 1485, 1521–22 (2012).

60 Eltantawy & Wiest, *supra* note 54, at 1213.

61 *Id.*

62 *Id.*

63 *See* Lara Logan, *The Deadly Beating that Sparked Egypt Revolution*, CBS NEWS (Feb. 3, 2011, 8:31 AM), http://www.cbsnews.com/8301-18563_162-7311469.html.

64 *Id.*

65 *Id.*

66 *See id.*

67 Paslawsky, *supra* note 59, at 1523.

68 Eltantawy & Wiest, *supra* note 54, at 1214.

69 *Id.*

demanding an end to the rule of President Hosni Mubarak.[70] Meanwhile, thousands of others gathered in other cities all around Egypt.[71]

While social media was essential in initiating the revolution, it also played an important role in conducting the revolution. One individual who contributed to the revolution through social media was Omar Afifi.[72] Afifi is a former Egyptian police officer turned activist.[73] Afifi wrote a book advising Egyptians on how to avoid police brutality.[74] After his book was banned and his life was threatened, Afifi sought asylum in the United States.[75] Once the Tunisian revolts took place, Afifi released a series of detailed instructional videos on YouTube to teach Egyptians techniques for conducting their own revolution.[76] He specified the exact day to revolt, where to gather, and what to wear. Afifi's videos also emphasized the idea of peaceful protest.[77] Similarly, other activists used social media to instruct protestors how to use technology to escape the government's surveillance, how to face rubber bullets, and how to set up barricades.[78]

Social media was also used to monitor the revolution in Tunisia, in order to better plan the future revolution in Egypt.[79] Activists from both countries used social media to exchange information, ideas, and words of encouragement.[80] On January 17, 2011, an Egyptian female and activist blogger posted a video message from an Egyptian actress encouraging Tunisians activists.[81] She also urged Egyptians to send text messages to encourage Tunisians during protests.[82] Once the Egyptian revolution began, Tunisian activists used social media to post words of encouragement as well as instructions based on what they learned during their protests. The Tunisian activists advised Egyptians to protest at nighttime for safety, avoid suicide operations, use social media to spread

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70 Paslawsky, *supra* note 59, at 1523.
71 *Id.*
72 Eltantawy & Wiest, *supra* note 54, at 1213.
73 *Id.*
74 *Id.*
75 *Id.*
76 *Id.*
77 *Id.*
78 *Id.*
79 Eltantawy & Wiest, *supra* note 54, at 1214.
80 *Id.*
81 *Id.*
82 *Id.*

their message to the world, and wash their faces with Coca-Cola to reduce the impact of tear gas.[83]

Finally, after weeks of protest, President Hosni Mubarak resigned ending his thirty-year reign of Egypt during which he suppressed dissent and protest and jailed his opponents.[84] Upon resigning, Mubarak assigned the high council of the armed forces to take care of Egypt's affairs.[85] Since the council has taken over, however, it does not seem that much has changed for the better.[86] Nonetheless, Egyptian citizens have kept the revolution's momentum going through Twitter and Facebook.[87]

C. MOVING TO ASIA: THE USE OF SOCIAL MEDIA IN CHINA

In addition to the Middle East and Africa, Chinese citizens have also used social media and other technology to speak out against the government. At half a billion, China has the largest number of Internet users in the world.[88] Even though China has the largest number of Internet users, this number only amounts to 40% of China's total population, and is very low by the standards of developed economies.[89] Nonetheless, it is growing fast, increasing by more than fifty million users in 2011.[90] While China has the largest number of Internet users, Internet censorship in China is among the most stringent in the world.[91] Nonetheless, there have been some instances where Chinese citizens

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83 Eltantawy & Wiest, supra note 54, at 1215.

84 Egypt Crisis: President Hosni Mubarak Resigns as Leader, BBC News (Feb. 21, 2001, 12:12 AM), http://www.bbc.co.uk/news/world-middle-east-12433045.

85 *Id.*

86 *See* Tanja Aitamurto, *How Social Media Is Keeping the Egyptian Revolution Alive*, PBS (Sept. 13, 2011), http://www.pbs.org/mediashift/2011/09/how-social-media-is-keeping-the-egyptian-revolution-alive256.html.

87 *Id.*

88 Diamond, *supra* note 1, at xvii.

89 *Id.*

90 *Id.*

91 *Internet Censorship in China*, N.Y. TIMES (Dec. 28, 2012), http://web.archive.org/web/20121221214905/http://topics.nytimes.com/top/news/international/countriesandterritories/china/internet_censorship/index.html (accessed by searching for Internet Censorship in China in the Internet Archive index); *Infra* Part II.

have used the Internet, social media, and other digital technology to alter the political process and promote change.[92]

i. Citizen Expose the Chinese Government's Cover-up of the SARS Outbreak through Expressive Technology

One instance where Internet forums were used to not only stand up to China's authoritarian regime, but also to promote official accountability occurred in early 2003 when the SARS outbreak began in China. The earliest case of SARS is believed to have occurred in Foshan, a city in China's Guangdong province, in mid–November of 2002.[93] Chinese health personnel were alerted of the disease as early as mid–December 2002.[94]The first team of health experts sent by the Ministry of Health, however, did not arrive until January 20, 2003.[95] At the same time, the provincial government also sent a team of health experts to investigate the disease.[96] A week later, the report was sent back and marked "top secret" so that only top health officials could open it.[97] Meanwhile, the public was kept uninformed about the disease.[98] Furthermore, under the Implementing Regulations on the State Secrets Law concerning the handling of public health–related information, no physician or journalist who reported on the disease could release that information to the public without being persecuted for leaking state secrets until the Ministry of Health chose to make the information public.[99] Thus, a virtual news blackout about SARS continued into February 2003.[100]

Although the Chinese government-controlled media was prohibited from reporting on the World Health Organization's (WHO) warning about SARS, the news circulated via mobile phones, e-mail, and

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92 *See* Xiao Qiang, *The Battle for the Chinese Internet*, *in* LIBERATION TECHNOLOGY: SOCIAL MEDIA AND THE STRUGGLE FOR DEMOCRACY 63, 63 (Larry Diamond & Marc F. Plattner eds., 2012).

93 Yanzhong Huang, *The SARS Epidemic and its Aftermath in China: A Political Perspective*, *in* LEARNING FROM SARS: PREPARING FOR THE NEXT DISEASE OUTBREAK, 116, 117 (Stacy Knobler et al. eds., 2004).

94 Id.

95 Id.

96 Id.

97 Id.

98 Id. at 118.

99 Id.

100 Id.

the Internet.[101] On February 8, 2003, reports about SARS began to be sent via text messages on mobile phones in Guangzhou.[102] The message, "there is a fatal flu in Guangzhou,"[103] was sent out forty million times on February 8, 2002, forty-one million times the following day, and forty-five million times the day after that.[104] Three days later, Guangdong health officials finally broke the silence by holding press conferences about the disease.[105] From that point on, information about the disease was reported to the public through the news media.[106]

Although the news was out, the government continued to downplay the risk of illness.[107] Additionally, in response to reports which began to question the government's handling of the outbreak, the government halted reporting of the disease on February 23, 2003.[108] This new blackout continued until March 2003 and not only restricted the flow of information to the public, but also contributed to the government's failure to take further actions to address the looming catastrophe.[109]

By March 1, 2003, the epidemic had spread to Beijing; however, once again, the city authorities kept information about the scope of SARS from the public.[110] According to Dr. Jiang Yanyong,[111] Beijing's military hospitals were informed about the dangers of SARS in early March, but were not allowed to publicize what they had learned.[112] When the WHO advised people not to travel to Hong Kong and Guangdong,

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[101] Id. at 123.

[102] Id. at 118.

[103] William Thatcher Dowell, The Internet, Censorship, and China, 7 GEO. J. INT'L AFF. 111, 115 (2006).

[104] Id.

[105] Yanzhong, *supra* note 93, at 118.

[106] *Id.*

[107] *See id.* (stating that the Ghangzhou city government reported that the illness was under control); Joseph Kahn, *China Bars U.S. Trip for Doctor Who Exposed SARS Cover-Up*, N.Y. TIMES, July 13, 2007, *available at* http://www.nytimes.com/2007/07/13/ world/asia/13doctor.html (stating that the Chinese medical authorities were asserting that the entire nation had only a handful of cases of the disease.); Dowell, *supra* note 103, at 116.

[108] Yanzhong, *supra* note 93, at 118-19.

[109] *Id.* at 119.

[110] *Id.* at 120.

[111] Dr. Jiang is a retired surgeon in the People's Liberation Army (PLA). *CASE INFORMATION: JIANG YANYONG*, THE NATIONAL ACADEMIES, (last visited March 23, 2014). While in the military, Dr. Jiang was the Chief Surgeon of the PLA's No. 301 Hospital. He rose within the PLA and achieved a rank corresponding to general in the West. *Id.* Dr. Jiang is also a senior Community Party member. *Id.*

[112] *Id.*

Beijing held a news conference where the health minister reported that China was safe and that SARS was under control.[113]

In response, Dr. Jiang Yanyong emailed two TV stations in which he accused the minister of lying.[114] While the TV stations did not follow up on the email, his statements were published by the German news magazine *Der Spiegel*,[115] and the story was posted by *Time* magazine on its website.[116] Jiang's statements later became very popular in China, and were widely distributed by email and posted on the bulletin board system (BBS) of several universities, one of which was the very popular BBS *Shuimou* at Tsinghua University.[117] As a result, "the torrent of messages sent through cellphones or the Internet and Dr. Jiang Yanyong's exposure of the cover-up challenged the state's monopoly on information."[118] Since the cover-up was exposed, the health minister and the mayor of Beijing were removed from their posts.[119] More importantly, the citizens of China were able to have an impact on the Chinese government.

ii. Blogger Ousts Plans for Factory by Inspiring Popular Opinion while Online Photograph Post Helps Protect the Property Interests of Individual Homeowners

Just as Chinese citizens used digital communication technology and the Internet to expose the Chinese government's cover-up of the SARS outbreak, they also used this technology to increase their activity in politics. In March of 2007, a Chinese blogger posted a series of articles warning the people in his hometown, the city of Xiamen, about the potentially disastrous environmental effect a proposed paraxylene chemical factory could have on the city.[120] In those articles the blogger

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[113] *Id.* at 123.

[114] *Id.*

[115] Eric Sautedé, *The Snares of Modernity: Internet, Information and the SARS Crisis in China*, CHINA PERSPECTIVES 2003, http://chinaperspectives.revues.org/273 (last visited Mar. 14, 2013). The Chinese government officially recognized only twelve cases of SARS, *id.* while Dr. Jiang reported that there were at least 100 people being treated for SARS in Beijing alone; Kahn, *supra* note 107.

[116] Yanzhong, *supra* note 93, at 123.

[117] Sautedé, *supra* note 115.

[118] Yanzhong, *supra* note 93, at 123-24.

[119] Kahn, *supra* note 107.

[120] Xiao, *supra* note 92, at 64.

urged his fellow residents to speak out against the plant.[121] Although authorities deleted messages opposing the factory on servers within its jurisdiction, the posts on the original blog remained because its server was in another province.[122] As a result of the blogger's efforts, word of the plant spread throughout the city via e-mail, instant messages, and text messages.[123] Later, several thousand people protested the proposal for the chemical factory in front of city hall, and the participants reported the event live through their blogs.[124] After two public hearings on the matter, city authorities decided to relocate the proposed factory.[125] One news agency praised the turnaround "as indicating 'a change in the weight given to the views of ordinary Chinese in recent years.'"[126]

Similarly, Chinese citizens used the Internet to drive public opinion when a couple's home was being threatened by a new development.[127] In that instance, a citizen from Chongqing posted a photo of the house informing others of what was going on.[128] Even though a court ruled against the homeowners, public opinion heavily favored the couple.[129] Later, the homeowners refused to move as ordered by the court.[130] After the homeowners disobeyed the order, China's central government issued an order to limit reporting; however, the orders were too late and the story survived through the photographs posted online.[131] Eventually, the developer caved because of the public pressure, settled the case, and compensated the homeowners for their property.[132] If the pictures had never been posted, the couple would likely have been forced to move without any compensation.[133]

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121 *Id.*
122 *Id.*
123 *Id.*
124 *Id.*
125 *Id.*
126 *Id.*
127 *Id.* at 70.
128 Id.
129 *Id.* at 71.
130 *Id.*
131 *Id.*
132 *Id.*
133 *See id.*

III. INTERNET BLOCKING AND CENSORSHIP

While the Internet and other forms of digital communication technology have given voice to citizens in autocratic states, many states have tried to curtail the effects of this technology. In the last few years the number of states that limit access to Internet content has risen rapidly.[134] States may filter the Internet to prevent content that could damage its unity and sovereignty; portrays violence, pornography, gambling, or terrorism; violates privacy.[135] While these interests may be legitimate, states may also censor the Internet to prevent dissemination of dissenting and anti-government ideas to the public that could undermine the state's authority.[136]

A. METHODS FOR CENSORING THE INTERNET

There are multiple strategies through which a state can enact Internet censorship and content restrictions.[137] First, a state can use technical blocking.[138] There are three common techniques that are usually employed to block access to Internet sites: internet protocol (IP) blocking, domain name system (DNS)[139] tampering, and uniform resource locator (URL) blocking using a proxy.[140] Technical blocking methods are usually used when direct jurisdiction or control over websites are beyond the reach of authorities.[141] Furthermore, while the three technical methods listed above are most frequently used, a growing number of countries have started to use keyword blocking.[142] Similar to

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[134] *About Filtering*, OPEN NET INITIATIVE, http://opennet.net/about-filtering (last visited Jan. 20, 2013).

[135] Chris Buckley, *China Steps Up Defense of Internet Controls,* REUTERS (Jan. 25, 2010), http://www.reuters.com/article/2010/01/25/us-china-usa-idUSTRE60L1DK20100125?type=politicsNews.

[136] *See id.*

[137] *Id.*

[138] *Id.*

[139] A domain name system is a database system that translates domain names into an IP address. University Information Technology Services, *What is DNS?*, IND. U. KNOWLEDGE BASE (Dec. 4, 2012), http://kb.iu.edu/data/adns.html (last modified Mar. 12 2013).

[140] About Filtering, supra note 134.

[141] Id.

[142] Id. (defining keyword blocking as a more advanced technique that blocks access to websites based on the words found in URLs or blocks searches involving blacklisted terms).

technical blocking, states may also use denial of service (DoS) attacks to block users from accessing certain websites.[143]

A second strategy used to censor the Internet is search result removal.[144] This occurs when companies that provide Internet search services cooperate with states to omit illegal or undesirable websites from search results.[145] Thus, instead of blocking access to the targeted cites, search result removals make it much more difficult for users to find them.[146] Another strategy that states may use is called a take-down.[147] If regulators have both direct access to and legal jurisdiction over web content hosts, they may demand the removal of websites with inappropriate or illegal content.[148] In some states, a cease and desist notice may be sufficient to get the host to take down a sensitive website.[149] States that have control of domain name servers, however, can go one step further and deregister a domain that is hosting restricted content.[150] This makes the website invisible to those who are trying to access it.[151]

One last effective strategy is to limit exposure to Internet content by encouraging self-censorship with respect to browsing habits and choosing content to post online.[152] A state may do so through "the threat of legal action, the promotion of social norms, or informal methods of intimidation."[153] For example, a state may arrest or detain an individual for Internet related offenses or other unrelated offenses in order to induce compliance with Internet restrictions.[154] Moreover, the perception that the government is monitoring the Internet also provides a strong

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143 With a DoS attack, the attackers try to prevent legitimate users of a service. Denial of Service Attacks, CERT, http://www.cert.org/tech_tips/denial_of_service.html (last revised June 4, 2001). Two examples of DoS attacks are flooding the network in order to prevent legitimate network traffic and disrupting connections between two machines in order to prevent access to the service. Id.

144 About Filtering, supra note 134.

145 Id.

146 Id.

147 Id.

148 Id.

149 Id.

150 Id.

151 Id.

152 Id.

153 Id.

154 Id.

incentive to avoid posting material or visiting a site that is inappropriate or illegal.[155]

A state may apply these strategies at four different points of control.[156] First, state implementation of national content filtering schemes and blocking technologies may be employed at the Internet backbone.[157] This can affect Internet access throughout an entire country, and is often carried out at the international gateway.[158] An international gateway is a network point that allows a person on one state's network to access the network of another state.[159] A second point of control is at the Internet Service Providers (ISPs) level.[160] This is the most common point of control.[161] Government-mandated filtering is implemented by ISPs using any one or a combination of the technical filtering techniques mentioned above.[162] Internet filtration may also occur at the institutional level.[163] Institutional networks are filtered through technical blocking, induced self-censorship, or both.[164] While institutional-level filtering is typically used to meet the internal objectives of the institution, in some states, institutional filtering takes place at the government's behest.[165] Finally, Internet filtering can be achieved at the individual computer level.[166] Internet filtering at this level is achieved by installing filtering software that restricts an individual computer's ability to access certain websites.[167] Countries may filter the Internet at all of these levels.[168]

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155 Id.

156 Id.

157 Id.

158 Id.

159 See Bradley Mitchell, gateway, ABOUT.COM, http://compnetworking.about.com/od/networkdesign/g/network-gateway.htm (last visited March 23, 2014) (defining gateway as "an internetworking system capable of joining together two networks that use different base protocols").; see also Margaret Rouse, gateway, SEARCHNETWORKING, http://searchnetworking.techtarget.com/definition/gateway (last updated Dec. 2005) (defining gateway as "a network point that acts as an entrance to another network").

160 Id.

161 Id.

162 Id.

163 Id. (examples of institutions include companies, government organizations, schools, and cybercafés).

164 Id.

165 Id.

166 Id.

167 Id.

168 Id.

B. INTERNET CENSORSHIP IN TUNISIA AND EGYPT

Prior to the revolutions in Egypt and Tunisia, both governments censored and monitored the Internet activity of its citizens.[169] In Tunisia, the government pervasively filtered much of the Internet's political and social content.[170] The Tunisian government filtered the web by using a commercial software program, SmartFilter, and was able to hide its filtering from Internet users.[171] In addition to filtering content, Tunisia's government used laws, regulations, and surveillance to strictly control the Internet.[172] Moreover, online dissidents were severely punished.[173] In one instance, a human rights lawyer was sentenced to three years in prison for publishing a report online that accused the Tunisian government of torturing prisoners.[174] Furthermore, Tunisian law enabled authorities to intercept and check the content of e-mail messages under the pretext of protecting public order and national security.[175]

In Egypt, bloggers were harassed, intimidated, and arrested by the government as they continued to use the Internet for online activism.[176] Additionally, Egypt's law allowed jail terms for online writers.[177] By the end of January 2011, the Egyptian government had shut off the Internet for five days in order to stop the coordination of protests on Facebook and Twitter.[178] Egypt also disrupted text messaging and other mobile phone services.[179]

C. THE GREAT FIREWALL: INTERNET CENSORSHIP IN CHINA

As the revolts began to spread throughout the Middle East and North Africa, the Chinese government cracked down even harder on

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[169] Internet Filtering in Egypt, OPEN NET INITIATIVE, http://opennet.net/research/profiles/egypt (last visited Aug. 6, 2009) [hereinafter Egypt]; Internet Filtering in Tunisia, OPEN NET INITIATIVE, http://opennet.net/research/profiles/tunisia (last visited Aug. 7, 2009) [hereinafter Tunisia].

[170] Tunisia, supra note 169.

[171] Id.

[172] Id.

[173] Id.

[174] Id.

[175] Id.

[176] Egypt, supra note 169.

[177] Id.

[178] Matthew R. Dardenne, Testing the Jurisdictional Limits of the International Investment Regime: The Blocking of Social Media and Internet Censorship, 40 DENV. J. INT'L L. & POL'Y 400, 402 (2011-2012).

[179] Id. at 403.

electronic communications.[180] As a result, China has the world's most complex Internet censorship system, featuring DNS hijacking,[181] IP blocking, and keyword filtering.[182] This system significantly limits the content that Chinese citizens can access or post on the Internet as well as the content that Chinese citizens can transmit via cell phones.[183] Estimates show that China has 30,000 civil servants monitoring the Internet traffic and blocking content that is deemed undesirable.[184] While China has people literally policing the Internet, the most effective censorship mechanism it uses is keyword blocking.[185] In China, typing in a sensitive keyword like "democracy" into a search engine will result in an error message.[186] In addition to policing the Internet and blocking certain keyword searches, the Chinese government has also blocked access to major social media platforms such as Twitter and Facebook.[187]

The Chinese government also regulates the Internet through an extensive arsenal of laws and regulations.[188] As a result of these laws, Internet service providers[189] and individuals[190] engage in self-

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[180] *See* Anita Chang, *China tries to stamp out 'Jasmine Revolution,'* USA TODAY (Feb. 20, 2011, 9:27 AM) http://usatoday30.usatoday.com/news/world/2011-02-20-china-jasmine-revolution_N.htm (worried about pro-democracy demonstrations modeled after the demonstrations sweeping the middle east, Chinese authorities "disconnected some mobile phone text messaging services and censored Internet positing about the call to stage protests . . . ."; *see also* Tania Branigan, *Crackdown in China Spreads Terror Among Dissidents*, THE GUARDIAN (Mar. 31, 2011, 8:57 PM), http://www.theguardian.com/world/2011/mar/31/china-crackdown-on-activists-arrests-disappearances ("China has launched the most severe crackdown on dissidents and activists . . . [following] anonumous online calls for 'jasmine revolusion' protests, echoing the uprisings in the Middle East.")

[181] DNS hijacking is the practice of redirecting Internet traffic meant for one website to another website. Jason Taetsch, *How to Stop DNS Hijacking*, HOUS. CHRON., http://smallbusiness.chron.com/stop-dns-hijacking-32524.html (last visited Mar. 14, 2013).

[182] Xueyanag Xu et al., *Internet Censorship in China: Where Does the Filtering Occur?, in* PASSIVE AND ACTIVE MEASUREMENT: 12TH INTERNATIONAL CONFERENCE, PAM 2011 ATLANTA, GA, USA, MAR. 2011 PROCEEDINGS 133, 133 (Neil Spring & George F. Riley eds., 2011); *see also* Jon M. Garon, *Revolutions and Expatriates: Social Networking, Ubiquitous Media and the Disintermediation of the State*, 11 J. INT'L BUS. & L. 293, 308 (2012) (noting that China has created a pervasive, sophisticated, and multilayered system of censorship).

[183] Garon, *supra* note 182, at 308.

[184] GREAT FIRE WALL OF CHINA, *Frequently Asked Questions*, GREATFIREWALLOFCHINA.ORG, http://www.greatfirewallofchina.org/faq.php# (last visited Feb. 15, 2013) (follow the "How Does Internet Censoring Work" hyperlink) [hereinafter GREATFIREWALLOFCHINA.ORG].

[185] Xu, *supra* note 182.

[186] GREATFIREWALLOFCHINA.ORG, *supra* note 184.

[187] *China*, OPEN NET INITIATIVE, (Aug. 9, 2009), http://opennet.net/research/profiles/china.

[188] GREATFIREWALLOFCHINA.ORG, *supra* note 184.

[189] Internet providers comprise both commercial Internet providers, including Western commercial Internet providers such as Google (google.cn) and Yahoo! (yahoo.cn), and Internet cafes. *Id.*

censorship.[191] Voluntary compliance with Chinese regulations has had some severe consequences. In one instance a Chinese dissenter, Jiang Lijun, was imprisoned for a draft e-mail containing proposals for a more democratic China;[192] Yahoo! provided the necessary data to find Jiang.[193] Finally, the Chinese government has ambiguous "inciting subversion" and "revealing state secrets" laws to deter and punish dissidents.[194] For instance, the former editor of *Dangdai Shang Bao* was sentenced to ten years in prison for sending an e-mail to an overseas website in which he disclosed that the Chinese government had instructed him on how his newspaper should cover the fifteenth anniversary of the Tiananmen massacre.[195]

IV. ACCESSING THE INTERNET AND ITS MEDIA: A FUNDAMENTAL RIGHT

No matter how states try to justify their reasons for censoring the Internet and other digital communication technologies, their actions constitute human right violations. The Universal Declaration of Human Rights (the Universal Declaration) provides that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers."[196] Furthermore, the International Covenant on Civil and Political Rights provides that every person has the right to the freedom of expression, which includes the freedom "to seek, receive and impart information and ideas . . . regardless of frontiers . . . [and] through any . . . media . . . ."[197] Finally, all three regional human rights treaties–the European Convention on Human Rights, the American Convention on Human Rights, and the

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[190] Many people do not express what they actually believe because they know that their thoughts will be censored anyway. *Id.*

[191] *Id.*

[192] GREATFIREWALLOFCHINA.ORG, *supra* note 184.

[193] *Id.*

[194] HUMAN RIGHTS WATCH, WORLD REPORT 2012: CHINA 1, 3, *available at* http://www.hrw.org/sites/default/files/related_material/china_2012_0.pdf.

[195] Matt Keating, *The Chinese journalists in prison*, THE GUARDIAN, Feb. 19, 2006, http://www.guardian.co.uk/ media/2006/feb/20/china.mondaymediasection.

[196] Universal Declaration of Human Rights, G.A. Res. 217(III)A, art. 19, U.N. Doc A/RES/217(III) (Dec. 10, 1948) [hereinafter Universal Declaration].

[197] International Covenant on Civil and Political Rights, Art. 19 ¶¶ 1-2, *adopted by General Assembly* Dec. 19, 1966, 999 U.N.T.S. 171, 178, *available at* http://www.unhcr.org/refworld/docid/3ae6b3aa0.html [hereinafter International Covenant].

African Charter on Human and Peoples' Rights–guarantee the right to freedom of expression.[198] Although the Internet is not explicitly mentioned, the ordinary meaning of these treaties and the Vienna Convention, in addition to other international materials, clearly dictate that accessing the Internet is included within the right to freedom of expression.

Article 31 of the Vienna Convention states that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[199] Additionally, through the Universal Declaration, the United Nations (UN) decided "to promote social progress and better standards of life in larger freedom."[200] In light of this purpose, the plain meaning of "media" and "frontier" only support the proposition that the people have a fundamental right to accessing the Internet.

Webster defines a "medium" as "something through or by which something is accomplished, conveyed, or carried on: as . . . an intermediate or direct instrumentality or continuous revelation especially a channel, method, or system of communication, information, or entertainment."[201] The Internet and its electronic tools such as social media, blogs, and news media, have provided people with a means to communicate with each other; specifically, to receive and impart

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[198] TOBY MENDEL, CENTRE FOR LAW AND DEMOCRACY, RESTRICTING FREEDOM OF EXPRESSION: STANDARDS AND PRINCIPLES 1-2, *available at* http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf. The European Convention provides that everyone has the right to opinion and freedom of expression, and that the right to freedom of expression includes the right to receive and disseminate information and ideas regardless of frontiers. Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10, ¶ 1. Nov. 4, 1950, 005 C.E.T.S. available at http://www.echr.coe.int/Documents/Convention_ENG.pdf. Similarly, the American Convention provides that everyone has the right to freedom of expression which includes the right "to seek, receive, and impart information and ideas of all kinds, regardless of frontiers . . . or through any medium [they choose]." Organization of American States, American Convention on Human Rights, art. 13, ¶ 1, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, 148-49, *available at* http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf. Finally, the African Charter provides that every individual has the right to receive information and to express and disseminate opinions. African [Banjul] Charter on Human and Peoples' Rights, art. 9, ¶¶ 1-2, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, 60 (entered into force Oct. 21, 1986), *available at* http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf.

[199] Vienna Convention on the Law of Treaties, § 3, art. 31, ¶ 1, May, 23 1969, 1155 U.N.T.S. 331 (entered into force on Jan. 27 1980), *available at* http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[200] Universal Declaration, *supra* note 196, at Pmbl.

[201] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 914 (2002).

information as well as express their opinions.[202] Additionally, "frontier" is defined as "an area that constitutes the most advanced, obscure, or unexploited field or line of inquiry with respect to a particular subject . . . the farthermost limits of knowledge or achievement."[203] The definition of "frontier" demonstrates that the drafters of these treaties did not mean to limit media to traditional forms such as printed publications; rather, using "frontier" indicates that the right to freedom of expression encompasses the latest form through which people can receive and impart information and opinions. Therefore, since all people have the right to freedom of expression and the right to freedom of expression includes expressing oneself through the Internet, all people have a fundamental right to access the Internet.

Furthermore, other international materials support this conclusion. In a Joint Declaration on Freedom of Expression and the Internet (the Joint Declaration), the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, stated that freedom of expression applies to the Internet just like all other forms of communication.[204] Additionally, the OSCE[205] has indicated that access to the Internet is a positive fundamental right.[206] In

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[202] *See* Diamond *supra* note 1.

[203] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1403 (2002).

[204] FRANK LARUE, DUNJA MIJATOVIĆ, CATALINA BOTERO MARINO, & FAITH PANSY TLAKULA, THE UNITED NATIONS (UN) SPECIAL RAPPORTEUR ON FREEDOM OF OPINION AND EXPRESSION, THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE) REPRESENTATIVE ON FREEDOM OF THE MEDIA, THE ORGANIZATION OF AMERICAN STATES (OAS) SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND THE AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS (ACHPR) SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION, INTERNATIONAL MECHANISMS FOR PROMOTING FREEDOM OF EXPRESSION JOINT DECLARATION ON FREEDOM OF EXPRESSION AND THE INTERNET 2 (June 1, 2011), *available at* http://www.osce.org/fom/78309 [hereinafter LARUE, MIJATOVIĆ, MARINO & TLAKULA].

[205] The OSCE is the world's largest regional security organization. *Who we are*, ORG. FOR SEC. AND CO-OPERATION IN EUR., http://www.osce.org/who (last visited Feb. 16, 2013). It is comprised of fifty-seven states from Europe, Central Asia, and North America. *Id.* One of the OSCE's functions is to monitor media developments in its participating States for violations of freedom of expression. *What we do*, ORG. FOR SEC. AND CO-OPERATION IN EUR., http://www.osce.org/what (last visited Feb. 16, 2013).

[206] See, e.g., Internet Blocking Practices a Cocnern, Access is a Human Right, Says OSCE Media Freedom Representative at Launch of OSCE-Wide Study, OSCE (July 8, 2011) http://www.osce.org/fom/80735 ("The Internet . . . . should be considered a human right").

one of its decisions, the OSCE Permanent Council[207] reaffirmed the "importance of fully respecting the right to the freedoms of opinion and expression, which include the freedom to seek, receive and impart information, which are vital to democracy and in fact are strengthened by the Internet."[208]The Joint Declaration also states that any restriction on freedom of expression must satisfy the three-part test[209] that is recognized under international law.[210] Moreover, the Joint Declaration indicates that in general, mandatory blocking websites and content filtering systems that are not controlled by the end user are not justifiable under the right to freedom of expression.[211] Furthermore, the right to freedom expression also requires states to promote universal access to the Internet.[212] Finally, the Joint Declaration provides that cutting off access to the Internet as a whole or in part can never be justified.[213]

International law, however, also indicates that the right to freedom of expression–which includes the right to access the Internet–is not absolute. Since the right to freedom of expression comes with special duties and responsibilities, it may be subject to certain restrictions.[214] These restrictions must be provided by law and must be necessary for protecting the rights or reputations of others or for the protection of national security, public order, or public health or morals.[215] Any action taken by a public organ that has an actual effect on a person's freedom of expression constitutes a restriction or limitation.[216]

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[207] The OSCE Permanent Council is made up of delegates of the fifty-seven participating States. *Delegations*, ORG. FOR SEC. AND CO-OPERATION IN EUR., http://www.osce.org/pc/43251 (last visited Feb. 16, 2013).

[208] Organization for Security and Co-operation in Europe Permanent Council, *Decision No. 633 Promoting Tolerance and Media Freedom on the Internet*, 532nd Plenary Meeting, PC.Dec/633, Nov. 11, 2004, http://www.osce.org/pc/16912.

[209] *See infra* Part.V.

[210] LARUE, MIJATOVIĆ, MARINO & TLAKULA, *supra* note 204.

[211] *See id.*

[212] *Id.*

[213] *Id.*

[214] International Covenant, *supra* note 197, at art. 19, ¶ 3; Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 198, at art. 10, ¶ 2; Organization of American States, *supra* note 198 at art. 13, ¶ 2.

[215] International Covenant, *supra* note 197, at art. 19, ¶ 3; Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 198, at art. 10, ¶ 2; Organization of American States, *supra* note 198 at art. 13, ¶ 2.

[216] *Limitations*, ARTICLE 19, http://www.article19.org/pages/en/limitations.html (last visited March 23, 2014).

V. INTERNATIONAL MECHANISMS ARE INSUFFICIENT FOR PROTECTING PEOPLES' RIGHT TO ACCESS THE NET

Under the International Covenant on Civil and Political Rights, any limitation to the right of freedom of expression must pass a three-part test.[217] First, the law must explicitly provide for the limitation, and the law must be clear and accessible to everyone.[218] Second, the limitation must pursue one of the purposes set out in article 19, paragraph 3, of the International Covenant on Civil and Political Rights.[219] Finally, the limitation must be proven necessary and the limitation must use the least restrictive means necessary to achieve the law's purported aim.[220] The European Court of Human Rights has applied a similar test in light of the European Convention on Human Rights.[221] The Court has stated that a state action violates a person's right to freedom of expression "unless it [is] prescribed by law, pursued a legitimate aim and [is] necessary in a democratic society."[222]

In *Yildirim v. Turkey*, Mr. Yildirim's access to his website was blocked when the Denizli Criminal Court ordered the blocking of all access to Google Sites.[223] While the criminal court initially gave the order to shut down a third party's website, it found that the only way it could do so is to bar access to Google Sites as a whole.[224] On appeal, the European Court of Human Rights found that the order was a restriction on Internet access rather than a blanket ban.[225] It noted, however, that the limited effect of the restriction did not lessen its significance especially since the Internet has become a principal means for exercising the right

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[217] Frank La Rue, *Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, Human Rights Council, ¶ 24, U.N. Doc. A/HRC/17/27 (May 16, 2011), *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/132/01/PDF/G1113201.pdf?OpenElement [hereinafter La Rue].

[218] *Id.*

[219] *Id.*

[220] *Id.*

[221] Press Release, Eur. Ct. of Hum. R., Restriction of Internet access without a strict legal framework regulating the scope of the ban and affording the guarantee of judicial review to prevent possible abuses amounts to a violation of freedom of expression, Registrar of the Court (Dec. 18, 2012), *available at* http://hudoc.echr.coe.int/webservices/ content/pdf/003-4202780-4985142.

[222] *Id.* at 2.

[223] *Id.* at 1.

[224] *Id.*

[225] *Id.* at 2.

to freedom of expression.[226] The Court concluded that the criminal court's order amounted to an interference of Yildirim's right to freedom of expression by public authorities,[227] which would breach Article 10 unless it was prescribed by law, pursued one or more legitimate aims, and was necessary in to achieve those aims in a democratic society.[228]

The Court held that the measure was not prescribed by law because "it was not reasonably foreseeable or in accordance with the rule of law."[229] Moreover, it stated that a law is foreseeable "in its application if it was formulated with sufficient precision to enable individuals to regulate their conduct."[230] The Court reasoned that the law allowed a court to issue an order to block access to content published on the Internet as long as there are sufficient reasons to suspect that the content is illegal.[231] Furthermore, it reaffirmed that a restriction on access to the Internet content is only compatible with the convention if there is a strict legal framework is in place to prevent possible abuses.[232] Since the law did not provide for wholesale blocking of access to an entire domain, and neither Google Sites nor Yildirim's site were the subject of the criminal proceeding,[233] the criminal court's order was not prescribed by law, and thus violated Yildirim's right to freedom of expression.[234]

While the three-part test helped Yildirim to prevail in light of a human right's violation, it is insufficient for two reasons. First, in some circumstances it may allow states to regulate the Internet under the guise of a legitimate reason, but in a manner that violates their citizens' rights.[235] Second, citizens whose state is only a member of the UN, and not a party to any other human rights convention, have little options for redress.[236]

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[226] Id.

[227] *Id.*

[228] LARUE, MIJATOVIĆ, MARINO & TLAKULA, *supra* note 204.

[229] *Turkish block on Google site breached Article 10 rights, rules Strasbourg*, UK HUM. RIGHTS BLOG (Jan. 16, 2013), http://ukhumanrightsblog.com/2013/01/16/turkish-block-on-google-site-breached-article-10-rights-rules-strasbourg/#more-16793.

[230] *Id.*

[231] *Id.*

[232] *Id.*

[233] *Id.*

[234] *Id.*

[235] Infra Part V.A.

[236] Infra Part V.B.

A. UNDER THE CONVENTION'S THREE-PART TEST, STATES CAN USE THE LEGITIMATE INTEREST PRONG AS A PRETEXT FOR REGULATING THE INTERNET

While the ECHR's decision in *Yildirim v. Turkey* was a landmark decision,[237] it still demonstrates the problem with the overall test designed to prevent abuse. Under the current standard, it is easy for states to use a legitimate interest as a pretext for regulating the Internet.[238] Furthermore, had the law in *Yildirim* explicitly authorized a blanket ban, it is not clear whether that would have been a violation. Although a blanket ban is not necessary in blocking access to one website with illegal content, a blanket ban may be necessary when regulating a private Internet service provider that refuses to remove illegal content.

In China, the Guangdong Provincial Communications Administration states that "the system operator [is] responsible for the contents of his/her area . . . If there should be any content . . . that is against the regulations, the related supervisory department will hold . . . the individual operator responsible."[239] Under such a regulation, a blanket ban shutting down access to illegal content of a system operator may be necessary in achieving the purpose for the regulation. Therefore, as long as the regulations barring the content were enacted for a "legitimate purpose," which is certainty plausible because the Chinese government consistently condones human rights violations in the name of "social stability,"[240] a law such is this may be upheld.

Furthermore some states have created security measures and regulations to protect copyright and intellectual-property protection.[241] These regulations have helped to legitimize government intervention in cyberspace even in countries where regimes are likely to be more

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[237] *See* Press Release, Article 19, Turkey: Landmark European Court Decision finds blanket Google ban was a violation of freedom of expression, (Dec. 18, 2012), *available at* http://www.article19.org/resources.php/resource/3567/en/turkey:-landmark-european-court-decision-finds-blanket-google-ban-was-a-violation-of-freedom-of-expression.

[238] Ronald Deibert & Rafal Rohozinski, *Liberation vs. Control: The Future of Cyberspace*, *in* LIBERATION TECHNOLOGY: SOCIAL MEDIA AND THE STRUGGLE FOR DEMOCRACY 18, 25 (Larry Diamond & Marc. F. Plattner ed., 2012). While this is not true in all situations it is something to be concerned about. *Id.*

[239] Xiao, *supra* note 92 at 66.

[240] HUMAN RIGHTS WATCH, *supra* note 194.

[241] Deibert & Rohozinski *supra* note 238, at 24.

interested in self-preservation than property rights.[242] Additionally, as noted earlier, Tunisia has also infringed on its citizens privacy and expressive rights under the guises of protecting the public order and national security.[243] Finally, when democratic states[244] are able to regulate the Internet in conformity with its own laws, it will be easier for autocratic states to do so as well.[245]

B .THERE INTERNATIONAL COURT OF JUSTICE'S LIMITED JURISDICTION EFFECTIVELY BARS CLAIMS FOR VIOLATION OF A CITIZENS' RIGHT TO ACCESS THE INTERNET

Another problem arises with the fact that, under the Statute of the International Court of Justice (ICJ),[246] the ICJ does not have jurisdiction to hear claims brought by individuals against states.[247] Therefore, citizens in a state like China, which is not a party to the European, American, or African conventions, cannot bring individual claims for freedom of expression violations before the ICJ.[248] The only way that an individual can bring a claim in the ICJ is if the state in which the individual is a citizen takes up the case and invokes the claim against another state so that the dispute becomes one between states.[249]

There are two reasons, however, why a state would not take up an individual's claim.[250] First, neither states nor international organizations want to use the ICJ very often because they do not want to

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[242] *Id.*

[243] *Tunisia*, *supra* note 169.

[244] Such as Canada, Germany and Ireland. Deibert & Rohozinski *supra* note 238, at 24.

[245] *Id.*

[246] The ICJ is the principal judicial organ of the United Nations and functions in accordance with the Statute of the ICJ. U.N. Charter art 92. The ICJ is open to all parties that are present to the Statute of the ICJ. Statute of the International Court of Justice, ch. II, art. 35, ¶ 1, June 16, 1945, *available at* http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0 [hereinafter Statute of the ICJ]. The ICJ has jurisdiction over all cases which the parties refer to it and all matters that are provided for in the U.N. Charter or treaties and conventions in force. *Id.* at ch. II, art. 34, ¶ 2.

[247] Statute of the ICJ, *supra* note 246, at ch. II, art. 34, ¶ 1.

[248] *See id.* The ICJ has no jurisdiction to deal with applications from individuals, corporations, non-governmental organizations, or any other private entity. *Frequently Asked Questions*, INT'L COURT OF JUSTICE, http://www.icj-cij.org/information/index.php?p1 =7&p2=2#2 (last visited Mar. 14, 2013). Therefore, the ICJ cannot help those entities in their dealings with State governments at all. *Id.*

[249] *Id.*

[250] Mark W. Janis, *Individuals and the International Court*, *in* THE INTERNATIONAL COURT OF JUSTICE: ITS FUTURE ROLE AFTER FIFTY YEARS 205, 209 (A.S. Muller, D. Raič and J.M. Thuránszky eds., 1997).

lose political and administrative control of disputes.[251] Second, they do not want to embarrass other states or organizations.[252] One solution to this problem is to either abolish or amend Article 34(1)–the provisions that only allows states to bring cases before the ICJ–and amend some of the other articles[253] to allow private parties to bring claims against States.[254] Private parties are more likely to bring claims for violations of the right to freedom of expression because unlike states and international organizations they do not have political control and often wish to reverse political and judicial decisions that have been made.[255] Individuals are also more likely to bring claims because they have little fear about embarrassing governments and international organizations.[256] In order for this modified system to work, however, states would have to accept any amendments to the Statute of the ICJ.[257]

VI. CONCLUSION

Technological networks such as the Internet and its media, have redefined the ways that people are able to receive and impart information and express their opinions.[258] Furthermore, the ordinary meaning of the language in Article 19 of the Universal Declaration, as well as the other conventions on human rights, demonstrates that people have a fundamental right to accessing the technological networks such as the Internet and its media. Other international materials further bolster this conclusion. As a result, state action that restricts or blocks its citizens'

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[251] *Id.*

[252] *Id.*

[253] For example, one article that would have to be amended is Article 35(1) of the Statute of the ICJ. Article 35(1) currently provides that the ICJ is open to states that are parties to the Statute of the ICJ. Statute of the ICJ, *supra* note 246, at ch. II, Art. 35, ¶ 1. The Article would have to be amended to provide that the ICJ is open not only to states that are parties to the Statute of the ICJ but also citizens of those states.

[254] Janis, *supra* note 250, at 212-214.

[255] *Id.* at 209.

[256] *Id.*

[257] *See id.* at 211. See *supra* note 253 for an example of a necessary amendment to the Statute of the ICJ.

[258] "[T]he internet is a network that magnifies the power and potential of all others. . . . [Freedom of expression] is no longer defined solely by whether citizens can go into the town square and criticize their government without fear of retribution. Blogs, emails, social networks, and text messages have opened up new forums for exchanging ideas, and created new targets for censorship." Hilary Clinton, Secretary of State, United States Dep't of State, Remarks on Internet Freedom at The Newseum in Washington, D.C. (Jan. 21, 2010), *available at* http://www.state.gov/secretary/rm/2010/01/135519.htm.

access to technological networks–like the Internet–constitutes a human rights violation unless it is prescribed by law, pursues some legitimate aim, and is necessary for achieving that aim. Courts that hear such cases must be careful that laws, which have a legitimate purpose and seem necessary for achieving that purpose, are not a pretext for blocking or censoring the Internet. Furthermore, until the ICJ is able to hear cases brought by individuals against states which are not parties to the other conventions on human rights, those individuals will be hard pressed to find a remedy.