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**Introduction**

‘Freedom makes a huge requirement of every human being,’[[1]](#footnote-1) but the central responsibility in international human rights law is placed on the shoulders of the State to guarantee that freedom. Human rights law functions as a critical restraint on the power which may be exercised by those acting on behalf of the State and endures even in times of armed conflict.[[2]](#footnote-2) At the core of these freedoms and rights is the concept of human dignity: its ‘inherent’ nature is ‘the foundation of freedom, justice and peace in the world’[[3]](#footnote-3). These concepts, however, remain poetry rather than motion all too often. Despite the resilience of the existence of human rights law during armed conflict, there arise a number of legal problems with the enforcement of individual rights relating to the dignity of the individual. This is particularly problematic when the power of the State is in transition from one group of individuals to another, as this may create a gap in responsibility. The ‘Arab Spring’[[4]](#footnote-4) of revolutionary protests, civil resistance and organised rebellion against those in power in numerous countries which count themselves as members of the Arab World raises myriad issues which relate to the rights of individuals. In particular, the rights violations reported by the media[[5]](#footnote-5) indicate breaches of both international humanitarian law, applicable during armed conflict, and breaches of fundamental human rights law norms.[[6]](#footnote-6) However the central question from a legal perspective is the attribution of responsibility for the guarantee of such rights during a period of transition from one organisational form to another. The main aim of the protests appeared to be achieving respect for the dignity of the individual, which means that legally there must be a body responsible, but which? Equally, the law of armed conflict applies to ‘parties’ to an armed conflict, but it is not clear if this would apply to all of those engaged in the fighting. It is necessary to separate out the different categories of norms and to understand which apply to situations such as this; a task which is too broad in scope for one piece of work. Instead, this work aims to be the foundation for future work in this area. As such, it has the main purpose of understanding who or what ought to bear responsibility for a failure to respect the dignity of individuals. Human rights do not generally operate in a horizontal manner; human rights obligations are not addressed to individuals. This work will undertake an analysis of the problems which arise in this respect and address a possible solution for the gap in accountability which is created by the unseating (or attempted unseating) of the public authorities in power. Do such movements represent the people more than those in power, leading to a redefinition of what a ‘State’ is? The obligations relating to dignity in international human rights law arise from a number of sources, of which treaties are only one. The majority of States from the Arab world have ratified the International Covenant on Civil and Political Rights[[7]](#footnote-7), to give one example, which creates binding obligations on these States to honour their human rights commitments. However there are other sources of international human rights law which bind States, to which they need not openly, or even actively, consent. Might other forms of obligation bind insurgents and ‘freedom fighters’? These questions will be further analysed, separating out the numerous elements within them and dealing with the underlying questions relevant to the aim of protecting individuals from serious violations of individual dignity.

This work is divided into four parts. The first part explores the fundamental nature of the concept of dignity and the protection it attracts in international law. For the purpose of clarity, a discussion of the specific rights which should be enforceable against those in power is not put forward; this is a discourse which would follow consequentially from the conclusions reached herein. This discussion therefore centres on the sources of the concept of dignity. This includes an analysis of the obligations applying to the ‘States’ which are parties to a number of human rights law instruments, however symbolic that relationship may be, and the unique place of dignity in international law: there are no analogous limitations on State power which are imposed regardless of consent. The second part of this work then explores who ought to be responsible for the protection of the dignity of individuals. In the first part, it is acknowledged that ‘States’ are usually the parties on whom human rights obligations are binding in international law. This part will examine the forms of responsibility in international law and the adjustment of international criminal law to address individuals who may be held individually criminal responsible for serious violations of international criminal law against the person. The possibility of other groups being subjects of international law is also briefly discussed. The third part to this work deconstructs the concept of a State, as the central subject of international law, and investigates whether national liberation movements may be identified as States, which would allow them to undertake obligations in international law. The final part to this work unifies these three themes by analysing the potential of national liberation movements to be considered States, through their behaviour. The conclusions of the research will be put forward, with suggestions as to how to avoid a gap in the law during regime change, to avoid a lack of accountability at a critical point in the possible formation of a new State.

**The Dignity of the Individual and its Protection in International Law**

The concept of dignity is not one which has a universal definition, legal or otherwise, but rather relates to the respect due to individuals by dint of their being human.[[8]](#footnote-8) It is central to the concept of secular human rights as it attributes worth and value to the individual in the sense of positive law, as opposed to any reference to natural rights, which then gives entitlement to the individuals without requiring anything of them. Dignity is not enshrined in any one right in international law, but rather respect for the rights themselves represents respect for the dignity of the person. Dignity is not, therefore, a right in itself, but a concept from which other rights flow. Early human rights instruments made reference to the concept of dignity[[9]](#footnote-9) but did not provide expressly for its protection as a unique right. This part of the work seeks to understand the link between the protection of dignity and human rights, and accordingly its importance to the modern system of international human rights law. Of necessity, there will also be a reflection on the provisions of international humanitarian law which relate to the protection of dignity for the individual. The question of defining dignity is so expansive that it will not be covered in any depth here; that is a task which has been undertaken well in other quarters.

The concept of human dignity is one which stretches across the boundaries of a number of disciplines. In the context of human rights law, dignity is critical to our understanding of rights, given its frequent reference in human rights texts. There is no specific common theory on what dignity is and it is also relevant that such a theory was not a prerequisite for the acceptance of international legal instruments which rely upon it as the bedrock of reasoning for the entitlement to rights.[[10]](#footnote-10) The reference to dignity in legal instruments protecting human rights can be traced to the French Déclaration des droits de L’Homme et du Citoyen, which spoke of all the citizens of the State *‘étant égaux à ses yeux, sont également admissibles à toutes dignités’*.[[11]](#footnote-11) There was no express provision at this juncture for the protection of dignity, but rather an acknowledgment of the inherent dignity of French citizens before the State. The most significant reference to dignity in international human rights law is often thought to be the Universal Declaration of Human Rights,[[12]](#footnote-12) although an earlier reference to dignity can be found in the regional American Declaration[[13]](#footnote-13). This was the first supranational instrument, completed in April 1948, which indicated the importance of the concept of dignity in relation to human rights by acknowledging at the outset the ‘dignity of the individual’ in the preamble. There are elements of the concept of dignity elsewhere in the declaration, such as in the right to freedom of person,[[14]](#footnote-14) which requires that individuals be treated humanely when detained by the State. Interestingly it also makes the connection between duties and dignity,[[15]](#footnote-15) and the set of duties can be found at the end of the declaration.[[16]](#footnote-16) This connection makes the conception of dignity found in this instrument different from others; it requires a certain standard of behaviour in order to acquire dignity, or attributes dignity to a certain way of conducting oneself. In this form, dignity is almost a sort of gratitude for the rights which an individual has received from the State. This distances human dignity from the French idea of everyone possessing dignity and rather it being conditional on a certain mode of behaviour. The provision of duties is absent from most other international human rights instruments[[17]](#footnote-17) and the central international documents on human rights law, to which we now turn, do not refer to duties.[[18]](#footnote-18) There is no connection made in other international instruments between dignity as form of conducting oneself, and the provision of rights.

The Universal Declaration of Human Rights[[19]](#footnote-19) was adopted later that year in December 1948, representing the culmination of the efforts of a committee appointed under the auspices of the Economic and Social Council.[[20]](#footnote-20) It has since operated as the basis for a number of international human rights agreements, notably the International Covenant for Civil and Political Rights[[21]](#footnote-21) (ICCPR) and the International Covenant for Economic and Social Rights[[22]](#footnote-22) (ICESR). The concept of dignity is evident from the beginning of the document, where acknowledgment of the ‘inherent’[[23]](#footnote-23) dignity of the individual is offered as the reasoning which underlies human rights. As if to further bolster this, the ‘right to have rights’[[24]](#footnote-24) places dignity alongside rights as that which an individual is endowed with by virtue of being human. The equality between the two terms again creates a link, indicating that rights and dignity are connected in a circular fashion. There are elements of the concept of dignity elsewhere in the declaration, such as in the right to freedom of person[[25]](#footnote-25) and also in relation to property. The ICCPR goes slightly further and makes the direct connection between rights and dignity. Its preamble, mirroring that of the ICESR, states that the ‘equal and inalienable rights of all…*derive[[26]](#footnote-26)* from the inherent dignity of the human person.’[[27]](#footnote-27) The modern system of international human rights therefore looks to dignity as the reason for rights; the basis on which individuals are entitled to be protected from the excesses of State power. The modern international system does not demand anything of the individual, but rather attributes rights to him or her as a consequence of existence. In this system, human dignity is *presumed.*

Riley[[28]](#footnote-28) identifies this presumption as something which was required after the Second World War to rebalance the world. He states that the recourse to dignity was ‘the necessary response’[[29]](#footnote-29) to the atrocities of that period; a concept which applied to all was required to underline the international community’s rejection of fascist ideologies which had resulted in the brutal demise of so many people. He also identifies the recurring theme of dignity through the ICCPR, in areas such as the rights relating to treatment in detention[[30]](#footnote-30) and the way in which dignity is a common concept to both international humanitarian law[[31]](#footnote-31) and international human rights law, as shown above. The common denominator between the two invariably relates, not to an express conception of dignity as the reason for restraining one’s actions, but rather to the prevention of degradation in terms of treatment by State powers.[[32]](#footnote-32) The antonym, degrading, is used on a number of occasions rather than an express protection of the individual’s dignity, creating a threshold for the behaviour of authorities. The prohibition of torture, inhuman or degrading treatment is a norm which therefore transcends the usual boundaries between different areas of law and is commonly protected, to the same extent,[[33]](#footnote-33) by both areas of law. The prohibition on torture therefore rests on the concept of dignity and the absolute nature[[34]](#footnote-34) of the prohibition in international human rights law means that there can be no justification in international law for a decision to use torture or to treat an individual in a way which is degrading or inhuman to achieve aims which are in the State’s interest.

The absolute nature of the prohibition on torture thereby represents the logical conclusion of the connection between dignity and human rights. The prohibition on torture is common to international humanitarian law and international human rights law, as well as a *jus cogens* norm to which all States are bound, regardless of consent.[[35]](#footnote-35) Torture represents the ultimate rejection of an individual’s dignity and its wholesale prohibition in international law reflects the significance of the concept of dignity within that system.

 It occupies a unique place in the international human rights regime, alongside the concept of slavery,[[36]](#footnote-36) where the States do not require to consent to the application of such norms. The elevation of these norms to such a status underlines the significance of dignity in international human rights law: actions which undermine and reject the dignity of the individual are binding on all, with States occupying the position of the most likely

Dignity thus is a central concept in international human rights law and, more broadly, international law as a whole. It remains one of the founding aims of the United Nations,[[37]](#footnote-37) but is not mentioned anywhere else in the Charter other than in the preamble. It can clearly be seen that the concept of dignity recurs frequently in the introductory discussion and paragraphs of significant documents, but its reference does not denote protection for a specific right. Rather it can be identified as the precursor for an entitlement to rights. The sole direct legal protection, stemming from both international human rights and international humanitarian law, is to protect against any further infringement of an individual’s dignity caused by ill-treatment at the hands of the State. The absolute nature of the prohibition on torture or inhuman and degrading treatment is therefore a demonstration of the importance of dignity to the modern system of international human rights law, and the lengths to which international law will go to uphold the concept of dignity, by creating an absolute prohibition on any conduct which falls below the requisite threshold of human dignity. This represents a unique restraint on State power by international law.

**Responsibility in international law for human rights violations**

State power is central to international law, for it is by the consensus of states that international law is chiefly made.[[38]](#footnote-38) International law is thereby primarily addressed to states, with other forms of responsibility having been developed for the purpose of securing accountability for serious human rights violations.[[39]](#footnote-39) The norms which protect the dignity individual have been developed through treaties in the area international humanitarian law and international human rights law, but regard should also be had for the customary international law and *jus cogens* norms in these areas. State responsibility is evident where the State has demonstrated its agreement to the norm at issue through ratification of a convention, but the attribution of responsibility does not end there. This part of the work will examine the ways in which responsibility may be ascribed for the failure to protect the dignity of the individual. This will include an examination of State responsibility generally, and the concept of individual criminal responsibility, which renders individuals responsible for serious violations against the individual on behalf of the State. This section will also explore the extent to which a State-like entity is required in order to ascribe responsibility for a serious infringement of the dignity of an individual.

Most discussions of state responsibility[[40]](#footnote-40) begin with the Articles on State Responsibility[[41]](#footnote-41) drafted by the International Law Commission, which provides definitions of internationally wrongful acts for which a State might be responsible[[42]](#footnote-42) and the concept of what is internationally wrongful.[[43]](#footnote-43) Markedly there is no definition of a State within the document and it is therefore presumed that States are already acknowledged as such in international law. The articles do not conceal their focus on States and no mention is made of other entities to which international law might direct its attention. The articles are perceived to reflect customary international law,[[44]](#footnote-44) giving rise to the proposition that customary international is also generally directed at States alone. A comparison with a regional treaty in this area[[45]](#footnote-45) makes this gap all the more evident as the Montevideo Convention places importance on the definition of a State by outlining what a State is[[46]](#footnote-46) before enumerating its rights and duties. The common theme between the two documents is the lack of reference to dignity or, more broadly, to any duties which the State may have to its citizens. The sole reference can be found in the Articles on State responsibility, which prohibit countermeasures affecting any fundamental human rights[[47]](#footnote-47) obligations or humanitarian obligations[[48]](#footnote-48) States may have. Customary state responsibility thereby appears to differ from responsibilities which emanate from treaty law, to which the States have subscribed, and in context, human rights treaties. Treaty law invariably addresses States, and more precisely ‘States Parties.’[[49]](#footnote-49) The Vienna Convention[[50]](#footnote-50) holds that the definition of party refers to a State[[51]](#footnote-51) and the further definitions[[52]](#footnote-52) affirm that treaties are presumed to be agreements between States, rather than between a State and any other body with legal personality.

International law’s direction at States is further adduced by examining the membership criteria of the United Nations, which is open to ‘all…peace-loving states’[[53]](#footnote-53). A nation may be invited to observe the proceedings at the United Nations General Assembly[[54]](#footnote-54) may be extended, but those involved may not vote on resolutions. International relationships are perceived to involve states, and those pertaining to statehood or with a vested interest in international relations are permitted only to watch the proceedings without actively taking part in any work. The distinction between international law generally and the specialised branches of international human rights and international humanitarian law is perceptible because of the way in which it addresses States, but focuses on the entitlement to rights. There remains a question on the subject of whether human rights and humanitarian norms might bind those who do not actively subscribe to them through accession or ratification of a treaty. The discussion of *jus cogens* norms above provides an example of norms which bind without the consent of those to whom they apply; the ethereal nature of such norms makes it difficult to define the category of legal person to which they might extend. It also provides a basis for the discussion of whether States are the only subjects of international law to which fundamental norms protecting the dignity of the individual might apply. This is clearly not the case in international humanitarian law,[[55]](#footnote-55) and international criminal law has also developed a doctrine of individual criminal responsibility to avoid any lacunae in accountability.

The doctrine of individual criminal responsibility is not one which strictly applies to individuals as civilians, but rather identifies those who are, or have been, part of the State apparatus.[[56]](#footnote-56) The responsibility is generally for serious violations of international criminal law, stretching across international humanitarian law, international criminal law and international human rights law, where the offences overlap, and has now been codified in the Rome Statute of the International Criminal Court.[[57]](#footnote-57) Individual criminal responsibility represents an anomaly in international law because it addresses a category of individuals directly – those who have positions of power within the State – and allows them to be prosecuted in their own personal capacity, giving the International Criminal Court jurisdiction over ‘natural persons’[[58]](#footnote-58) in the first instance. The caveat to this jurisdiction is that individuals cannot be prosecuted for acts they commit as individuals in their personal life. Therefore a mass murderer who also works as a Secretary for State in the United Kingdom cannot be prosecuted for a crime against humanity unless she has committed those acts in the context of her office. The crimes within the jurisdiction of the Court must be committed as part of an ‘organizational plan or policy’[[59]](#footnote-59) or as part of a ‘large-scale commission’,[[60]](#footnote-60) demonstrating the intention of the Statute to apply to acts which are carried out with the endorsement of the State, or at least with the utilisation of its resources. The modern roots of this form of responsibility can be found in the tribunals following the Second World War and the International Criminal Court continues this tradition to avoid individuals escaping accountability for their contribution to atrocities by attributing ultimate responsibility to a superior in the State’s hierarchy.

This form of responsibility is thereby related to State responsibility, as the person to whom it may be ascribed must be part of the State machinery, but breaks with the tradition of addressing States as the sole subjects of international law by removing the veil which would often conceal those who ‘are’ the State: the decision-makers who effect the will of the State. There is flexibility in the wording, however, as the requirement of an ‘organizational plan or policy’ does not necessary specify exclusively that States will be the organization on behalf of which the individual is acting. Indeed, the elements of crimes[[61]](#footnote-61), which provide further detail on the provisions of the Statute note that jurisdiction extends to acts committed on behalf of the ‘State *or* organization’[[62]](#footnote-62), indicating that there is scope within international criminal law for non-State entities to be considered subjects, as a possible development from the doctrine of individual criminal responsibility. There is particular potential in the area of human rights and serious violations of international criminal law generally, because of the fundamental requirement of respect for individual dignity; a critical part of public international law. It is thereby necessary to explore the possibility of the provision of responsibility for those actors which are not states for fundamental norms of international human rights and international humanitarian law.

In keeping with the concept that accountability may be attributed to actors other than States in international law, particularly where a violation of dignity is at stake, the attribution of human rights responsibilities for non-state actors has increased in prominence over the past century.[[63]](#footnote-63) Much of the discussion appears to focus on the application of human rights norms to companies, multinational corporations and terrorists, rather than applying to those who might succeed the State. The State thus remains the most significant actor in international law however it is not necessarily the most powerful, particularly in areas where the State as failed. Accordingly, entities which may have power in certain geographical areas may exercise that power to a greater extent that the State. Those who act in this way are grouped together as non-state actors, a term encompassing all who are not defined as States.[[64]](#footnote-64) This manner of definition gathers together multinational corporations, companies, terrorists, non-governmental organisations and international organisations; essentially any entity which operates in the international arena without calling itself a State. The only exception to this has been national liberation movements, which tend to occupy an unclear position in international law. There is a clear need to extend responsibility for human rights beyond the State and there has been some attempt to do so through the imposition of duties on non-state actors.

The identification of non-state actors is a fairly straightforward process owing to the negative nature of the definition; it includes any entity which is not a State. The extension of responsibility to such actors is acknowledged as a necessary aspect to the international human rights regime. The power that non-state actors have may transcend that of the State and therefore the classical paradigm of the weak individual against the strong State[[65]](#footnote-65) becomes irrelevant, where the State no longer has the power traditionally attribute to it. However, it is questioned by Reinisch if such an extension can legitimately be incorporated into the human rights framework,[[66]](#footnote-66) or even referred to as ‘human rights.’ This piece of research is particularly interesting because it adopts an empirical approach of analysing codes of conduct and extraterritorial legislation to understand the change in approach by international human rights law in an attempt to extend human rights responsibilities to non-state actors. It also demonstrates the enormity of the task, theoretically and practically, of extending the protection of human rights against non-state actors. One of the main reasons for this is the numerous forms that a non-state actor might take. A terrorist organisation will evidently present different challenges for incorporation into the system – not least of all the difficulty of recognising a body which is most likely proscribed by law in the first instance – than a legally incorporated business entity. There is also extension of human rights law to situations of armed conflict, which may or may not involve States. The fourth Geneva Convention[[67]](#footnote-67) indicates that international humanitarian law will involve primarily States which have contracted themselves to the Conventions but acknowledges that armed conflict may also involve non-contracting ‘Powers.’[[68]](#footnote-68) Human rights law is acknowledged to apply during periods of armed conflict[[69]](#footnote-69) and potentially has the scope to extend to actors who would not be covered by the Geneva Conventions. Alston’s point therefore remains the most critical, as without proper classification of non-state actors and a distinction made between them, there is a limited possibility of using human rights law to bridge such gaps. There is a great deal of potential in this area which is being limited by throwing a cloak over all entities which are not defined as states.

This point leads neatly on to the next part of the discussion, which revolves around the identification of a State. How do we know a State when we see one? There is a general separation in law of States from State-like entities in terms of the responsibilities of both, but it is difficult to make such a separation when an entity may see and conduct itself as a State. This next part seeks to understand how States and non-state actors are delineated in international law, and whether there may be a blurring of boundaries, and consequently, responsibilities, in certain cases.

**How do we know a State when we see one?**

The only differentiation between States and non-state entities is the lack of the latter’s stats as a State, which can lead to problems where it appears to function as one. This section of the work will deal with the question of how a State is identified in international law, dealing in turn with the criteria for Statehood, State-like entities such as Palestine and nations attempting to be States, such as Kosovo. The aim of this discussion is to then apply the conclusions reached to the concept of national liberation movements, which appear to be neither States nor non-state actors in international law. This gap represents a challenge for international human rights law, given that most national liberation movements have engaged in armed conflict to further their cause at one stage or another. The issue of ‘presupposing’ the legal personality of such entities in order to include them in the international human rights law regime will also be dealt with; the idea of such groups possessing separate legal personality, as other non-state actors may, is something which is central to the attribution to such groups of responsibility for violations of human dignity.

The criteria for statehood has been laid down by the Montevideo Convention[[70]](#footnote-70) which holds that a State must have ‘a permanent population, a defined territory, a government and the capacity to enter into relations with other states’ in order to possess legal personality in international law.[[71]](#footnote-71) The Convention was signed by all of the countries on the Latin American continent apart from Costa Rica, leading to the conclusion that it has more cogency as an example of regional law than binding international law. Be that as it may, the noted international lawyer James Crawford drew directly on this definition for his seminal work on the creation of states[[72]](#footnote-72) and augmented it through arguing that States would also require to be independent.[[73]](#footnote-73) Crawford also suggest that, to be considered a State, the entity would require sovereignty, a degree of permanence and also to possess a certain ‘degree of civilisation.’[[74]](#footnote-74) These additional criteria are also evident in his earlier work,[[75]](#footnote-75) where he drew on the initial criteria to make the case for the additional requirements. Sovereignty, for example, was declared as a natural consequence of independence. Examining these criteria, it would appear that a number of organisations not recognised as States may have a claim to being such in law. Entities, or groups of individuals, which exercise control over a defined geographical area within which a permanent population resides thereby may have a claim to statehood. The interesting examples put forward in this area range from the Holy See to Palestine, and even to nations such as Kosovo, which recently declared independence in a bid to have its statehood recognised.[[76]](#footnote-76)

The process of international law-making involves, chiefly, States, which have the power to determine whether or not they wish to be bound by the rules made. The United Nations addresses States in its Charter and statehood is a criterion of membership to the United Nations.[[77]](#footnote-77) Membership of the United Nations is not a prerequisite of involvement in international law-making, but practically speaking only States which are members would be involved. The ‘States’ which remain outwith the membership of the United Nations are generally those which have an element of contention in relation to their statehood, such as Palestine, Taiwan or the Holy See. There ought to be a certain level of recognition of a State, which may or may not come from the United Nations. Indeed the creation of a State is not limited to its recognition by other States in the first instance. Rather it has been put forward by Vidmar that it can be conceptualised as a ‘law-governed political process which leads to a change in a certain territory.’[[78]](#footnote-78) This creates immense problems for potential states such as Palestine and Taiwan, not to mention Kosovo, where the ‘States’ themselves seek recognition, sometimes only of their authorities as the legitimate government of the territory, rather than any process-driven change in their governance structure. Indeed, this conception would provide more support for a national liberation movement which controls an area and seeks to become the legitimate government of the territory to do so, through a democratic process. The legality of statehood appears, accordingly, to be secondary to the political issues which surround the declaration of independence or statehood by the government of a defined territory with a permanent population which represents that population in international relations. The International Court of Justice’s silence on the question of Kosovo as an independent state speaks volumes about issues surrounding the creation of states,[[79]](#footnote-79) not least of all because the question was framed by the United Nations request for the advisory opinion to circumvent the issue. The focus appears to be on the political, rather than the legal, where the law’s only function is to provide a baseline of compliance. The law does not appear to provide any framework for action, nor to delineate with any clarity the process by which a state may come into being. This is both useful and problematic for such state, allowing ambiguity to reign for potential States which wish to extract themselves from the shackles of an ‘other’ State.

The United Nations, despite excluding non-States from its decision-making process, can include them within its procedures through allowing them ‘observer’ status. There is no formal reference to observer status in the Charter, and indeed it appears to have been given on an ad hoc basis to certain States, based on an invitation from the Secretary-General of the United Nations. This lack of clarity has been resolved in the case of both Palestine and the Holy See through resolutions in 2004[[80]](#footnote-80) and 2012[[81]](#footnote-81) affirming the Holy See’s status as a permanent observer and offering similar status to Palestine. The Holy See’s role is outlined in a more specific manner, expressing what it can and cannot do as an observer[[82]](#footnote-82) and given the limited materials on observer status, it would appear that the rights of the Holy See in relation to participation may extend to all parties which are accorded observer status, such as the right to participate in meetings and excluding the right to vote. This informs the point that there is scope for participation within the system of international law, which places at its heart the concept of human dignity and rights,[[83]](#footnote-83) for bodies which are not States, but also to include those bodies which have the responsibility of governance in international law and, as such, the international human rights regime. The interesting question posed by the inclusion thus far of Palestine into the international system is whether this may set a precedent for the inclusion of national liberation movements into the international law regime. In according Palestine observer status, the United Nations acknowledges that it is representative of individuals who wish a voice in the international arena. If this power exists, as it does with States, then the natural corollary is that there must be a certain degree of responsibility incumbent on Palestine in respect of those which it represents.

Palestine is often put forward as a unique case in international law, yet it represents perfectly the paradigm of national liberation movements which have become visible since the first Arab Spring protests. It cannot function as a State, since it lacks the defined territory which all States ought to have, yet it fulfils the other criteria of statehood. What could be termed as the ‘government’ of Palestine has been recognised since 1974, when the Palestinian Liberation Organization was invited to observe at the United Nations[[84]](#footnote-84) on issues relating to Palestine as the representative of the Palestinian people. Indeed the representative function of the Palestinian delegation since then indicates the strength of the reasoning behind recognising Palestine as a State in international law.[[85]](#footnote-85) Indeed there appears to have been a ‘presupposition of its legal personality’[[86]](#footnote-86) and the ability of the Palestinian Liberation Organisation to speak, and thereby conduct itself, on behalf of the people of Palestine. This recognition potentially opens the door for other national liberation movements to be considered emerging States in international law.

The capacity of the organisation to make decisions on behalf of a people, as well as the fulfilment of some the other criteria of statehood, therefore appears to be key to including it in the international system. Conferring the responsibility, and right, of representation on such organisations arguably creates the kinds of responsibilities that States would be expected to hold in international law, chiefly those of ensuring the human rights of individuals within their jurisdiction. Furthermore, it appears that there is a limited need for States to meet the traditional criteria[[87]](#footnote-87) for statehood. In the case of Palestine, the main obstacle to the organisation assuming full statehood is apparently that of recognition by, primarily, the United Nations. The argument that there should be a standard by which States can be recognised in international law[[88]](#footnote-88) ignores the central role of politics in the identification of a State. A declaration of independence is insufficient although it may demonstrate the democratic requirement of any new State;[[89]](#footnote-89) representation and recognition by other States appear to be the key factors.

This recognition by the United Nations of Palestine as representative of its people, however, is not an anomaly without legal reasoning. Cassese identifies two main criteria for the recognition of a rebel group, or group advocating armed resistance. Firstly, there ought to be proof of ‘effective control’ over a territory and secondly, there should be a ‘civil commotion’ which reaches a certain degree of intensity over a period of time.[[90]](#footnote-90) Again these requirements appear to be thoroughly flexible, and would be ineffective without the recognition of other States.[[91]](#footnote-91)Again recognition is key to any form of involvement in international affairs. The ability to represent is central to engaging in relations with other States, and there can be no greater engagement in international relations than by becoming a member of the United Nations. A step towards this does indeed presuppose legal personality on the part of the Palestinian Authorities and thereby sets a precedent for other armed groups, which truly represent the people for whom they fight, to be recognised as States where they are seeking to liberate the people whom they represent from an oppressive regime. It is for this reason that the recognition of Palestine at the United Nations is more than a landmark event for the recognition of it as a State; it changes the way in which we view States and how we can recognise a State. It also demonstrates the central importance which recognition occupies in the process of ‘creating’ a State which appears to already exist. Recognition in international law seems to be the most vital ingredient in the creation of a State which can then function in the international arena, most significantly at the United Nations.

This offers the opportunity to discuss the potential for all national liberation movements to acquire responsibility for the protection of dignity, in much the same way that a functioning State would. The key criterion of representation would appear to be a starting point from which to ascribe responsibilities to such organisations, rather than retrospectively applying responsibility when they enter into power formally. The position of organisations such as the National Transitional Council in Libya[[92]](#footnote-92) and authorities of a similar ilk in Syria may also acquire responsibilities in this manner during the conflict, to ensure the highest level of protection for those whom they seek to represent.

**Should national liberation movements acquire responsibilities in international law?**

The next step in this work is to determine the responsibilities for human dignity that it may be possible to ascribe to national liberation movements, or which they may already have in international law. At present, there appears to be an extension of customary international law in relation to the law of armed conflict to parties to an armed conflict, but again there is the issue of the ‘presupposition of (the) legal personality’[[93]](#footnote-93) of such groups. This means that in order to acknowledge that certain groups have responsibilities, it is necessary to acknowledge their engagement in international relations. This part looks at how national liberation movements are classified in international law and the similarities which exist between this classification and that of States. It will also explore the extent to which national liberation movements already have responsibilities in international law, relating to the protection of human dignity during periods of armed conflict, and the ways in which these reflect the natural extension of human rights responsibilities to such groups. The focus remains on the concept of human dignity, rather than an enumeration of the rights that such organisations ought to deliver for the individual, given the centrality of dignity to the international system and the problem this presents for periods of upheaval in relation to State control.

National liberation movements occupy a unique place in international law, not least of all because they are conspicuously excluded from a number of discussions. They do not feature to any great extent in the literature on non-state actors[[94]](#footnote-94) and it has been put forward that it would be ‘clumsy’[[95]](#footnote-95) to identify them as such, given that they may act as a state does and may also have ambitions to undertake the mantle of the State at some stage in the future. They may also have obtained the recognition of regional organizations[[96]](#footnote-96) which hold them to have greater legitimacy to represent the people than the State itself. Indeed, there can be no direct transfer of the State power to such groups until there has been a consultation with the public,[[97]](#footnote-97) thereby precluding the argument that such entities ought to be presumed as States following such recognition. The nature of a national liberation movement would require that power was seized prior to any kind of consultation, preventing those becoming States upon recognition by other States. It appears that there is a degree of discomfort in identifying national liberation movements as States, even if they have ambitions to be so in the future, or if they present as meeting the criteria for statehood in international law.[[98]](#footnote-98) Such entities sit outside the discussions of non-state actors and statehood, creating a third category of actors within the sphere of international relations. Their position, however, is critical to the functioning of international law because of the way in which these entities are capable of overthrowing States and asserting the right to govern. Such government must, logically, mean that these groups bear human rights responsibilities if they acquire the right to govern. This is further complicated by the idea that all parties to a conflict have certain rights which exist even without their consent. Tomuschat notes that, in relation to human rights and humanitarian law, ‘the rule that any obligation requires that consent of the party concerned has long been abandoned. The international community has set up a general framework of rights and duties which every actor seeking to legitimise himself as a suitable player at the inter-State level must respect.’[[99]](#footnote-99) The focus from this perspective is the legitimacy of the rule, rather than whether the entity *is* a State. This logic would determine that there is, in fact, an element of presupposition in the legal personality of national liberation movements. There is no formal process of recognition, but a great deal of interest in determining whether such groups are ‘legitimate’ rulers of the population.

At present, both States and non-state entities possess responsibilities to those over whom they exercise powers. In the context of a violent struggle for power between the national liberation movement and the State currently in place, it appears both have responsibilities to civilians groups which may be affected by their conduct, where the State is not yet affected by the belligerent occupation.[[100]](#footnote-100) Crawford further clarifies this idea by stating that it is the powers which the State possesses which continue to exist, rather than the machinery of the State itself persisting. This would give rise to the interpretation that the State is much like a vehicle which requires a driver; during times of revolution the persons in the driving seat may change, but the vehicle itself remains. If this is the case, then the governance criteria is that which truly defines a State more than anything other. If the national liberation movement can provide evidence of its governance, it may then be considered a State. This puts the concept that a State has responsibilities emanating from treaties to which it is a signatory in a very different light; the responsibilities then apply to the State generally, regardless of the group which occupies the position of the State. The other ways in which responsibilities may apply to either States or national liberation movements are through *jus cogens* norms and customary elements of international humanitarian law and international human rights law.

*Jus cogens* norms are those which cannot be violated by any party and bind even those who do not subscribe to them, because of the fundamental place which these occupy in the international system. The oft-cited example of torture is a useful demonstration of such a norm, given that it cannot be violated by any one party regardless of justification or excuse. The norm has been codified in treaty law,[[101]](#footnote-101) although the treaty has not been ratified by all States.[[102]](#footnote-102) It is also considered part of customary international law and can be found repeatedly within each of the Geneva Conventions.[[103]](#footnote-103) It remains an enforceable norm because of its significance in relation to human dignity, which remains the foundation, and the reason for the existence, of the international system. Both national liberation movements and States would thereby be bound by such a norm, even if these did not subscribe to or agree to the specific treaty law because of the classification of the norm as *jus cogens* and its existence within customary international law. This extends the application of responsibility to national liberation movements as there are norms which they must respect as organisations which function within the arena of international relations, and may affect or infringe upon the rights of individuals.

It would thereby appear that national liberation movements, despite their conspicuous absence from the discussions on actors in international law not characterised as States, already have responsibilities in international law. These obligations arise from customary international law, primarily where the struggle for power is a violent one. The concept that the recognition of such entities, or ascribing responsibility to them, may involve the ‘presupposition’ of their legal personality fails to account for the fact that their actions may already create a degree of responsibility. If a group chooses to take up arms in the name of rebellion, such entities have a direct impact upon the rights of civilian individuals. Customary international law, in the form of international humanitarian law, would then apply to both parties to the conflict, regardless of whether both were States. Cassese’s grounds for recognition[[104]](#footnote-104) already indicate that there may be a threshold above which rebel groups require to be taken seriously as international actors and accorded responsibilities to prevent any gaps in accountability. The threshold, of both effective control over a territory and the civil disturbance having reached a certain intensity, indicate the similarities between such organisations and States. Furthermore, it is acknowledged that the most important aspect of the engagement of such actors is their compliance with international law. There is no explicit recognition of their personality, but there appears to be a tacit acknowledgement through mechanisms such as deeds of commitment.

Deeds of commitment[[105]](#footnote-105) are used to avoid gaps in accountability in international humanitarian law. The deeds function as undertakings made by parties to an armed conflict which are not States; in the main, rebel groups or factions or armed resistance. These groups then agree to be bound by international humanitarian law and international human rights law in the course of their campaign, to prevent civilian suffering insofar as may be possible. Such a pragmatic measure indicates the way in which armed non-state actors are to be drawn into the system, in which there remains no official place for them. The notion that ‘if the means by which the rule of law is upheld are too vulnerable, its very authority may be endangered’[[106]](#footnote-106) during times of armed conflict is demonstrated amply by the concept; there is no purpose for rigidly sticking to the rule that States are the subjects of international law and that no other entities may be addressed by it. The concept of a State, or the organisations which may be addressed by international law appear to be lagging behind the problems which confront international law at this time, particularly where the law has been laid down to prevent atrocities and protect the individual.

Such deeds address the inevitable gap during periods of conflict, whereby an organisation has the capacity to behave like an army, with the potential to kill and maim and wound in an organised fashion. It seems odd, therefore, that such deeds should be binding, but that such organisations are formally outwith the scope of international obligations to respect the law of war. This inconsistency is further heightened when the application of customary international law and *jus cogens* norms is examined: norms emanating from both areas would apply to actors who operate as armed groups against governments. It would therefore appear that the most likely situation is that armed groups can acquire responsibilities through their recognition by other States. The argument that the Geneva Conventions may apply because these treaties are binding on the subjects of States[[107]](#footnote-107) seems flawed because of the way in which the treaties address Powers and parties to a conflict,[[108]](#footnote-108) rather than individuals. This is illustrated perfectly by the argument put forward by Moir that the concept of superior orders would only apply in the context of military operations;[[109]](#footnote-109) no civilian organisation would naturally have a command structure established in such a way.

The natural application of these rules to both States and to groups with governance responsibilities may indicate that the way we perceive States in international law is changing. It appears that national liberation movements could have responsibilities for the dignity of the individual without classifying themselves as States. Their recognition as an actor, without consideration of their legitimacy, allows such entities to assume responsibilities for the protection of individual dignity. The failure therefore exists where there is a reluctance to acknowledge the existence of the actor, or to seek to quell a rebellion through rejection of the actor. These political aims do nothing to ensure the protection of the individual; they directly compromise it.

In this vein, it would appear the way in which we view State responsibility is changing. States may have been the primary addressees of international law, but it is no longer sufficient to maintain such a gap between non-state actors and States. International humanitarian and human rights law has acknowledged the development, while the law of State responsibility lags behind. The extension of responsibility to national liberation movements thereby exists in law and simply requires the recognition of such groups. This recognition would be facilitated by an appreciation of a more flexible approach to Statehood or, more precisely, State responsibility. The recognition of the power to govern, and to make decisions on behalf of a people, should be the guiding principles as to whether or not an entity acquires international, rather than State, responsibility. This responsibility would hinge on the duty to protect the dignity of the individual, providing a natural extension of responsibility for human rights for actors who seek to represent the people, with the potential to pave the way for their acceptance into the international community as legitimate actors.

**Conclusion**

Max Weber identified a political organisation as one which occupied the position of power in a certain geographical area, augmenting that organisation to a State when it could monopolise the power in that defined territory.[[110]](#footnote-110) This definition evidences the period in which it was written[[111]](#footnote-111) and reflects the way in which the international system has been established to address States, in the main, as the central organisation which holds power over the individual. During the twentieth century, there has been a shift away from the characterisation of the State as the omnipotent actor within the international arena; this has been evidenced no more clearly than when the veil of the State was pierced to reveal those who were concealed by it following the defeat of the Axis powers during the Second World War, in order to to ascribe individual criminal responsibility to those who had participated in the organisation and commission of atrocities. The focus on States was made more precise through also considering those who operated the State machinery, in order to enhance accountability for the commission of crimes. There is still a certain attachment to State, and State-linked, responsibility in terms of ensuring accountability for serious breaches of human rights, and to guarantee respect for the dignity of the individual. Meron stated that the ‘coupling’[[112]](#footnote-112) of human rights to state responsibility in law created a link which could make human rights more effective. However this perspective creates a vacuum in which national liberation movements, qualifying neither as non-state actors nor as States, can conduct themselves as they wish. There is evidence to suggest that such actors desire to conduct themselves well,[[113]](#footnote-113) possibly to gain a political advantage, but there is no law which requires them to do so.

The significance of human dignity in the international arena is enormous: it provides the bedrock on which the international system has been built and continues to operate. Human rights obligations and international humanitarian law elucidate precisely what the protection of dignity entails, but the concept of dignity remains central to the international system. It is one of the reasons for the creation of the United Nations and is referenced frequently in international law documents, as well as by international judges. This is equally demonstrated by the high level of protection offered to individuals through the elevation of rights which are considered to be

 complete rejections of human dignity, such as enslavement and torture, to customary and *jus cogens* norms. This allows for the widest application of such norms and further stresses the significance of the protection of dignity in the international system: accountability is the necessary corollary of such protection where breaches may be committed.

Accountability is usually addressed to States in international law, within the parameters of a certain definition. Human rights responsibilities are thus addressed chiefly to States, but the recent Arab Spring protests and revolutions, regardless of success, demonstrate the significant problems with limiting the application of human rights responsibilities to States alone. The paradigm of States being the most powerful actors in international law is now a relic of much less evolved system, a fact which has been recognised by the regime of international humanitarian law and international human rights law. The pragmatic nature of international humanitarian law, particularly the customary principles which bind all actors, indicate the necessity of applying some norms to actors which are not States. This branch of law seeks to protect, above all, the dignity of the person during wartime and thus there is an appreciation that the protection will be futile should it not apply beyond the confines of the State.

The focus of the international human rights regime following the Second World War became accountability, rather than an exclusive approach to participation in international law. The doctrine of individual criminal responsibility demonstrated how the concept of State responsibility could be deconstructed in order to ensure accountability for heinous crimes committed by the individuals who controlled the machinery of the States. This conveys the emphasis in international law on the protection of dignity, rather than a restrictive interpretation of which entities may possess duties and the potential flexibility which exists to avoid any gaps in accountability. The system itself formally facilitated this development, but the next stage in development does not appear to be so straightforward. Non-state actors are acknowledged to hold certain human rights obligations, but national liberation movements appear to fall outwith this paradigm for the central reason that they do not fit into the mould of non-state actors. By being classified as neither non-state actors nor as States, there appears to be a lacuna in accountability for national liberation movements which cannot undertake State responsibilities. The main obstacle appears to be the political recognition, or lack thereof, of such movements by other States.

The extension of human rights law and international humanitarian law often occurs in practice, whereby non-governmental organisations will seek to encourage national liberation movements to undertake obligations outlined in international human rights and international humanitarian law. These representative bodies may also be recognised regionally and are agreeing as one, thus assuming their own legal personality. International human rights law and international humanitarian law demonstrates the capacity to recognise such actors, but the law on State responsibility and the categorisation of States appears rigidly fixed.

The way in which we view States is changing and evolving, and it is a failure of international law not to keep pace with this area. The key factors in drawing national liberation movements into international relations, attributing a degree of legitimacy to their conduct underpinned by an expectation of its standard, appear to be recognition and governance. Other States must recognise the movement and it must represent the people in its governance. The case of Palestine at the United Nations demonstrates a measure of slow but steady progress in this area; the focus remains on the capacity of the authorities to represent the people and the recognition of this by other States, or collectively by the United Nations. Democracy is not a requirement to become a State in international law,[[114]](#footnote-114) as Vidmar illustrates, but the future emphasis may not be on whether the organisation is a State. It may rather be on the capacity of that organisation to legitimately represent the people.

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**Bibliography**

Advisory Opinion on the accordance with international law of the unilateral declaration of independence in respect of Kosovo I.C.J. Reps. 2010, p.403

M. Alhassen and A. Shihab-Eldin (eds.), *Demanding dignity: Young voices from the front lines*

*of the Arab revolutions,* White Cloud Press, 2012

African Charter on Human and Peoples’ Rights 1981 OAU Doc. CAB/LEG/67/3 rev. 5

P. Alston (ed.), *Non-state actors and human rights*, Oxford University Press, 2005

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948)

Articles on State Responsibility for Internationally Wrongful Acts, GA Res 56/83 of 12 December 2001

M.C. Bassiouni, *International crimes:* jus cogens *and* obligatio erga omnes, Law and Contemporary Problems 1997, 59(4), 63-74

A. Cassese, *International law,* Oxford University Press, 2005

Charter of the International Military Tribunal 1945

Charter of the International Military Tribunal for the Far East 1946

A. Clapham*, Human rights responsibilities of non-state actors*, Oxford University Press, 2006

J. Crawford, *The creation of states in international law,* Oxford University Press, 2007

J. Crawford, *The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect*, (2002) 96 AJIL 874

J. Crawford, A. Pellet and S. Olleson, *The law of international responsibility,* Oxford University Press, 2010

Déclaration des Droits de l’Homme et du Citoyen 1789

Elements of Crimes ICC-ASP/1/3(part II-B)

E. de Wet, *The prohibition of torture as an international norm of* jus cogens *and its implications for national and customary international law,* E.J.I.L. 15 (2004), 97-121

H. Fischer et al. (ed.), *Crisis management and humanitarian protection: Festschrift fur Dieter Fleck,* Berliner Wissenschafts-Verlag, 2004

General Assembly Resolution A/RES/3210 (XXIX) of 14 October 1974 Invitation to the Palestinian Liberation Organization

General Assembly ResolutionA/58/314 of 1 July 2004 on the participation of the Holy See in the work of the United Nations

General Assembly Resolution67/19 of 4 December 2012 on the status of Palestine in the United Nations

Geneva Conventions I-IV, 1949

J.M. Henckaerts and L. Doswald-Beck, *Study on customary international humanitarian law,* Cambridge University Press, 2006

International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 16 December 1966

*International Protection of Human Rights during Armed Conflict*, United Nations Office of the High Commissioner for Human Rights, HR/PUB/11/01, 2011

D. Jacob, B. Ladwig and A. Oldenbourg, *Human rights obligations of non-state actors in areas of limited statehood,* Working Paper no.27, January 2012

C. McCrudden, *Human Dignity and JudicialInterpretation of Human Rights*, E.J.I.L. (2008), Vol. 19 No. 4 , 655 – 724

T. Meron, *State responsibility for violations of human rights,* Proceedings of the Annual Meeting of the American Society of International Law, 83, 1989, 372-385

L. Moir, *The law of internal armed conflict,* Cambridge University Press, 2002

Montevideo Convention on the Rights and Duties of States 1933

J. Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field,* International Committee of the Red Cross (ICRC), Geneva, 1952

J. Quigley, *The statehood of Palestine: International law in Middle East Conflict,* Cambridge University Press, 2010

# S. Riley, *Human dignity: Comparative and conceptual debates,* Int. J.L.C. 2010, 6(2), 117-138

Rome Statute of the International Criminal Court 1998

# E. Roosevelt, *You Learn by Living: Eleven Keys for a More Fulfilling Life*, HarperPerennial, 2012

# Slavery Convention 1926

Statute of the International Court of Justice, annexed to the United Nations Charter 1945

# J. Vidmar, *Democratic statehood in international law,* Hart, 2013

Vienna Convention on the Law of Treaties 1969

*Report on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013*

Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (1948)

United Nations Charter 1945

United Nations Convention on the Prohibition of Torture GA Res 39/46, 10 December 1984

M. Weber, *Economy and society: An outline of interpretive sociology,* University of California Press, 1978

Western Sahara Advisory Opinion, I.C.J. Reports 1975, p.12

H.A. Wilson, *International law and the use of force by national liberation movements,* Oxford University Press, 1988

S. Wittich, *Domestic courts and the content and implementation of state responsibility,* L.J.I.L. 2013, 26(3), 643-665

1. #  E. Roosevelt, *You Learn by Living: Eleven Keys for a More Fulfilling Life*, HarperPerennial, 2012 at 152

 [↑](#footnote-ref-1)
2. For a full analysis, see *International Protection of Human Rights during Armed Conflict*, United Nations Office of the High Commissioner for Human Rights, HR/PUB/11/01, 2011 [↑](#footnote-ref-2)
3. Preamble to the Universal Declaration of Human Rights 1948 [↑](#footnote-ref-3)
4. This term has been criticised as overly simplistic; a book comprising essays written by those involved in the protests and conflicts refers to the events as the ‘Arab Revolutions’ – see M. Alhassen and A. Shihab-Eldin (eds.), *Demanding dignity: Young voices from the front lines of the Arab revolutions,* White Cloud Press, 2012. However the simplicity of this term is beneficial to the following discussion as it avoids the exclusion of any countries which have yet to achieve regime change and will therefore be used in the work which follows. [↑](#footnote-ref-4)
5. There have been frequent reports relating to conflict in Syria, Libya and Egypt in the UK media; there has been less reporting on the protests in Bahrain, Tunisia and Oman. The Guardian online has a useful tool demonstrating the timeline of events (<http://www.theguardian.com/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline>, accessed 22.10.13); there is also a more international perspective from TIME magazine at <http://topics.time.com/arab-spring/> (accessed 22.10.13) and a more scholarly tool for research uploaded by Cornell University at <http://guides.library.cornell.edu/arab_spring> (accessed 22.10.13) [↑](#footnote-ref-5)
6. See, in the context of the Syrian conflict, *Report on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013* which concluded that chemical weapons had been used in Syria; a breach of both international human rights law relating to the prohibition on torture and international humanitarian law, relating to the use of chemical weapons. [↑](#footnote-ref-6)
7. All States with the exception of Saudi Arabia, Oman and the United Arab Emirates have ratified the Covenant, see <http://www.ohchr.org/Documents/Issues/HRIndicators/Ratification/Status_ICCPR.pdf> (accessed 22.10.13) [↑](#footnote-ref-7)
8. For a thorough exploration of what dignity actually means, see C. McCrudden, *Human Dignity and Judicial*

*Interpretation of Human Rights*, E.J.I.L. (2008), Vol. 19 No. 4 , 655 – 724 [↑](#footnote-ref-8)
9. Article VI, Déclaration des Droits de l’Homme et du Citoyen 1789; the Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (1948) makes several references to dignity in both the preamble and as part of other rights, such as the ‘right to have rights’ under article 1 [↑](#footnote-ref-9)
10. C. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, E.J.I.L. (2008), Vol. 19 No. 4 , 655 – 724 at 723 [↑](#footnote-ref-10)
11. Article VI, Déclaration des Droits de l’Homme et du Citoyen 1789 [↑](#footnote-ref-11)
12. GA Res 217A (III), UN Doc A/810 (1948) [↑](#footnote-ref-12)
13. American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948); see the preamble and article XXIII on the right to property [↑](#footnote-ref-13)
14. Article XXV, American Declaration of the Rights and Duties of Man [↑](#footnote-ref-14)
15. The preamble to this declaration holds that ‘duties express the dignity of…liberty’ [↑](#footnote-ref-15)
16. See Chapter II, American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948) [↑](#footnote-ref-16)
17. For a notable (albeit regional) exception, see Chapter II, African Charter on Human and Peoples’ Rights 1981 OAU Doc. CAB/LEG/67/3 rev. 5 [↑](#footnote-ref-17)
18. A. Clapham*, Human rights responsibilities of non-state actors*, Oxford University Press, 2006 at 40 [↑](#footnote-ref-18)
19. Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (1948) [↑](#footnote-ref-19)
20. The Economic and Social Council has competence in the area of human rights under Article 62, United Nations Charter 1945 [↑](#footnote-ref-20)
21. GA Res 2200A (XXI), 16 December 1966 [↑](#footnote-ref-21)
22. ###  GA Res 2200A (XXI), 16 December 1966

 [↑](#footnote-ref-22)
23. Preamble, United Nations Declaration [↑](#footnote-ref-23)
24. Article 1, Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (1948) [↑](#footnote-ref-24)
25. Article XXV, American Declaration of the Rights and Duties of Man [↑](#footnote-ref-25)
26. Emphasis added [↑](#footnote-ref-26)
27. Preamble, International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 16 December 1966 [↑](#footnote-ref-27)
28. S. Riley, *Human dignity: Comparative and conceptual debates,* Int. J.L.C. 2010, 6(2), 117-138 [↑](#footnote-ref-28)
29. Riley at 119 [↑](#footnote-ref-29)
30. Riley at 123; Article 10, ICCPR [↑](#footnote-ref-30)
31. See Common Article 3(1)(c), Geneva Conventions I-IV, 1949 [↑](#footnote-ref-31)
32. See article 7, ICCPR, for the analogous provision in international human rights law [↑](#footnote-ref-32)
33. The prohibition is absolute in both instances [↑](#footnote-ref-33)
34. There can be no reservations or derogations from this right; no defence is available in international law for the decision to override the prohibition on any grounds, meaning the act would remain illegal. See article 2(2), United Nations Convention on the Prohibition of Torture GA Res 39/46, 10 December 1984 [↑](#footnote-ref-34)
35. For a full discussion of its nature as a *jus cogens* norm, see E. de Wet, *The prohibition of torture as an international norm of* jus cogens *and its implications for national and customary international law,* E.J.I.L. 15 (2004), 97-121 [↑](#footnote-ref-35)
36. See the Slavery Convention 1926; see also M.C. Bassiouni, *International crimes:* jus cogens *and* obligatio erga omnes, Law and Contemporary Problems 1997, 59(4), 63-74 [↑](#footnote-ref-36)
37. Preamble, United Nations Charter 1945; [↑](#footnote-ref-37)
38. Through treaties and conventions; see Article 38(1), Statute of the International Court of Justice, annexed to the United Nations Charter 1945 [↑](#footnote-ref-38)
39. Such as individual criminal responsibility; see article 6, Charter of the International Military Tribunal 1945 and article 5, Charter of the International Military Tribunal for the Far East 1946 [↑](#footnote-ref-39)
40. See J. Crawford, A. Pellet and S. Olleson, *The law of international responsibility,* Oxford University Press, 2010 [↑](#footnote-ref-40)
41. Articles on State Responsibility for Internationally Wrongful Acts, GA Res 56/83 of 12 December 2001 [↑](#footnote-ref-41)
42. Article 1, Articles on State Responsibility for Internationally Wrongful Acts, GA Res 56/83 of 12 December 2001 [↑](#footnote-ref-42)
43. Article 2, Articles on State Responsibility for Internationally Wrongful Acts, GA Res 56/83 of 12 December 2001 [↑](#footnote-ref-43)
44. See S. Wittich, *Domestic courts and the content and implementation of state responsibility,* L.J.I.L. 2013, 26(3), 643-665, at 649 for a recent perspective and J. Crawford, *The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect*, (2002) 96 AJIL 874, at 890, for more discussion [↑](#footnote-ref-44)
45. Montevideo Convention on the Rights and Duties of States 1933 [↑](#footnote-ref-45)
46. Article 1, Montevideo Convention on the Rights and Duties of States 1933 [↑](#footnote-ref-46)
47. Article 50(1)(b), Articles on State Responsibility for Internationally Wrongful Acts, GA Res 56/83 of 12 December 2001 [↑](#footnote-ref-47)
48. Article 50(1)(c), Articles on State Responsibility for Internationally Wrongful Acts, GA Res 56/83 of 12 December 2001 [↑](#footnote-ref-48)
49. See, for example, the preamble to the ICCPR [↑](#footnote-ref-49)
50. Vienna Convention on the Law of Treaties 1969 [↑](#footnote-ref-50)
51. Article 2(1)(g), Vienna Convention on the Law of Treaties 1969 [↑](#footnote-ref-51)
52. Article 2, Vienna Convention on the Law of Treaties 1969 [↑](#footnote-ref-52)
53. Article 4(1), Charter of the United Nations 1945 [↑](#footnote-ref-53)
54. Usually by resolution, as there are no express powers to do so under the United Nations Charter 1945; see GA ResA/58/314 Participation of the Holy See in the work of the United Nations and GA Res 67/19 Status of Palestine in the United Nations [↑](#footnote-ref-54)
55. The International Committee of the Red Cross has undertaken a project to elucidate norms of international humanitarian law which form part of customary international law; see J.M. Henckaerts and L. Doswald-Beck, *Study on customary international humanitarian law,* Cambridge University Press, 2006 and updated by an online database at <http://www.icrc.org/customary-ihl/eng/docs/home> (accessed 25.10.13) [↑](#footnote-ref-55)
56. See article 6, Charter of the International Military Tribunal 1945 and article 5, Charter of the International Military Tribunal for the Far East 1946, where the doctrine was first explicitly referred to in a treaty [↑](#footnote-ref-56)
57. Article 25, Rome Statute of the International Criminal Court 1998 [↑](#footnote-ref-57)
58. Article 25(1), Rome Statute of the International Criminal Court 1998 [↑](#footnote-ref-58)
59. Articles 7(1) and 8(1), Rome Statute of the International Criminal Court 1998 [↑](#footnote-ref-59)
60. Article 8(1), Rome Statute of the International Criminal Court 1998 [↑](#footnote-ref-60)
61. Article 2, Elements of Crimes ICC-ASP/1/3(part II-B) [↑](#footnote-ref-61)
62. Article 2, Elements of Crimes ICC-ASP/1/3(part II-B) [↑](#footnote-ref-62)
63. See in particular A. Clapham*, Human rights responsibilities of non-state actors*, Oxford University Press, 2006 [↑](#footnote-ref-63)
64. Alston highlights the ridiculousness of defining such entities negatively, and the consequences thereof, in P. Alston, *The not-a-cat syndrome: Can the international human rights regime accommodate non-state actors?* in P. Alston (ed.), *Non-state actors and human rights*, Oxford University Press, 2005, 3-36 at 3 [↑](#footnote-ref-64)
65. A. Reinisch, *The changing international legal framework for dealing with non-state actors* in P. Alston (ed.), *Non-state actors and human rights*, Oxford University Press, 2005, 37-89, at 38 [↑](#footnote-ref-65)
66. A. Reinisch, *The changing international legal framework for dealing with non-state actors* in P. Alston (ed.), *Non-state actors and human rights*, Oxford University Press, 2005, 37-89, at 38 [↑](#footnote-ref-66)
67. Geneva Convention IV relative to the protection of Civilian Persons in Time of War 1949 [↑](#footnote-ref-67)
68. Article 2, Geneva Convention IV relative to the protection of Civilian Persons in Time of War 1949 [↑](#footnote-ref-68)
69. See *International Protection of Human Rights during Armed Conflict*, United Nations Office of the High Commissioner for Human Rights, HR/PUB/11/01, 2011 [↑](#footnote-ref-69)
70. Convention on the Rights and Duties of States 1933, signed at the International Conference of American States [↑](#footnote-ref-70)
71. Article 1, Convention on the Rights and Duties of States 1933, signed at the International Conference of American States [↑](#footnote-ref-71)
72. J. Crawford, *The creation of states in international law,* Oxford University Press, 2007 [↑](#footnote-ref-72)
73. J. Crawford, *The creation of states in international law,* Oxford University Press, 2007 at 45-88 [↑](#footnote-ref-73)
74. J. Crawford, *The creation of states in international law,* Oxford University Press, 2007 at 45-88 [↑](#footnote-ref-74)
75. J. Crawford, *The criteria for statehood in international law,* B.Y.I.L. 1976, 48(1), 93-182 at 139-141 [↑](#footnote-ref-75)
76. Advisory Opinion on the accordance with international law of the unilateral declaration of independence in respect of Kosovo I.C.J. Reps. 2010, p.403 [↑](#footnote-ref-76)
77. Article 4(1), Charter of the United Nations 1945 [↑](#footnote-ref-77)
78. J. Vidmar, *Democratic statehood in international law,* Hart, 2013 at 10 [↑](#footnote-ref-78)
79. Advisory Opinion on the accordance with international law of the unilateral declaration of independence in respect of Kosovo I.C.J. Reps. 2010, p.403 [↑](#footnote-ref-79)
80. Resolution A/RES/58/314 of 1 July 2004 on the participation of the Holy See in the work of the United Nations [↑](#footnote-ref-80)
81. Resolution A/RES/67/19 of 4 December 2012 on the status of Palestine in the United Nations [↑](#footnote-ref-81)
82. Annex to Resolution A/RES/58/314 of 1 July 2004 on the participation of the Holy See in the work of the United Nations [↑](#footnote-ref-82)
83. Article 1(3), Charter of the United Nations 1945 [↑](#footnote-ref-83)
84. Resolution A/RES/3210 (XXIX) of 14 October 1974 Invitation to the Palestinian Liberation Organization [↑](#footnote-ref-84)
85. J. Quigley, *The statehood of Palestine: International law in Middle East Conflict,* Cambridge University Press, 2010 at 252 [↑](#footnote-ref-85)
86. J. Crawford, *The creation of states in international law,* Oxford University Press, 2007 at 135 [↑](#footnote-ref-86)
87. J. Vidmar, *Democratic statehood in international law,* Hart, 2013 at 253 [↑](#footnote-ref-87)
88. As discussed by Hersch Lauterpacht and mentioned in J. Crawford, *The creation of states in international law,* Oxford University Press, 2007 at 540 [↑](#footnote-ref-88)
89. J. Vidmar, *Democratic statehood in international law,* Hart, 2013 at 242 [↑](#footnote-ref-89)
90. A. Cassese, *International law,* Oxford University Press, 2005 at 125 [↑](#footnote-ref-90)
91. A. Clapham*, Human rights responsibilities of non-state actors*, Oxford University Press, 2006 at 271 [↑](#footnote-ref-91)
92. This entity passed power to the official government of the State of Libya on 8 August 2012 following two years of rule, during which it identified itself as the ‘supreme authority’ in Libya. There appears little change in authority in Libya from this Council. See <http://ntc.gov.ly/> (accessed 15.11.13) [↑](#footnote-ref-92)
93. J. Crawford, *The creation of states in international law,* Oxford University Press, 2007 at 135 [↑](#footnote-ref-93)
94. A good example is D. Jacob, B. Ladwig and A. Oldenbourg, *Human rights obligations of non-state actors in areas of limited statehood,* Working Paper no.27, January 2012. This work entirely avoids the concept of a national liberation movement as a non-state actor and presumes such actors to be limited to non-governmental organisations. The brief reference to leaders of rebel groups notes that such leaders may have ‘moral obligations’ to obey certain rules, but nothing further, at 14; see also G. Cahin, *Responsibility of other entities: Armed bands and criminal groups*, 331-341 at 332 in J. Crawford, A. Pellet and S. Olleson, *The law of international responsibility,* Oxford University Press, 2010 [↑](#footnote-ref-94)
95. A. Clapham*, Human rights responsibilities of non-state actors*, Oxford University Press, 2006 at 273 [↑](#footnote-ref-95)
96. A. Clapham*, Human rights responsibilities of non-state actors*, Oxford University Press, 2006 at 273 [↑](#footnote-ref-96)
97. Particularly in the context of decolonisation; see Western Sahara Advisory Opinion, I.C.J. Reports 1975, p.12 at 81 [↑](#footnote-ref-97)
98. Article 1, Montevideo Convention on the Rights and Duties of States 1933 [↑](#footnote-ref-98)
99. C. Tomuschat, *The applicability of human rights law to insurgent movements,* 573-591 in H. Fischer et al. (ed.), *Crisis management and humanitarian protection: Festschrift fur Dieter Fleck,* Berliner Wissenschafts-Verlag, 2004 at 583 [↑](#footnote-ref-99)
100. J. Crawford, *The creation of states,* Cambridge University Press, 2007 at 73 [↑](#footnote-ref-100)
101. United Nations Convention against Torture 1984 [↑](#footnote-ref-101)
102. See <http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-9&chapter=4&lang=en> for a list of countries which have ratified the treaty (accessed 20.11.13) [↑](#footnote-ref-102)
103. The Geneva Conventions of 12 August 1949; articles 3 common to all the Conventions; articles 12 and 50 of the first Convention, article s 12 and 51 of the second Convention, articles 17, 87 and 130 of the third Convention and articles 32 and 147 of the fourth Convention [↑](#footnote-ref-103)
104. A. Cassese, *International law,* Oxford University Press, 2005 at 125 [↑](#footnote-ref-104)
105. A. Clapham*, Human rights responsibilities of non-state actors*, Oxford University Press, 2006 at 297; see the non-governmental organisation Geneva Call (<http://www.genevacall.org/> - accessed 20.11.13) which routinely engages armed actors to avoid gaps in compliance with international humanitarian law [↑](#footnote-ref-105)
106. J. Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field,* International Committee of the Red Cross (ICRC), Geneva, 1952 at 377 [↑](#footnote-ref-106)
107. H.A. Wilson, *International law and the use of force by national liberation movements,* Oxford University Press, 1988 at 51 [↑](#footnote-ref-107)
108. The issue would be one of domestic criminal law if the ‘parties’ were individuals, which may not offer appropriate protect if the State is in transition. [↑](#footnote-ref-108)
109. L. Moir, *The law of internal armed conflict,* Cambridge University Press, 2002 at 186-7 [↑](#footnote-ref-109)
110. M. Weber, *Economy and society: An outline of interpretive sociology,* University of California Press, 1978 at 54 [↑](#footnote-ref-110)
111. Published posthumously in 1922, following Weber’s death in 1920 [↑](#footnote-ref-111)
112. T. Meron, *State responsibility for violations of human rights,* Proceedings of the Annual Meeting of the American Society of International Law, 83, 1989, 372-385 at 372 [↑](#footnote-ref-112)
113. The Syrian National Council, as one of representative bodies of the Syrian people, sets out one of its main aims as to ‘support the Syrian’s people’s struggle for freedom, dignity and democracy’. From the organisation’s official website at <http://www.syriancouncil.org/en/about.html>(accessed 21.11.13) [↑](#footnote-ref-113)
114. J. Vidmar, *Democratic statehood in international law,* Hart, 2013 at 242 [↑](#footnote-ref-114)