

Coup in International Law: Between Theory and Reality

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Specifically, the matter of coups against governments – particularly those resulting from legitimate democratic elections – requires a more resolute approach. This entails criminalizing such actions and imposing substantial penalties on the individuals responsible. By doing so, the goal is to dissuade potential revolutionaries from attempting this act, given the clear stance and condemnation it would receive from the international community. Furthermore, it is imperative to highlight the international community's inconsistent response to coups. This inconsistency becomes evident in the varying levels of support for different coups, seemingly influenced by the international community's relationship with the affected state and, notably, its ousted president. This underscores the necessity for well-defined and unambiguous regulations governing coups themselves. The article aims to address this issue comprehensively and impartially, avoiding selective treatment. The significance of this issue lies in the need to address a legislative gap in international law.

Keywords

International Law, Coup, International Agreements, Turkey, Venezuela, Sudan

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I. Introduction

In recent decades, coups against various regimes worldwide, particularly those resulting from legitimate democratic elections and the people's mandate, are increasing. This surge has occurred without a legitimate framework or set of rules within international law to govern such occurrences. Additionally, there has been a lack of measures to classify the act as criminal and impose penalties on those responsible. This void in legal structure has contributed to a situation where revolutionaries might perceive acceptance and recognition from the international community for their actions, potentially encouraging the repetition of such acts. In this regard, an essential focus point is the international community's approach to power-altering coups. This approach has showcased a discernible pattern of selectivity and double standards, wherein support for or rejecting a coup appears contingent upon each country's relationship with the country in question and, notably, the deposed president. This disparity underscores the necessity for establishing robust and lucid regulations governing the very act of coups.

Against this backdrop this research aims to analyze the coup against authority from the international law perspective based on theories of international relations. In this study, the author will analyze how international law instruments and treaties have addressed this issue and whether they can be applied to certain coups that have unfolded in recent years across the globe. She will also examine the responses from countries and international organizations on this matter from an international legal perspective. This analysis aims to shed light on the following inquiries: Do established and precise international regulations exist for handling illegal power-altering coups?; Can the act of a coup be classified as an international crime under international law?; and Does a state bear responsibility before the international community for the consequences of a coup? These questions will be addressed comprehensively and equitably, without any trace of partiality.

Certainly, addressing these inquiries necessitates a thorough exposition of the pertinent international legal principles, encompassing the content elucidated in the conventions and Charter of the United Nations (UN). Equally important are the stipulations articulated in regional international agreements and the contributions made by international courts in their decisions and provisions. This comprehensive exploration underscores the pivotal role played by international regulations in establishing the bedrock of democracy and human rights. A paramount objective is ensuring that domestic legislation within countries remains in harmony with these

entrenched international tenets and populations' associated liberties and political entitlements. Any deviation from these established international principles could potentially erode these rights' legal and binding authority.

This paper is divided into four parts including Introduction and Conclusion. Part two will examine coups against the legitimate government according to the theories of international relations. Part two will focus on filling the legislative deficiency in international law on cases of coup against power

II. Coups against the Legitimate Government: Theories of International Law and Relations

A. The Concept of Military or Political Coup

In a political reality that entertains coups against the government as a means to seize power, the international community deems such actions unacceptable for establishing non-political stability among the populations of these nations. These coups often lead to disruptive outcomes, escalating even to civil warfare or non-international armed conflicts. Such scenarios pose significant threats to global peace and security. Demonstrated by international practices across time,¹ the concern deepens over the subversion of a democratically elected government with one brought into power through military intervention. This subversion undermines fundamental principles like freedom, equality, democracy, and human rights, all championed by international norms and organizations. My emphasis lies in deeming a government as democratic, implying its establishment through equitable and impartial elections carried out by the people. Whether the ruling entity or its administration leans towards democracy or dictatorship? We recognize this as an internal affair of the electorate who participated in the voting and selection process, regardless of the ruler's democratic standing.

A coup d'état commonly unfolds when a distinct faction, political or military, seizes control by toppling the reigning governance within the state. Alternatively, it can manifest through military intervention, where the armed forces assume control

¹ The coup d'état in Madagascar was in the year 2009, after days of deadly anti-government protests, when Andry Rajoelina, a politician and mayor of the capital, announced that he was now in power, essentially announcing a coup d'état for power in this democratic country. See Barry Bearak, *Mayor Declares a Coup in Madagascar*, N.Y. TIMES (Jan. 31, 2009), <https://www.nytimes.com/2009/02/01/world/africa/01madagascar.html>; The military coup in Mauritania in 2008 overthrew the civilian rule. On Wednesday, the army and soldiers overthrew the country's first freely elected president, Sidi Mohamed Ould Cheikh Abdallahi. See *Mauritania: United States Halts Aid After Coup*, N.Y. TIMES (Aug. 8, 2008), https://www.nytimes.com/2008/08/08/world/africa/08briefs-UNITEDSTATES_BRF.html.

and manage state affairs after declaring the suspension or dissolution of existing authority and the temporary invalidation of the constitution.² Therefore, a coup finds its definition in international law as: “the sudden, violent, and illegal seizure of power from the government.”³ This concept stands apart from a revolution, which typically involves many individuals rallying with specific demands aimed at the authorities for implementation. They also express their intent to replace the authority should their demands remain unmet, as exemplified by the Arab Spring movements in Egypt, Tunisia, Libya, Yemen, and Syria.⁴ In contrast, a coup occurs through the actions of a distinct, limited group – far smaller in size compared to a revolution. Its primary objective revolves around toppling the incumbent authority and seizing power. A notable example is the coup against the President of Peru in 1992.⁵

Numerous jurisprudential perspectives have scrutinized the notion of coups within international law. This is primarily due to a civil, democratic order where citizens genuinely engage in its establishment and partake in the selection of leaders deemed most capable of steering the nation. Such a scenario reinforces the principles of democracy, political stability, and developmental progress within the nation. Consequently, any outcome contrary to the maintenance of balanced authority or characterized by a repressive and dictatorial regime can trigger a coup against said authority. This coup might be spearheaded by prominent political figures within the state or take the form of a military intervention led by the armed forces, who assume control until a new governing body is announced.

Crucially, this matter is not contingent upon whether the ruler is perceived as virtuous or democratic. Instead, the objective centers around safeguarding the democratic process embraced by the populace, ensuring the election of regimes through unrestricted balloting – a principle expressly enshrined in the International Covenant on Civil and Political Rights. This Covenant also underscores the imperative of upholding the sovereignty of states and their commitments to international

² Frederick Cowell, *Preventing Coups in Africa: Attempts at the Protection of Human Rights and Constitutions*, 15(5) INT'L J. HUM. RTS. 749-50 (2011).

³ Coup, Oxford Living Dictionaries, <https://www.oxfordreference.com/display/10.1093/acref/9780199670840.001.0001/acref-9780199670840-e-295#:~:text=Source%3A%20A%20Concise%20Oxford%20Dictionary,bearing%20directly%20on%20the%20military.>

⁴ Paul Salem, *MIDDLE EAST: 'Arab Spring' has yet to alter region's strategic balance*, L.A. TIMES (May 9, 2011), [https://www.latimes.com/archives/blogs/babylon-beyond/story/2011-05-09/middle-east-arab-spring-has-yet-to-alter-regions-strategic-balance.](https://www.latimes.com/archives/blogs/babylon-beyond/story/2011-05-09/middle-east-arab-spring-has-yet-to-alter-regions-strategic-balance)

⁵ The coup took place against the former President of Peru (Alberto Fujimori) after he suspended the constitution and dissolved Parliament. See JAN TEORELL, DETERMINANTS OF DEMOCRATIZATION, EXPLAINING REGIME CHANGE IN THE WORLD 1972–2006, 16-38 (2010).

agreements in this domain.⁶

Defining the intricacies of democracy within the legal framework stands as one of the most complex challenges, particularly due to differing perceptions among nations – dictatorships in particular.⁷ Many of these dictators contend that governance and power structuring matters are purely internal affairs,⁸ exclusively subject to their own domestic laws. Consequently, they assert that external states should not intervene in these matters. These countries' constitutions nominally outline voting processes, elections, and power successions without direct international legal involvement as long as they fulfill their international obligations and adhere to global norms without violating established international principles.⁹

On the other side, however, numerous studies and theories within the field of international relations assert that democracy has transcended national boundaries to become an international concern governed by international legal standards rather than exclusively domestic regulations. This shift is evident in the post-Cold War era with the emergence of the theory of “democratic entitlement,” articulated by Thomas Franck.¹⁰ According to Franck, democratic governance has become subject to international legal benchmarks that governments worldwide are expected to adhere to. The occurrence of coups, even if executed through improper or unlawful means, is seen as a direct consequence of failing to uphold international democratic principles.¹¹

This theory has garnered support from many scholars,¹² who contend that a state sovereignty over its internal matters, including governance issues, does not absolve it from adhering to common democratic standards established by international norms and regulations. Establishing a democratic framework is instrumental in achieving political stability and mitigating the risk of coups against ruling regimes. The occurrence of such coups can potentially be interpreted as an encroachment on a state's sovereignty. Consequently, proponents of this perspective advocate for necessary international measures to address this matter, potentially through the actions of the UN Security Council.¹³

⁶ International Covenant on Civil and Political Rights, <https://www.refworld.org/legal/agreements/unga/1966/en/17703>.

⁷ Cornelius Castoriadis, *Democracy as Procedure and Democracy as Regime*, 4(1) CONSTELLATIONS 1-3 (1997).

⁸ U.N. Charter art. 2(7). It states: Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.

⁹ Joseph Weiler, *The Geology of International Law – Governance, Democracy and Legitimacy*, 64 ZAÖRV 547-48 (2004).

¹⁰ Thomas Franck, *The Emerging Right to Democratic Governance*, 86(1) AM. J. INT'L L. 46-8 (1992).

¹¹ *Id.* at 48.

¹² George Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L L. 539 (1992); Christine Cerna, *Universal Democracy- An International Legal Right or the Pipe Dream of the West*, 27 N.Y.U. J. INT'L L. & POL. 289 (1995).

¹³ *Id.*

Conversely, a segment of scholars,¹⁴ including Jean d'Aspremont,¹⁵ assert that the occurrence of a coup against a lawfully elected government – if aligned with all globally acknowledged criteria of democratic entitlement – holds no international or legal acceptance. This viewpoint contends that the acquisition of power through force or coercion, be it political or military, must not garner international endorsement or approval. The essential principle here is that the collective will of a nation and people should remain unaltered using force.¹⁶

We firmly believe in embracing the principle that clinging to sovereignty cannot serve as a means to evade international obligations. This stance is underpinned by the recognition that one of the paramount human rights principles is the populace's entitlement to exercise unfettered democracy and engage in effective political participation within their nation. Consequently, when a state chooses to assert its authority over governance as an exclusively internal concern, it inherently flouts established norms of international law, particularly when such a stance is coupled with overt transgressions against human rights and the political liberties of its people. In such cases, the framework of international law retains the prerogative to intervene, enabling the restoration of control and compelling the state to adhere to democratic principles.

The non-interference principle in states' internal affairs holds significant importance. Nevertheless, this principle is circumscribed by other tenets within international law. In particular, the presence or absence of a particular provision within the legal framework of a state cannot be used as an argument to evade an international obligation.¹⁷ Here, my focus extends to a state's international commitments *vis-à-vis* other states and international organizations. A state's capacity to uphold these obligations, whether through direct or indirect means, is intertwined with the stability of its governing regimes or the overall state apparatus. The instability of either can potentially result in breaching international obligations, as the international agreements and regulations adhered to by states wield greater authority than their internal constitutions.

Additionally, the principle of non-interference in the internal affairs of states encounters limitations through the concept of “responsibility to protect” (R2P). This

¹⁴ James Crawford, *Democracy and International Law*, 64 BRIT. Y.B. INT'L L. 113 (1993); Obiora Okafor, *The Concept of Legitimate Governance in the Contemporary International Legal System*, 44(1) NETH. INT'L L. REV. 33 (1997).

¹⁵ Jean d'Aspremont, *Responsibility for Coups d'état in International Law*, 18(2) TUL. J. INT'L & COMP. L. 454 (2010).

¹⁶ *Id.*

¹⁷ Responsibility of States for International Wrongful Acts, ch. IV, https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf. See also The Law of International Treaties of the Republic of Kazakhstan, art. 20, <https://www.osce.org/files/f/documents/7/6/19180.pdf>.

doctrine denotes the international community's mandate to shield civilians if their governments fail to safeguard them or perpetrate human rights violations amidst demonstrations or similar circumstances. The Libyan crisis of 2011 serves as a vivid illustration. During this period, under President Muammar Gaddafi's leadership, Libya perpetrated various atrocities against civilians.¹⁸ At that juncture, Libya was not embroiled in armed conflict but witnessed peaceful protests by civilians demanding a regime change. The peaceful protests turned into armed conflict because of the Libyan regime and the acts they did back then.

This dire situation spurred the UN Security Council to pass Resolution 1973/2011, authorizing the use of force to safeguard Libyan civilians from the excesses of the ruling authority.¹⁹ This intervention was based on the principle of R2P, compelling military action to safeguard the Libyan populace. The subsequent formation of the North Atlantic Treaty Organization (NATO)-US alliance stemmed from this principle, solidifying it as a binding decision sanctioned by the Security Council.²⁰ The principle of R2P finds its foundation in another critical tenet known as "sovereignty as a responsibility." This principle underscores the imperative to safeguard populations from all manifestations of genocide and crimes against humanity; a stipulation explicitly articulated in Article 1 of the Genocide Convention. Introduced in 2005, this novel principle gained unanimous approval from states during the World Summit Conference held in New York. Its purpose was to underscore the significance of addressing transgressions against civilians, particularly in non-international armed conflicts.²¹ This context encompasses scenarios where armed military coups occur, potentially causing harm to civilians and leading to the commission of crimes against them as a means to seize power. The Security Council further affirmed this principle in Resolution 1674 adopted in 2006.²² Notably, this framework solely applies to coups involving armed actions or violations against civilians, elevating the issue from a domestic concern to an international one.

There may be dissenting views regarding the concept of international protection or military intervention, often rooted in the principles of state sovereignty and the avoidance of meddling in internal affairs.²³ However, my stance aligns with the tenets

¹⁸ DEYMAH ALWEQYAN, SELECTIVITY IN INTERNATIONAL LAW ENFORCEMENT 184-221 (2015).

¹⁹ S.C. Res. 1973, U.N. Doc S/RES/1973 (Mar. 11, 2011).

²⁰ Matthew Green, *To What Extent Was the NATO Intervention in Libya a Humanitarian Intervention?*, E-International Relations (Feb. 6, 2019), at 1-2, <https://www.e-ir.info/pdf/77488>.

²¹ Deymah Alweqyan, *International Crimes Committed During the Armed Conflict in Syria: A Study in Light of the Rules of International Humanitarian Law*, 1 CAIRO J. L. ECON. 42-3 (2020).

²² S.C. Res 1674, U.N. Doc. S/RES/1674 (Apr. 28, 2006).

²³ Alweqyan, *supra* note 21, at 35.

of international law, asserting that states cannot leverage sovereignty as a shield to preclude intervention aimed at shielding civilians from perpetrated crimes. Instead, the onus rests upon the Security Council to take necessary action to uphold global peace and security through any feasible means available.

Given this perspective, sovereignty should not serve as an absolute impediment against international humanitarian intervention. Article 2(7) of the UN Charter underscores that respecting state sovereignty does not hinder the Security Council from exercising its designated powers delineated in Chapter VII of the Charter.²⁴

B. The Responsibility of the International Community to Coup d'état

The responsibility of the international community can arise due to non-compliance with international law, resulting in effects and damages to the state itself or extending to other states. Such responsibility emerges when a state supports coup groups in another country to instigate a regime change. The questions are whether the coup's instigators can be held accountable for the coup itself or if they can be punished for the resulting damages, including destruction, loss of life, or civil war?; Does international responsibility come into play solely by violating international laws and obligations, even without resulting harm?; and more critically, Can a coup against a government be categorized as an international criminal offense?

Some scholars posit that responsibility can arise under the concept of "strict liability," wherein liability is established solely based on the occurrence of harm.²⁵ In this sense, responsibility is present regardless of whether the state's actions were lawful or not prohibited by international law; what matters is that its actions caused harm to another state.

The concept of "strict liability" emerged in response to potentially hazardous actions that, while possibly lawful, yield significant detrimental consequences for states or individuals.²⁶ This idea can be linked to instances of government overthrow, where the act itself might not be legally classified as a crime, yet its

²⁴ *Id.* at 15-6.

²⁵ Constance O'keefe, *Transboundary Pollution and the Strict Liability Issue: The Work of the International Law Commission on the Topic of International Liability for Injuries Consequences Arising out of Acts Not Prohibited by International Law*, 18(2) DENV. J. INT'L L. & POL'Y 145 (1989); Alex Kiss & Dinah Shelton, *Strict Liability in International Environmental Law*, in *LAW OF THE SEA, ENVIRONMENTAL LAW AND SETTLEMENT OF DISPUTES: LIBER AMICORUM* JUDGE THOMAS A. MNSAH 1131-51 (Tafsir Ndiaye & Rüdiger Wolfrum eds., 2007); Catherine Tinker, *Strict Liability of States for Environmental Harm: An Emerging Principle of International Law*, 3 *TOURO J. TRANS. L.* 155 (1992).

²⁶ RASHID ALANEZI, *PUBLIC INTERNATIONAL LAW AND A SPECIAL STUDY ON THE POSITION OF INTERNATIONAL LAW ON THE IRAQI OCCUPATION OF THE STATE OF KUWAIT* 542-3 (2018).

resulting damages could resemble those of a conflict, particularly if the effects are comparable. Furthermore, these repercussions might extend across national borders, inflicting harm upon other countries for the actions taken within the state where the coup transpired. To the groups that attain power through such means, maintaining full sovereignty over their territory becomes complex if their actions yield adverse consequences for other nations. Consequently, strict liability could be the basis for holding such a state accountable.²⁷

Only a handful of international treaties establish strict liability for any harm inflicted within the territory of another state as a consequence of specific activities. This liability remains in effect even if the state complies with its legal obligations in other respects. In contrast, the vast majority of multilateral treaties and agreements concentrate on the nature of the action rather than the harm incurred by the state. Notably, as staging a coup lacks criminalization within international criminal law, it is not classified as an international crime. This omission highlights a deficiency in the realm of international law. Addressing this gap calls for the formulation of a binding agreement that criminalizes such acts and deems the act of orchestrating a coup itself as criminal. Such a step would safeguard individuals' political rights and autonomy in selecting their governing authority based on established constitutional systems. Ultimately, this would contribute to preserving international stability within the global community by upholding the integrity of international commitments among involved parties.

As mentioned above, staging a coup is not categorized as an international crime. However, the criminal "actions" undertaken during and following the coup process are deemed "international crimes" as defined by the Rome Statute of the International Criminal Court (ICC).²⁸ This stance was notably affirmed by the Special Criminal Court of Sierra Leone during the "Taylor case."²⁹ The court clarified that "overthrowing a government does not inherently amount to an international crime, as this specific characterization is absent from the legal texts."³⁰ However, accountability for the individuals behind the coup is established through their culpability for the criminal deeds. These actions constitute international crimes subject to prosecution

²⁷ John Kelson, *State Responsibility and the Abnormally Dangerous Activity*, 13 HARV. INT'L L. J. 197 (1972). See also *Responsibility and Liability under International Law for Environmental Damage*, art. 4, https://www.idi-ii.org/app/uploads/2017/06/1997_str_03_en.pdf.

²⁸ Rome Statute, arts. 4-7, https://legal.un.org/icc/statute/99_corr/cstatute.htm; ICC, *ELEMENTS OF CRIMES* 9-29 (2013), <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>.

²⁹ *Prosecutor v. Taylor*, Case No. SCSL-03-01-PT, Second Amended Indictment (Special Ct. Sierra Leone, May 29, 2007), <http://www.rscsl.org/Documents/Decisions/Taylor/264/SCSL-03-01-PT-264.pdf>.

³⁰ *Id.*

under international criminal law.

Criticism has been directed at the ICC for its perceived inflexibility in modifying the Rome Statute to incorporate or revise specific international crimes, including those related to governmental coups, and subsequently prosecuting the individuals responsible. Notably, some regional courts have taken proactive steps ahead of the ICC. The African Court of Justice and Human Rights is an exemplar, particularly within its criminal division. Article (28) of the Malabo Protocol overtly designates certain acts as crimes, specifically those involving “...committing or ordering to be committed the following acts, to illegally access or maintain power”:

- A putsch or coup d'état against a democratically elected government;
- An intervention by mercenaries to replace a democratically elected government;
- Any replacement of a democratically elected government by the use of armed dissidents or rebels or through political assassination; and
- Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair, and regular elections.³¹

I believe that the debate over the legality or illegality of a coup is of secondary importance if the culpable parties cannot be held fully accountable through its criminalization under the framework of international criminal law, accompanied by enforceable sanctions. It is imperative for international law and the Rome Statute to encompass the notion of staging a coup as a prosecutable offense on the international stage. This objective can only be realized by establishing international accountability for those responsible for such actions, thus incorporating a significant deterrent factor, albeit perhaps limited, against attempts to orchestrate coups. The reason behind this stance is that, at present, some coup endeavors manage to seize power and subsequently garner complete international recognition as the legitimate governing body within a nation.

An illustrative case in point is the coup in Egypt against President Mohamed Morsi, with the Minister of Defense at the time, Abdel Fattah El-Sisi, taking control through a military coup, replacing civilian rule with a military regime. The international community supported this transition through the acknowledgment of Sisi's government.³² This situation could embolden other factions in different countries to seize power, even through military force, and subsequently strive for

³¹ Malabo Protocol art. 28, https://www.pulp.up.ac.za/images/pulp/books/legal_compilations/compendium/Malabo%20Protocol%202014.pdf.

³² David Kirkpatrick, *Army Ousts Egypt's President; Morsi is Taken into Military Custody*, N.Y. TIMES (July 3, 2013), <https://www.nytimes.com/2013/07/04/world/middleeast/egypt.html>.

global recognition without fearing any legal consequences or deterrents since the act itself is not classified as criminal.

III. Legislative Deficiency in International Law on the Cases of Coup

In recent, the world has witnessed numerous power shifts through coups, whether political or military. These coups aim to topple the existing government, taking control of the nation's governance. The global response to such events has been a mixture of support and opposition for each case. These diverse reactions are due to the absence of well-defined regulations surrounding coups and their categorization. This, in turn, creates a significant disparity within international law, consequently affecting diplomatic relationships. This bias is evident when there is a selective approach to endorsing or denouncing a particular coup, driven by strained political affiliations with the affected country or its leadership. It is critically necessary to rectify such imbalance and address the legal gaps in international law for global peace and security.

A. Cases of Coup against the Government

While coups are not novel in international affairs and have occurred across different continents, their frequency has notably surged in recent decades. Even in this situation, there is no established international regulations overseeing such actions. The typologies of coups encompass military-driven takeovers and those instigated by political opposition factions or parliamentary bodies. Among these endeavors, some have successfully grasped power and secured acknowledgment from the global community. Notable examples include the coups in Egypt and Sudan, while those in Turkey and Venezuela could not achieve their objectives to gain control.

1. Military Coup in Türkiye

On July 15, 2016, a faction within the Turkish military undertook a coup to overthrow Turkish President Recep Tayyip Erdogan and his affiliated party, the Justice and Development Party. The primary objective of this coup was to alter the prevailing Islamic governmental structure in the nation. It was fueled by the belief among opposition groups that President Erdogan aimed to reconstruct a modern-day version of the Ottoman Empire, characterized by Islamic principles, instead of a

secular foundation.³³ However, this coup effort ultimately failed. President Erdogan successfully rallied millions of citizens to protest in the streets of the capital city, Ankara, and Istanbul, effectively quelling the coup's momentum. As the subsequent day dawned, it became evident that the coup had been entirely thwarted, leading to the apprehension of many military personnel and officials implicated in the plot.³⁴

After this thwarted coup, the international community is divided into two groups with different stances and viewpoints. Notably, several nations, including Russia, extended their support for the actions undertaken by the Turkish president in response to the coup.³⁵ They emphasized upholding democracy and safeguarding the constitution. Russia emerged as a pivotal ally for Turkey following the failed coup. Concurrently, this period witnessed strained relations between Turkey and the US. Turkey accused the US of backing the coup and orchestrating regime change through support for Fethullah Gulen, an opposition leader in exile in Pennsylvania.³⁶ Allegedly, the US facilitated the necessary tools for the coup's success and the removal of President Erdogan from power.

Conversely, some countries expressed implicit displeasure over the coup's failure. They channeled this sentiment by indirectly criticizing the Turkish president's actions, which encompassed the implementation of coercive measures, the declaration of a state of emergency, and a sweeping campaign of arrests spanning various echelons of Turkish society. This campaign included judges, teachers, employees, military personnel, and even university students, all suspected of contributing to the ill-fated coup. Among these were European countries, including Britain, France, and Germany. The strain on Turkey's relationship with Germany was particularly notable with a lasting impact on their bilateral ties.³⁷

The coup's failure was not anticipated by the coup instigators, largely due to their perception, influenced by the policies of the Justice and Development Party that they would garner regional, global, and international backing. This assumption was grounded in several factors as: Unresolved Kurdish Conflict,³⁸ Interference in Other

³³ Chandrika Narayan et al., *Turkey coup attempt: How a night of death and mayhem unfolded*, CNN (July 17, 2016), <https://edition.cnn.com/2016/07/15/world/turkey-military-coup-what-we-know/index.html>.

³⁴ Ahmed Diab, *Dimensions and Repercussions of the Russian-Turkish Conflict*, 203(1) INT'L POL'Y J. 1-5 (2016).

³⁵ Jeffrey Mankoff, *A Friend in Need? Russia and Turkey after the Coup*, Center for Strategic and International Studies (July 29, 2016), <https://www.csis.org/analysis/friend-need-russia-and-turkey-after-coup>.

³⁶ *See Turkey demands extradition of Fethullah Gulen from US*, AL JAZEERA (July 17, 2016), <https://www.aljazeera.com/news/2016/7/17/turkey-demands-extradition-of-fethullah-gulen-from-us>; Tim Arango & Ceylan Yeginsu, *Turks Can Agree on One Thing: U.S. Was Behind Failed Coup*, N.Y. TIMES (Aug. 2, 2016), <https://www.nytimes.com/2016/08/03/world/europe/turkey-coup-erdogan-fethullah-gulen-united-states.html>.

³⁷ Erhan İçener, *Turkey – EU Relations after the Failed July 15 Coup Attempt*, 79 BILIG 69-75 (2016).

³⁸ Council on Foreign Relations, *Conflict Between Turkey and Armed Kurdish Groups* (Aug. 8, 2023), <https://www.cfr>.

Nations;³⁹ Terrorist Acts and National Security;⁴⁰ Strained International Relations;⁴¹ and Economic Challenges.⁴² The positions of international organizations in the region such as the NATO, the EU and the UN were wavering when determining their stance on the coup. It reveals that they not just aimed to uphold international peace, security, and the relevant tenets of international law. Instead, it hinged on the diplomatic relationships with the state where the coup transpired. This is a paradox between international law and politics.

While the coup orchestrators had control over public facilities, military installations, and media organizations within the country, the Russian news agency, TASS quoted a diplomatic source within NATO, asserting: “It is too early to comment on a situation that is changing very quickly.”⁴³ NATO also refused to communicate with the Turkish authorities at the time of the coup, noting that “the recognized Turkish authorities are currently working on solving more serious problems.”⁴⁴ NATO’s implicitly supported the coup stating: “The military who are trying to seize power in the country will not endanger the forces of NATO countries stationed at Incirlik Air Base.”⁴⁵ This proves NATO’s concern for its interests in the member states rather than those of the states themselves.

Meanwhile, the EU, for example, issued a late statement after the coup and the Turkish president’s return to control, as Federica Mogherini, the European Commissioner for Foreign Policy and Security, stressed the importance of restraint

[org/global-conflict-tracker/conflict/conflict-between-turkey-and-armed-kurdish-groups](https://www.global-conflict-tracker.com/conflict/conflict-between-turkey-and-armed-kurdish-groups).

- ³⁹ KHAYRALLAH AL-HILU, THE TURKISH INTERVENTION IN NORTHERN SYRIA: ONE STRATEGY, DISCREPANT POLICIES 13-7 (2021), <https://hdl.handle.net/1814/69657>.
- ⁴⁰ Dilkhaz Mohammed & Murat Karabatak, *Terrorist attacks in Turkey: An evaluate of terrorist acts that occurred in 2016*, in 6TH INT’L SYMP. DIGIT. FORENSIC & SEC. PROC. 1-3 (2018), <https://ieeexplore.ieee.org/document/8355370>.
- ⁴¹ Tuvan Gumrukcu, *Turkey says U.S. support for Syrian Kurdish YPG a “big mistake,”* REUTERS (Nov. 18, 2018), <https://www.reuters.com/article/us-mideast-crisis-syria-turkey-usa-idUSKCN1NN09I>; Kadir Ustun & Lesley Dudden, *Turkey-KRG Relationship Mutual Interests, Geopolitical Challenges*, 31 ANALYSIS 6-7 (2017); Ali Bakir, *The Future of Turkish-Egyptian Relations after the Military Coup*, AL JAZEERA CENTER FOR STUDIES (2013), at 3-5, <https://studies.aljazeera.net/en/node/3635>; Rased Al-Hamid, *The Developments of The Turkish Military Presence In Iraq and Its Possible Repercussions*, AL JAZEERA CENTER FOR STUDIES (2015), at 2-4, <https://studies.aljazeera.net/en/node/3990>; Ekrem Akçay & Halil Deniz, *Turkey-European Union (EU) Relations after the July 15 Coup Attempt within the Framework of the Random Walk Model*, 11(2) MANAS J. SOC. STUD. [MANAS Sosyal Araştırmalar Dergisi] 863-64 (2022), <https://dergipark.org.tr/tr/download/article-file/2054702>.
- ⁴² Kemal Ozturk, *Economic War in Türkiye*, AL-SHARQ NEWS (Dec. 7, 2016), <https://m.al-sharq.com/opinion/07/12/2016/ايفكورت-ييف-ياداصرقتالابرحل>.
- ⁴³ *NATO will not support any party against the other in Türkiye*, RT NEWS (July 16, 2016), <https://arabic.rt.com/news/832498>.
- ⁴⁴ *Id.*
- ⁴⁵ *Erdogan is Leading a Purification Campaign After the Failed Coup, and the West is Expressing Its Concern*, AL-HURRA NEWS (July 19, 2016), <https://www.alhurra.com/turkey/2016/07/19/غل-اولش-افنل-اباللقن-الابري-مطت-ظلم-ح-دوق-ي-ن-اغودر>.
غل-اولش-افنل-اباللقن-الابري-مطت-ظلم-ح-دوق-ي-ن-اغودر
غل-اولش-افنل-اباللقن-الابري-مطت-ظلم-ح-دوق-ي-ن-اغودر

and respect for democracy without any further explanation, or condemnation about the military coup. After the coup's failure, the EU expressed its full support for the democratically elected government in Türkiye, calling for a return to the constitutional order as soon as possible. This was stated by the President of the European Council, Donald Tusk, in a statement: "Turkey is a basic partner of the European Union", noting that the EU "fully supports the democratically elected government, state institutions, and the rule of law."⁴⁶

Turning to international organizations, UN Secretary-General Ban Ki-moon unequivocally expressed his stance that military intervention in the internal affairs of any nation is deemed unacceptable. He underscored the urgency of promptly and peacefully reinstating a constitutional and civil order in Turkey in alignment with democratic ideals. Amid the prevailing uncertainty in Turkey, Ban Ki-moon advocated for a collective demeanor of composure, urging a renunciation of violence, the exercise of restraint, and the safeguarding of fundamental rights, encompassing freedom of expression and the right to assemble.⁴⁷

The Security Council failed to issue a statement condemning the unsuccessful coup in Turkey and the ensuing waves of violence and turmoil, while offering support to the Turkish government. Regrettably, adopting such a statement was impeded due to an objection from Egypt. The draft statement, presented by the US, expressed profound apprehension regarding the Turkish situation, "calling on all parties in Turkey to respect the democratically elected government of Turkey."⁴⁸

Egypt, as a non-permanent member of the Security Council during that session, objected to the phrasing of the draft. An Egyptian diplomatic source stated that Egypt's representative at the meeting called for amending one phrase in the statement, indicating that "Egypt agrees with what was stated in the statement as a whole," with a request to change the phrase, "respect for the democratically elected government in Türkiye" into the phrase, "respect for democratic and constitutional principles and

⁴⁶ EU External Action, Statement by Federica Mogherini and Johannes Hahn a year after a coup attempt in Turkey (July 14, 2017), https://www.eeas.europa.eu/node/29890_en; European Commission, Statement by High Representative/Vice-President Federica Mogherini and Commissioner Johannes Hahn on the declaration of the State of Emergency in Turkey, (July 22, 2016), https://neighbourhood-enlargement.ec.europa.eu/news/statement-high-representative-vice-president-federica-mogherini-and-commissioner-johannes-hahn-2016-07-22_en.

⁴⁷ *Ban is closely following 'with concern' developments in Turkey*, UN NEWS (July 15, 2016), <https://news.un.org/en/story/2016/07/534552>.

⁴⁸ *Egypt blocks UN resolution denouncing Turkish coup attempt*, NEW ARAB (July 17, 2016), <https://www.newarab.com/news/egypt-blocks-un-resolution-denouncing-turkish-coup-attempt>; *Egypt 'obstructs' the issuance of a Security Council statement 'supporting the democratically elected Turkish government'*, BBC NEWS (July 16, 2016), https://www.bbc.com/arabic/middleeast/2016/07/160716_egypt_turkey_unsc.

the rule of law.”⁴⁹

Subsequently, the Security Council announced its decision not to adopt the statement above. This outcome arose due to concerns voiced by Turkey, as well as numerous members of the Council, including the US. These stakeholders harbored apprehensions that the statement, lacking a reference to “support for the democratically elected Turkish government,”⁵⁰ would suffer from a significant dilution. This prevailing sentiment aligns harmoniously with the fundamental tenets of democracy and robustly underscores the populace’s entitlement to engage in democratic processes in connection with the overarching human rights principles.

It is essential to note that such declarations necessitate unanimous endorsement from all 15 members of the Security Council, further highlighting the intricate dynamics that underscore decision-making within this authoritative body.

2. The Political Coup in Venezuela

Venezuela has been plagued by significant political turmoil for numerous years. The strained political relationship between the government and the opposition culminated in a pivotal event when the parliament, led by “Juan Guaidó,” orchestrated a coup against President “Nicolas Maduro’s” rule. This development unfolded on January 23, 2019, as Guaidó declared himself the interim president of Venezuela.⁵¹ This coup did not involve military intervention or support from governmental bodies. Instead, it stemmed from a political maneuver executed by members of the legislative authority within the parliament. In this audacious move, Guaidó subverted the constitution and rebuffed the Venezuelan president’s second term. As a result, he effectively marginalized Maduro, isolating him from his supporters in the streets of Caracas while asserting his claim to the position of the country’s acting president.⁵² Several factors compelled the opposition to orchestrate this coup including economic

⁴⁹ Michelle Nichols, *Egypt blocks U.N. call to respect ‘democratically elected’ government in Turkey*, REUTERS (July 16, 2016), <https://www.reuters.com/article/us-turkey-security-un-idUSKCN0ZW0ZN>.

⁵⁰ *Id.*

⁵¹ *Venezuela’s Juan Guaido Declares Himself Acting President*, DEUTSCHE WELLE (Jan. 23, 2019), <https://www.dw.com/en/venezuelan-opposition-leader-juan-guaido-declares-himself-acting-president/a-47201512>.

⁵² Joshua Goodman, *Venezuela’s Guaido takes to streets in military uprising*, PBS NEWSHOUR (Apr. 30, 2019), <https://www.pbs.org/newshour/world/venezuelas-guaido-takes-to-streets-in-military-uprising>.

factors,⁵³ social conditions,⁵⁴ and political situation.⁵⁵

Following Guaidó's proclamation of the presidency and the overthrow of Maduro's regime, international responses exhibited striking polarization. Notably, the US promptly acknowledged Guaidó as the rightful president when he assumed his position.⁵⁶ This prompt recognition could imply an underlying support or alignment between Washington and the Venezuelan opposition under Guaidó's leadership. Such alignment aimed to encircle Maduro's administration, given the stark disagreement between the US and Maduro's socialist policies, with the US seeking his removal from power.⁵⁷ This stance garnered concurrence from the countries across Latin America as well as Canada.⁵⁸ Conversely, a contrasting stance emerged from Russia, China,⁵⁹ and Turkey,⁶⁰ who resolutely declined to endorse the coup or recognize Guaidó. These countries insisted on upholding Maduro as the "constitutionally" elected president, highlighting the sanctity of the constitution and the will of the people, even in the presence of an opposing faction. For them, electoral processes were the paramount determinant.⁶¹

In a different vein, the EU adopted a somewhat ambiguous position by offering a statement supporting the coup while urging Venezuela to expedite presidential elections "to mitigate the internal strife within the country."⁶² Those countries have adopted distinct stances based on their specific relationships with Venezuela and its incumbent president. It has occurred without necessarily considering international law or the principle of national sovereignty.

Additionally, the rejection of coups against constitutional orders within countries

⁵³ Mahmoud Abdelal, *The Political Crisis in Venezuela: The Causes, Developments, and International Positions*, 40(3) ARAB CENT. RES & STUD. 17 (2019).

⁵⁴ *Venezuela crisis: How the political situation escalated*, BBC NEWS (Aug. 12, 2021), <https://www.bbc.com/news/world-latin-america-36319877>.

⁵⁵ Soudfa Mahmoud, *Venezuela: Crisis Paths and Future Scenarios*, 17(67) J. DEMOCRACY 190-1 (2017).

⁵⁶ Mariana Zuñiga, Anthony Faiola & Carol Morello, *U.S. to defy Venezuelan order for American diplomats to leave Caracas in 72 hours*, WASH. POST (Jan. 23, 2019), https://www.washingtonpost.com/world/the_americas/opposition-launches-protests-to-oust-maduro-as-us-venezuela-tensions-rise/2019/01/22/0416687a-1e4f-11e9-a759-2b8541bbbe20_story.html.

⁵⁷ *Venezuela's Self-Declared Interim Leader*, AL JAZEERA (Jan. 24, 2019), <https://www.aljazeera.com/news/2019/1/24/profile-juan-guaido-venezuelas-self-declared-interim-leader>.

⁵⁸ Abdelal, *supra* note 53, at 18-9.

⁵⁹ *Russia, Turkey, China Denounce US Interference in Venezuela*, AL JAZEERA (Jan. 24, 2019), <https://www.aljazeera.com/news/2019/1/24/russia-turkey-china-denounce-us-interference-in-venezuela>.

⁶⁰ Ayah Abdulaziz, *A New Infiltration: What Does Erdogan Want from Venezuela?* 18(2) ARAB CENT. RES. & STUD. 207 (2019).

⁶¹ Amal Mukhtar, *Early Elections Consolidate Political Polarization*, 18(2) DEMOCRACY L. J. 207 (2019).

⁶² *European nations recognise Guaido as Venezuela's acting president*, AL JAZEERA (Feb. 4, 2019), <https://www.aljazeera.com/news/2019/2/4/european-nations-recognise-guaido-as-venezuelas-acting-president>.

has not been uniform, shedding light on a troubling issue. While international law deems coups reprehensible, the response to such incidents lacks consistency and objectivity. Instead, viewpoints diverge based on the nation in question or its leadership. This discrepancy reveals a flaw within the framework of international law, which remains ambiguous on this matter. The absence of consistent measures, including imposition of sanctions on those responsible, undermines any dissuasion against such actions. It disrupts the global community's expected stance against such events and its refusal to recognize coup-instated governments.

Regarding the coup attempt, Guaidó's endeavor faltered in the face of the Venezuelan military's rejection. The armed forces upheld the constitution, thwarting Guaidó's plans, while Maduro further consolidated his hold on authority. He took decisive actions such as dissolving the parliament and disbanding the National Assembly, with which Guaidó was affiliated as its president. Maduro also established a National Constituent Assembly endowed with extensive powers to oversee the nation's affairs. In tandem, the Supreme Court ruled barring Guaidó from international travel and freezing his financial accounts.⁶³

On an international scale, the repercussions of the coup were pronounced. Maduro responded to the US by expelling the members of its embassy from Venezuela, affording them a 72-hour ultimatum to vacate the country. Concurrently, he completely shuttered the US embassy in Caracas, attributing these measures to his assertion that the embassy personnel were complicit in orchestrating and supporting the attempted coup.⁶⁴

3. The Military Coup in Sudan

After over three decades of ruling Sudan, the army couped against Sudanese President Omar Al-Bashir on April 10, 2019.⁶⁵ This coup followed massive popular protests in Sudan due to corruption, committed crimes, and mismanagement. The army, led by Ahmed Awad Ibn Auf – the vice president and defense minister at that time – overthrew President Al-Bashir and his government. In addition, Ibn Auf dissolved the parliament and declared a state of emergency. This state of emergency was set to last for 3 months, followed by a transitional period of two years. The goal of this transitional period was to prepare for legitimate, civil, and democratic elections to be

⁶³ Joe Daniels, *Venezuela court freezes Juan Guaidó's bank accounts and imposes travel ban*, GUARDIAN (Jan. 30, 2019), <https://www.theguardian.com/world/2019/jan/29/venezuela-juan-guaido-tarek-saab-investigation>.

⁶⁴ Daniel Cancel & Fabiola Zerpa, *Venezuelan Official Threatens to Cut Power to U.S. Embassy as Diplomatic Standoff Grows*, TIME (Jan. 24, 2019), <https://time.com/5512374/us-embassy-venezuela-maduro-military-standoff>.

⁶⁵ *Sudan Military Coup: History Of Successful and Failed Coup Attempts Since Independence*, BBC NEWS (Oct. 26, 2021), <https://www.bbc.com/pidgin/tori-59057559>.

elected by the people.⁶⁶

Since December 2018, significant popular protests have persisted, demanding the removal of Al-Bashir from power. Despite Al-Bashir's attempts to suppress these protests through various means, this suppression, which Al-Bashir attempted to commit, led to the army defecting from him and considering it as the main catalyst for the army's decision to overthrow the government. This pivotal development can be attributed to several reasons including economic factors, political considerations, and foreign policy ramifications.⁶⁷

Despite the successful execution of this military coup, the international community's reactions exhibited a spectrum of positions, spanning from proponents to detractors, largely aligned with each country's vested interests vis-à-vis Sudan. On the one hand, the US unequivocally endorsed the populace's right to determine their internal policies. In this vein, the US supported the coup itself and championed the peaceful transition of power and the Sudanese people's prerogative to elect a civilian president.⁶⁸ It is worth noting that the relationship between the US and Al-Bashir had been strained, elucidating the US's backing for this political transformation. Many countries, including Egypt, rallied behind the American standpoint. Egypt's endorsement stemmed from its encouragement of toppling dictatorial regimes,⁶⁹ echoing a precedent set by Al-Sisi when he unseated an elected civilian president. Furthermore, the Sudanese coup garnered backing from the United Arab Emirates and Saudi Arabia.⁷⁰

Conversely, Russia adopted a firm stance of outright rejection against the military coup that ousted the government and subverted the constitutional order. Russia's position rested on the principle that any power shift should be orchestrated democratically through the electoral process,⁷¹ a viewpoint also espoused by Turkey. Turkey, in particular, aspired to witness Sudan surmount this tumultuous phase via national reconciliation and the restoration of peace. Turkey's stance is rooted in

⁶⁶ Michael Young, Protests in Sudan, Where the President Has Just Been Removed from Office, Malcolm H. Kerr Carnegie Middle East Center (Apr. 13, 2019), <https://carnegie-mec.org/diwan/78858>.

⁶⁷ Matthew Leriche, The Fall of Omar Bashir in Sudan: A People's Revolution or a Changing of the Guard?, E-International Relations (Apr. 17 2019), at 3-5, <https://www.e-ir.info/pdf/78449>.

⁶⁸ Naunihal Singh, *The Myth of the Coup Contagion*, 33(4) J. DEMOCRACY 77 (2022).

⁶⁹ Eliza Mackintosh & James Griffiths, *Sudan's Omar al-Bashir forced out in coup*, CNN (Apr. 11, 2019), <https://www.cnn.com/africa/live-news/sudan-latest-updates/index.html>.

⁷⁰ Suliman Baldo & JR Mailey, A Strategy for Revitalizing Sudan's Democratic Transition, Sentry (Nov. 2021), at 3, https://thesentry.org/wp-content/uploads/2021/11/StrategyRevitalizingSudan'sDemocraticTransition_TheSentry_Nov2021.pdf.

⁷¹ Marcel Plichta, *Why Russia Is Standing By Sudan's Bashir*, WORLD POL. REV. (Mar. 9, 2019), <https://www.worldpoliticsreview.com/articles/27714/with-russian-activity-in-sudan-growing-moscow-stands-by-bashir>.

its opposition to coup d'états within nations. Notably, despite being wanted by the ICC for charges encompassing genocide, war crimes, and crimes against humanity, Al-Bashir visited Turkey on multiple occasions. He even participated as a guest of President Erdogan in the inauguration of Istanbul's new airport, solidifying his status as a close ally of Turkey.⁷²

Moreover, Al-Bashir enjoyed judicial immunity due to his status as a head of state, preventing his arrest on foreign soil. This legal immunity shielded him from detention, a scenario that unfolded in both Jordan and South Africa. These nations declined to apprehend and surrender Al-Bashir to the ICC,⁷³ despite active arrest warrants against him. This was based on the belief that such actions would infringe upon international and diplomatic laws. Additionally, their decisions contravened the ruling of the International Court of Justice (ICJ) in the *Congo v. Belgium* case.⁷⁴ The ICJ's ruling explicitly underscored the robustness of diplomatic immunity concerning ICC arrest warrants.

Concerning international organizations, Antonio Guterres, the UN Secretary-General, has expressed his anticipation that the Sudanese aspirations will be realized within a reasonable transitional period. Guterres has appealed to all parties in Sudan to exercise utmost restraint and patience until democratic elections can be conducted.⁷⁵ Furthermore, the EU closely monitored the sequence of events and issued a statement following the military's assumption of government control. The statement urges for a peaceful transfer of power through a nonviolent process, aiming to accomplish political and economic reforms for the people of Sudan.⁷⁶

The EU Commissioner for Foreign Affairs, Federica Mogherini, called on the Sudanese army to transfer power 'quickly' to civilians, noting the Sudanese people's desire for change. Mogherini added in a statement: "to prevent such a scenario, there has to be a swift handover to a civilian transitional government, with real decision-making authority. This would open the way for a peaceful, credible and inclusive political process – to finally address the Sudanese people's demand for political and

⁷² *Omar al-Bashir deposed: How the world reacted*, AL JAZEERA (Apr. 11, 2019), <https://www.aljazeera.com/news/2019/4/11/omar-al-bashir-deposed-how-the-world-reacted>.

⁷³ Gitobu Imanyara, *Critiquing Immunities of Serving Heads of State under Articles 27 and 98 of the Rome Statute of the International Criminal Court: A Case Study of President Omar al-Bashir Warrant of Arrest 20-21* (LL.M. Thesis, Strathmore University Law School, 2021), <https://su-plus.strathmore.edu/server/api/core/bitstreams/5dd80304-a6f6-425c-bbe2-28753a9e9937/content>.

⁷⁴ Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), Judgment, 2002 I.C.J. Rep. 3 (Feb. 14).

⁷⁵ UN, Statement attributable to the Spokesman for the Secretary-General - on Sudan (Apr. 11, 2019), <https://www.un.org/sg/en/content/sg/statement/2019-04-11/statement-attributable-the-spokesman-for-the-secretary-general-sudan>.

⁷⁶ EU External Action, Statement by High Representative/Vice-President Federica Mogherini on the situation in Sudan (Apr. 11, 2019), https://www.eeas.europa.eu/node/60957_en.

economic reforms” that the country needed.⁷⁷

On the other hand, the ICC has renewed its request for Sudan to hand over Al-Bashir to it in order to proceed with his trial for war crimes and genocide in Sudan. Several arrest warrants have been issued for Omar Al-Bashir due to the crimes committed in the Darfur region. The Convention on the Prevention and Punishment of the Crime of Genocide⁷⁸ has defined this crime as the acts that fall within the act of the destruction of a group. Following Article 2 of the Convention stipulates that “persons convicted of the crime of genocide shall be subject to criminal trial in the courts of the internal state in whose territory the crime occurred or in one of the special courts established by the Security Council which shall have jurisdiction over the matter.”⁷⁹ What can be noticed in this Convention is that it did not take into account the political status of the perpetrator, and therefore, it is not based on the immunities enjoyed by the perpetrator, whatever his capacity was and would be under trial according to Articles 27 and 28 of the Rome Statute.⁸⁰ Article 27 was applied to Sudanese former President Al-Bashir when the ICC issued an arrest warrant against him for the crimes he committed against Sudanese civilians, including the crime of genocide, without taking into consideration his diplomatic immunity.⁸¹

B. Filling the Legislative Deficiency of Coups under International Law

As mentioned above, international law does not intervene in designating certain actions as international crimes unless they have occurred and been committed. In a different sense, international law does not criminalize the act of a coup itself, even though such an act may violate norms within international law. These norms could be outlined in treaties a state is party to either with the UN or other international organizations or within agreements between states that impose obligations on both parties. Instead of targeting the coup act itself, international law focuses on holding

⁷⁷ EU External Action, Speech by High Representative/Vice-President Federica Mogherini at the plenary session of the European Parliament on the situation in Sudan (Apr. 16, 2019), https://www.eeas.europa.eu/node/61137_en.

⁷⁸ The Convention on the Prevention and Punishment of the Crime of Genocide, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

⁷⁹ The Statute of the International Criminal Tribunal for the former Yugoslavia was adopted by the Security Council acting pursuant to Chapter VII of the UN Charter in Security Council Resolution No. 827 (May 25, 1993). *See* U.N. Doc. S/RES/827 (1993). The Statute of the International Criminal Tribunal for Rwanda was also adopted by the Security Council acting pursuant to Chapter VII of the UN Charter Security Council Resolution 955 (Nov. 8, 1994).

⁸⁰ Rome Statute arts. 27-28.

⁸¹ *The Prosecutor v. Omar Al Bashir*, ICC-02/05-01/09.

individuals accountable for actions that amount to international crimes.

For instance, let's take a look at the ICC warrant issued against Omar Al-Bashir due to his involvement in war crimes against civilians in Darfur. Notably, this warrant is a consequence of his actions constituting international crimes rather than his prior engagement in coup activities. This raises an important distinction: the act of a coup itself is not inherently classified as an international crime (a gap in international law), but the actions carried out during the coup or the process of seizing power could lead to criminal accountability. In the former scenario, the coup is regarded as an internal matter of the state, while the jurisdiction of the ICC comes into play when determining cases of committed international crimes.

Hence, international law generally has not deemed coups against established power structures as criminal acts, unlike its stance on the criminalization of warfare. This distinction is notable despite the discernible parallels between warfare and coups' underlying causes and outcomes. For instance, the motives behind warfare may encompass power struggles or the annexation of foreign territories to extend influence – a resemblance that is strikingly akin to the objectives of a coup, primarily focused on seizing power and amplifying influence within a nation's borders.

Similarly, the consequences of warfare often manifest in extensive destruction, encompassing both physical infrastructure and civilian lives. This pattern bears intriguing similarities to a coup's aftermath, particularly if it fails to unfold peacefully or achieve its intended outcomes. In such instances, a coup might instigate a civil war or generate conflicts among various factions of the population, yielding outcomes that strikingly echo the repercussions of war. This parallel is vividly exemplified by the Libyan civil war that erupted after the toppling of Gaddafi's regime – an upheaval marked by widespread destruction and loss of civilian lives. A comparable pattern emerges in the ongoing events in Sudan following a recent coup.

I believe that the absence within international law to rectify the legislative gap concerning coups represents a significant legal loophole requiring attention. A considerable portion of the treaties or resolutions established takes the form of instruments and recommendations, lacking the force of legal obligation. These situational dynamics place them outside the purview of the ICC's jurisdiction for enforcement and penalties.⁸² In certain instances, a coup might garner endorsement and approval from the international community, as previously discussed. This pronounced imbalance inadvertently fosters a climate where various factions may

⁸² Badriya Al-Rawi, *Political Upheavals in International Covenants*, Egyptian Institute for Studies (July 12, 2019), at 6, <https://eipss-eg.org/wp-content/uploads/2019/07/الهيئة المصرية للدراسات والبحوث/الهيئة المصرية للدراسات والبحوث.pdf>; SAMUEL HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 192-237 (1973).

feel emboldened to execute coup attempts without trepidation. Instead, these groups might be inclined to pursue unchecked authority backed by the explicit support of the international community.

Nonetheless, various international and regional efforts have been undertaken to criminalize coups between countries. A noteworthy example is the collaborative initiative within Latin American nations. Countries such as Costa Rica, Guatemala, El Salvador, Honduras, and Panama joined forces to establish a collective treaty named the “Inter-American Democratic Charter.”⁸³ This accord underscores the imperative to fortify democracy and necessitates that signatory parties reaffirm their commitment to abstain from extending political, military, financial, or any other form of support to individuals, groups, irregular forces, or armed factions that pose a threat to a state’s unity and order. This pertains particularly to entities advocating for the overthrow of a democratically elected government or the destabilization of other parties.⁸⁴

In addition, the Organization of American States (OAS) holds a significant stance on the issue of coups, amplified by their escalation within Latin American countries over the past three decades. When a coup occurs within a member state, the OAS responds with sanctions that could potentially culminate in the state’s expulsion from the Organization.⁸⁵ Importantly, this approach is guided by the OAS Charter, refraining from being perceived as interference in the internal affairs of Latin American states.⁸⁶ Instead, it exemplifies the Organization’s central mission: safeguarding the security and stability of these nations. Moreover, the OAS underscores the commitment of its member states to collaboratively and swiftly enact measures that safeguard democracy in any member state facing threats.⁸⁷

It is noteworthy that any instance of unconstitutional change or interruption of the democratic system within an American state poses a substantial hindrance to fulfilling that state’s obligations as an OAS member.⁸⁸ However, in practical terms, despite the stringent measures outlined by the Organization, the occurrence of coups and subsequent recognition of the deposed governments after a certain period remain conceivable outcomes. This is because the OAS, per Article 17 of the Democratic

⁸³ OAS, Inter-American Democratic Charter, https://www.oas.org/charter/docs/resolution1_en_p4.htm.

⁸⁴ *Id.* art. 8.

⁸⁵ Framework Treaty on Democratic Security in Central America, art. 8, http://www.internationaldemocracywatch.org/attachments/242_Framework%20Treaty%20on%20democratic%20security%20in%20Central%20America.pdf.

⁸⁶ Rubén Perina, *The Inter-American Democratic Charter: An Assessment and Ways to Strengthen It*, in *THE ROAD TO HEMISPHERIC COOPERATION: BEYOND THE CARTAGENA SUMMIT OF THE AMERICAS* 79-80 (2012).

⁸⁷ OAS, Representative Democracy, AG/RES. 1080 (XXI-0/91) (June 5, 1991).

⁸⁸ OAS, Declaration of Quebec City, <http://www.summit-americas.org/Documents%20for%20Quebec%20City%20Summit/Quebec/Declaration%20of%20Quebec%20City%20-%20Eng%20-%20final.htm>.

Charter,⁸⁹ permits member states to solicit assistance from the Organization to safeguard their democratic systems against coup attempts. This provision underlines the Organization's commitment to avoiding infringement upon the principle of non-interference in the internal affairs of member states. Instances of such intervention indeed materialized, as seen in Ecuador in 1997⁹⁰ and Honduras in 2009.⁹¹ However, it is worth noting that the OAS's involvement in these cases did not suffice to thwart the occurrence of coups against legitimate governments in either instance. This reality stresses the intricate challenges tied to effectively preempting coup attempts through practical implementation.

Conversely, the Organization of African Unity (OAU) embarked on a path to criminalize coups within its member states and took a resolute stance against recognizing governments resulting from coup actions. This approach was particularly driven by the extensive toll coups have exacted on the continent, given that coup incidents have disproportionately affected Africa. This commitment found expression in the OAU's 1999 Charter,⁹² where it distinctly underscored its stance against coups targeting democratic governments by labeling them as human rights violations. This principle was further entrenched within the OAU's Constitutive Act of 2000 and the Protocol Concerning the African Charter on Democracy, Elections and Governance (ACDEG) of 2007.⁹³

Notably, this stance translated into tangible consequences when Egypt's membership in the OAU was suspended for a full year due to the coup that deposed Mohamed Morsi from power. In response to this incident, the OAU issued a statement unequivocally asserting that Morsi's overthrow contravened the tenets of the Egyptian constitution, representing a breach of the principle of altering governments through unconstitutional means. This event directly contradicted the OAU Charter, which steadfastly upheld the denouncement of coups against legitimately elected democratic governments.⁹⁴

The UN is prominent in unequivocally denouncing coups against constitutional governments. Being the most globally encompassing intergovernmental organization,

⁸⁹ *Id.* art. 17.

⁹⁰ Yanina Welp & Laurence Whitehead, *Referendums about Presidential Mandates: Deviations or Correctives?*, in *LATIN AMERICA IN TIMES OF TURBULENCE* 42-4 (Mariana Llanos & Leiv Marsteintredet eds., 2023).

⁹¹ Will Freeman & Lucas Perelló, *The Long Game: The Opposition Wins in Honduras*, 33(2) *J. DEMOCRACY* 118-20 (2022).

⁹² African Union, Decision, AU Dec. No. AHG/Dec. 142 (xxv) (July 14, 1999).

⁹³ Balingene Kahombo, *Putschists behind Bars? Regional Criminalization of Unconstitutional Changes of Government in Africa*, *VÖLKERRECHTSBLOG* (Jan. 27, 2017), <https://voelkerrechtsblog.org/putschists-behind-bars>.

⁹⁴ Aaron Maasho, *African Union suspends Egypt*, *REUTERS* (July 5, 2013), <https://www.reuters.com/article/us-egypt-protests-africa-idUSBRE9640EP20130705>.

the UN possesses a unique and influential position. This is evident in its adoption of various resolutions condemning coup instances worldwide. A significant example is Security Council Resolution 841(1993),⁹⁵ issued in response to the coup in Haiti. Within this resolution, the Security Council expressed its firm opposition to the coup government and extended support for decisions made by the OAS. Resolution 841 further entailed imposing punitive measures on Haiti, encompassing a trade embargo and prohibiting petroleum products and weapons trade. Notably, the Security Council invoked the sanctions prescribed within Chapter VII of the UN Charter in tandem with these actions.⁹⁶

Furthermore, Security Council Resolution 2048(2012)⁹⁷ addresses the coup in Guinea. This resolution resolutely condemned the military coup, which manifested as a “military leadership” obstructing the democratic electoral process. As a response, the Security Council imposed various sanctions on the military leadership, encompassing travel restrictions and arms embargoes. These actions underscore the UN’s dedication to thwarting coup attempts and safeguarding democratic norms across the globe.

The international courts played a role in rejecting the coups against the government, as the ICC examined cases of violating international human rights law in the Honduran coup in 2010, as this coup caused crimes of torture and imprisonment without trial for a large number of opponents of the coup. In addition to several murders during the post-coup period, the court investigated killings during curfews and at checkpoints, either at the spot or through excessive tear gas inhalation (seven to 12 cases) and also the alleged targeted assassinations of selected members of the opposition, including human rights defenders, journalists and political activists (six to more than 20 cases).⁹⁸

The treaties mentioned earlier lack universal legal enforceability among state members, excluding Security Council decisions. Instead, their impact is confined solely to the countries that have signed and ratified them. Consequently, these treaties may be considered non-binding recommendations when viewed within the broader international community. This reality undermines their intended core purpose. Adding complexity to the situation, implementing these protocols on a global scale presents challenges. Unlike the aspirations voiced by certain regional organizations to criminalize coups, the actual practice may unfold with the international community’s

⁹⁵ S.C. Res. 841, U.N. Doc. S/RES/841 (June 16, 1993).

⁹⁶ *Id.*

⁹⁷ S.C. Res. 2048, U.N. Doc. S/RES/2048 (May 18, 2012).

⁹⁸ ICC, Situation in Honduras: Article 5 Report (2015), at 27-30, https://www.icc-cpi.int/iccdocs/otp/SAS-HON-Article_5_Report-Oct2015-ENG.PDF.

backing, leading to the official recognition of the coup government as the legitimate ruling body of the state. This discrepancy fundamentally contradicts the established and emphasized principles of law.

IV. Conclusion and Recommendations

We have observed that a coup generally takes place when a specific group, whether political or military, tries to capture power by overthrowing the established ruling authority within the state. Alternatively, it transpires when the military intervenes to seize control and manage state affairs. This often follows the announcement of power suspension or removal and the cessation of constitutional functions. This action underscores the gravity of the matter, posing a significant threat to international peace and security.

What further amplifies this threat is the lack of clarity exhibited by various states in their perspectives towards coups. At times, they align themselves with the coup, offering their support. Conversely, there are instances where they vehemently reject such actions, advocating for upholding democracy and adherence to the constitution. These responses appear contingent on their diplomatic ties with the country where the coup unfolds. This issue represents a concerning indication of international rule violations that pose a threat to global peace and security. The lack of clarity surrounding the classification of a coup as an international crime, subject to punishment under international criminal law, exacerbates the situation. This ambiguity inadvertently fosters an environment that emboldens opposition groups within countries to orchestrate coups, thereby leading to the suspension of constitutional norms. The repercussions of such actions can be profoundly impactful on both a political and international scale, affecting not only the immediate region but also neighboring nations.

As a result, it becomes imperative for the international community to take appropriate measures to define, contextualize, and criminalize coup activities. This approach is essential in establishing a deterrent against any faction contemplating a coup, particularly if the incumbent authority is legitimate, democratically elected, and supported by the populace. In conclusion, the author has put forth a series of recommendations underlining the significance of establishing explicit legal frameworks to prohibit coups against democratic governments. These recommendations include:

1. Establishing a UN-adopted international convention aimed at criminalizing coup d'état actions. This effort would condemn practices that threaten global peace and security while flagrantly violating the fundamental principles enshrined in the UN Charter.

2. Amending the Rome Statute to encompass coups targeting democratically elected governments as international crimes under the ICC jurisdiction. This revision would align with the ICC's mission to prosecute and penalize perpetrators following established norms of international criminal law.

3. Affirming states' non-recognition of coup-instated governments and unequivocally denouncing coups against legitimate constitutions and democratically elected leadership. Simultaneously, it is important to bolster the bedrock of democratic practices, safeguarding constitutional integrity, and the populace's rights to choose and actively engage in their political prerogatives.

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