The Long Arm of Secrecy: Assange, the Espionage Act, and the Globalization of Press Liability

Susan Wu*

* Susan Wu, J.D. Candidate (2026), Washington University School of Law; Vol. 25 Executive Note Editor and Symposium Director, Washington University Global Studies Law Review; Research Assistant to Professor Leila Nadya Sadat. Many thanks to Professor Sadat for her mentorship and to the Global editors for meticulous edits. This Note grew out of and benefited greatly from the Freedom of Expression Seminar – thank you, Professor Gregory P. Magarian. I also thank Professor Melissa J. Durkee for her guidance. I write in the belief that robust protections for free expression across borders are cornerstones of the rule of law. All views and any errors are my own.

This Note uses "publisher" to refer to any actor who disseminates information to the public; "journalists" refers to the act of newsgathering and verification. In the modern digital age, many actors perform both functions, hence the analysis adopts a functional, role-neutral approach. The proposed limits on extraterritorial application and on subsequent freedom of press analyses apply to publication by any speaker engaged in public-interest journalism.

ABSTRACT

This Note uses the prosecution of Julian Assange as a lens to interrogate the uneasy intersection of national security secrecy and press freedom in a borderless information economy. Part I situates the case against the backdrop of WikiLeaks' disclosures. Part II first sets out the taxonomy of jurisdiction, accepted bases for prescriptive reach, and reasonableness and comity restraints. It then analyzes the Espionage Act's text and architecture as applied to publishers abroad. This section confronts extraterritoriality: it maps territoriality, nationality, protective, and effects principles and proposes a limiting framework that requires (1) a substantial, foreseeable, and direct U.S. effect, and (2) a tight nexus between the defendant's conduct and that effect. Part III brings comparative and international human rights law to bear, particularly ICCPR Article 19's necessity and proportionality tests, to articulate a speech-protective baseline for transnational prosecutions. How do we ensure that we are comity-sensitive in tailoring where speech rights of non-nationals are implicated? Part IV advances a functional "public-interest journalism" test and a narrow, administrable public-interest defense that protects publication absent proof of specific, imminent, and grave harm, coupled with a heightened mens rea. This section looks forward, recommending a publisher carve-out or safe-harbor amendment to the Espionage Act, DOJ charging guidelines that operationalize the proposed tests, and institutional channels for secure disclosures. The Note's central claim is that prosecuting non-U.S. publishers for publication under the Espionage Act, without the proposed limits, threatens core First Amendment values and undermines the United States' speech commitments in the transnational arena.

INTRODUCTION

When I founded WikiLeaks, it was driven by a simple dream: to educate people about the way how world works so that through understanding, we might bring out something better. Carrying a map of where we are lets us understand where we might go.

Julian Assange

In a remote and obscure corner of the vast Pacific Ocean, within the confines of the United States (U.S.) federal court of the Northern Mariana Islands, a historic legal moment unfolded that captured global attention. On June 25, 2024, Julian Paul Assange, the founder and publisher of WikiLeaks, stood before the court and pleaded guilty to one count of violating the U.S. Espionage Act of 1917.[1] This pivotal ruling culminated in a sentence of time served, acknowledging the five years he spent in a British prison while he battled extradition efforts to the United States.[2] Walking out of the courtroom, in an act of defiance, Assange invoked the principles enshrined in the First Amendment of the U.S. Constitution, a powerful statement that champions the rights to free speech and freedom of the press.[3]

This is a cautionary tale that underscores the complex interplay between government secrecy and the pursuit of truth. We are no strangers to governments declassifying or intentionally leaking classified information– not just to highlight their alleged intelligence victories, but also to demonize enemies. In our contemporary landscape, where the flow of information wields extraordinary power, journalists play a crucial role in uncovering and sharing stories about government actions worldwide.

Julian Assange's prosecution under the Espionage Act for publishing classified military documents sent shockwaves across international borders. The implications of such legal actions extend far beyond Assange himself, prompting a critical dialogue about the fundamental rights that underpin democratic societies.[4] WikiLeaks is emblematic of the friction between

1 James Oaten, *Julian Assange Freed after Pleading Guilty to One Espionage Charge at a Hearing in Saipan: In Saipan, Julian Assange's Long-Running Legal Battle Has Come to a Close as He Pleaded Guilty and Walked out of the Courtroom as a Convicted Felon but Free Man*, ABC PREMIUM NEWS (June 25, 2024), https://www.abc.net.au/news/2024-06-26/julian-assange-freed-as-court-hearing-concludes-in-saipan/104022842; Plea Agreement, [https://perma.cc/6744-9Q7Q]; Plea Agreement, United States v. Assange, No. 1:18CR00111 (E.D. Va. June 25, 2024).

2 Oaten, *supra* note 1; *Julian Assange Freed: What's the Deal the WikiLeaks Founder Struck with US?*, AL JAZEERA (June 25, 2024), https://www.aljazeera.com/news/2024/6/25/julian-assange-freed-whats-the-deal-the-wikileaks-founder-struck-with-us [https://perma.cc/NK9J-YRTP].

3 *Id.* ("I believe the First Amendment and the Espionage Act are in contradiction.").

4 *See* Jameel Jaffer & Ben Wizner, *Assange Indictment Is Shot Across the Bow of Press Freedom*, JUST SECURITY (Apr. 11, 2019), https://www.justsecurity.org/63595/assange-indictment-is-shot-across-the-bow-of-press-freedom/ [https://perma.cc/8SL7-KDPK] ("[W]hat the Justice Department characterizes as the 'manners and means' of criminal conspiracy is just ordinary, everyday, and

national security and the globalized nature of press freedom, demanding a re-evaluation of investigative journalism's role in the era of digital platforms.[5]

This note examines the legal issues arising from Assange's prosecution, with emphasis on the extraterritorial application of U.S. criminal law and its implications for press freedom in an increasingly interconnected world. Although his case raises broader concerns, such as extradition, diplomatic protection, and due process, this analysis will not address them. Instead, it maps the critical tensions between the expansive reach of state authority and the constraints of international law, and it considers the evolving role of journalism in safeguarding transparency and democratic accountability.

Part I provides background on the Julian Assange case, focusing on facts relevant to the legal issues addressed in this analysis. Part II explores the legal and ethical limitations surrounding extraterritorial jurisdiction, particularly the application of U.S. domestic law beyond its borders and the implications for international sovereignty and legal norms. Part III delves into press freedom under both U.S. constitutional law and international human rights law, emphasizing landmark cases that illuminate the tension between governmental secrecy and the public's right to information. Part IV analyzes the evolving landscape of investigative journalism in the digital age, identifying both the risks and challenges posed by the digital dissemination of sensitive information. This section also highlights gaps in existing international legal protections, illustrating how shrinking safe havens have heightened journalists' vulnerabilities globally. It proposes potential pathways for reform, suggests both international and domestic legal adjustments necessary to protect journalistic freedom and maintain democratic accountability.

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constitutionally protected journalism. In fact, so much of the indictment is dedicated to describing legitimate journalism that a reader can't help but wonder whether the Justice Department believes the alleged hacking was necessary to support an indictment here, or just sufficient."); *see also* Yochai Benkler, *A Public Accountability Defense for National Security Leakers and Whistleblowers*, 8 HARV. L. & POL'Y REV. 281, 306-07 (2014).

5 *See* Mary-Rose Papandrea, *The Publication of National Security Information in the Digital Age*, 5 J. NAT'L SECURITY L. & POL'Y 119, 121 (2011) ("Relying on leaks is hardly a perfect way of making sure the public receives essential information or of checking excessive government power; it does not guarantee that improperly classified information will come to light, or that genuinely sensitive information will remain secret. Nevertheless, this imperfect system is the best we have for checking the virtually unbridled power of the government to control the dissemination of national security information."); *see also* Emily Bell, *How WikiLeaks Has Woken Up Journalism*, EMILY BELL(WETHER) AN ENGLISHWOMAN IN NEW YORK (Dec. 7, 2010), https://emilybellwether.wordpress.com/2010/12/07/how-wikileaks-has-woken-up-journalism/ [https://perma.cc/J5GE-7ANE] (arguing that WikiLeaks fundamentally disrupted traditional journalistic models by demonstrating how digital platforms could challenge state control over information at a global scale. She notes that WikiLeaks exposed the limitations of mainstream media in confronting powerful institutions and forced news organizations to rethink their roles in the digital era. By operating outside conventional frameworks of editorial gatekeeping and national allegiance, WikiLeaks heightened tensions between state security interests and transnational information flows.).

I. BACKGROUND

On April 5th, 2010, WikiLeaks published a video later referred to as "Collateral Murder" that shocked the world.[6] The footage showed a classified U.S. military video: a 2007 U.S. Apache helicopter airstrike in the Iraqi suburb of New Baghdad.[7] The footage shows helicopter fire killing more than a dozen people, including two Reuters employees.[8] A later sequence shows rounds fired at a van that stopped to pick up a wounded man; two children in the van were injured.[9]

The release drew widespread attention and debate for its graphic content and the ethical questions it raised about military conduct and transparency.[10] The release heightened public awareness of the complexities and brutality of modern warfare and catalyzed discussions about government secrecy and accountability.[11] For some observers, the publication underscored the role of disclosure and transparency in exposing potential abuses[12]; for others, it raised concerns about the unauthorized disclosure of classified material and the attendant risks to U.S. national security.[13] The incident was pivotal in

6 *See Collateral Murder*, WIKILEAKS (Apr. 5, 2010), https://collateralmurder.wikileaks.org/ [https://perma.cc/8XL8-7RAK].

7 *Id.*

8 *Id.*

9 *Id.*

10 *See* Christian Christensen, *WikiLeaks and the Afterlife of Collateral Murder*, 8 INT'L J. COMM. 2593, 2595-97 (2014) (stating that "the leaks prompted 'a radical critique of U.S. military and geo-political power into mainstream popular discourse . . . [such that] the very presence of this critique 'opened up the possibility that the murky world of US power might now be forced to concede ground to transparency advocates'"). The article further emphasizes the leaks "exposed the arrogance of unilateral power, a disdain for human life, a clear and systematic opposition to transparency, and the undermining of democracy through the elimination of citizen participation and knowledge . . . The fact that two Reuters staff were victims in the film served as a reminder to viewers about the function of news reporting in war: to see the horrors of what happens in armed conflict, and to do so not only from the perspective of one's own country but from the opponent's perspective." *Id*.

11 *See id.*

12 *See* Paul Daley, *'All Lies': How the US Military Covered Up Gunning Down Two Journalists in Iraq*, THE GUARDIAN (June 14, 2020), https://www.theguardian.com/us-news/2020/jun/15/all-lies-how-the-us-military-covered-up-gunning-down-two-journalists-in-iraq [https://perma.cc/N464-KX9T] (quoting former Reuters journalist Dean Yates, who was in charge of the bureau in Baghdad when his Iraqi colleagues Namir Noor-Eldeen and Saeed Chmagh were killed: "I think we need to push the issue of transparency strongly with the U.S. military . . . [and what Assange] did was 100% an act of truth-telling, exposing to the world what the war in Iraq looks like and how the U.S. military lied."); *see also* Raffi Khatchadourian, *No Secrets*, THE NEW YORKER (May 31, 2010), https://www.newyorker.com/magazine/2010/06/07/no-secrets [https://perma.cc/SL6J-TKSS] (quoting Steven Aftergood, a staff for the Federation of American Scientists: "[T]he overclassification of information is a problem of increasing scale–one that harms not only citizens, who should be able to have access to government records, but the system of classification itself. When too many secrets are kept, it becomes difficult to know which ones are important.").

13 *See* Nawi Ukabiala, *Wikilaw: Securing the Leaks in the Application of First Amendment Jurisprudence to Wikileaks*, 7 FED. CT. L. REV. 209 (2013) (discussing a United States Army Report leaked to WikiLeaks reveals that the Army characterizes WikiLeaks as "a potential force protection [and] counterintelligence [. . .] threat to the U.S. Army."); *see also* Terence Burlij, *The Morning Line: Leaked Afghanistan Field Reports to Shape Political War Debate At Home*, PBS NEWS (July 26, 2010), https://www.pbs.org/newshour/politics/the-morning-line-leaked-afghanistan-field-reports-to-shape-political-war-debate-at-home [https://perma.cc/ACK5-9SMW] (quoting U.S. National Security Adviser

shaping the perception of WikiLeaks as a prominent, if controversial, actor in debates over press freedom and government oversight.

WikiLeaks was born in 2006.[14] It was a realization of Assange's manifesto.[15] WikiLeaks describes its mission as seeking to dismantle government secrecy by presenting unfiltered data to the public, allowing people to form their own opinions on state decisions.[16] Its anonymous model provides raw or barely edited documents, promising readers complete transparency in unexpurgated form, made accessible through a self-proclaimed "scientific journalism" that grants the public full insight into the state's inner workings.[17] In 2010, U.S. Army intelligence analyst Chelsea Manning provided a trove of classified military documents and diplomatic records.[18] It was followed by two large-scale document releases relating to Iraq and Afghanistan.[19]

Following the 2010-11 releases, the U.S. Justice Department launched an investigation. The Swedish authorities issued an arrest warrant in an unrelated case.[20] In 2012, Assange sought asylum in Ecuador's Embassy in London.[21] After Assange spent nearly seven years there, under conditions of confinement, Ecuador revoked his asylum in 2019, and British authorities arrested him for breaching bail.[22] The U.S. unsealed an indictment alleging conspiracy and Espionage Act violations related to the Manning materials.[23] Assange was not charged in connection with other high-profile publications, including the Democratic National Committee emails released during the

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Jim Jones: "The United States strongly condemns the disclosure of classified information by individuals and organizations which could put the lives of Americans and our partners at risk, and threaten our national security.").

14 *See* Khatchadourian, *supra* note 12.

15 *See id.* ("[Assange] had come to understand that defining human struggle not as left versus right, or faith versus reason, but as individual versus institution . . . He argued that, when a regime's line of internal communication is disrupted, the information flow among conspirators must dwindle").

16 *Id.*

17 *Id.* (Assange explains that his new journalistic standards are similar to those of scientific publications, wherein all data informing the research must be submitted and then subjected to replication and verification. Without such method, he states: "[t]here is an immediate power imbalance, in that readers are unable to verify what they are being told, and that leads to abuse.").

18 Manning v. United States, 78 F. Supp. 3d 120 (E.D. Va. 2011).

19 *Iraq & Afghan War Diaries Explorer*, WIKILEAKS (Oct. 22, 2010), https://wardiaries.wikileaks.org [https://perma.cc/4AVK-UUVX]; *see also* Nick Davies & David Leigh, *Afghanistan War Logs: Massive Leak of Secret Files Exposes Truth of Occupation*, THE GUARDIAN (Jul. 25, 2010), https://www.theguardian.com/world/2010/jul/25/afghanistan-war-logs-military-leaks [https://perma.cc/TZ4H-U5CJ].

20 Assange v. Swedish Prosecution Authority [2011] EWHC 2849 [https://perma.cc/BU8S-EK36].

21 *Julian Assange: WikiLeaks Co-founder Arrested in London*, BBC (Apr. 11, 2019), https://www.bbc.com/news/uk-47891737 [https://perma.cc/HC3X-AUT2].

22 *Id.*

23 *See* PRESS RELEASE NO. 19-575, *WikiLeaks Founder Julian Assange Charged in 18-Count Superseding Indictment*, U.S. DEP'T JUST. (May 23, 2019), https://www.justice.gov/archives/opa/pr/wikileaks-founder-julian-assange-charged-18-count-superseding-indictment [https://perma.cc/L83P-CEKY].

2016 presidential campaign[24] or the "Vault 7" CIA cyber-espionage documents[25] that surfaced in 2017.[26]

On June 25, 2024, Assange pleaded guilty to one count of conspiring with Manning to obtain and disclose national defense information in violation of the Espionage Act.[27] Despite the extensive amounts of military and diplomatic secrets published by WikiLeaks over numerous years, the U.S. was unable to pinpoint even one disclosure, at the time of sentencing or on other platforms, that was "used to the *injury* of the United States, or to the advantage of any foreign nation."[28]

This unprecedented application of the Espionage Act has sparked global debate. Historically, the Espionage Act prosecutions have been brought primarily against sources rather than against publishers who directly leak national defense information to a foreign nation or to individuals not entitled to receive such information,[29] such as government employees or intelligence agents. It seems, however, that in this case the character of the offender has expanded its application to include third-party publishers.[30] This sets an

24 *Search the DNC Email Database*, WIKILEAKS (Jul. 22, 2016), https://wikileaks.org/dnc-emails/ [https://perma.cc/T62T-B94U].

25 *Vault 7: CIA Hacking Tools Revealed,* WIKILEAKS (Mar. 7, 2017), https://wikileaks.org/ciav7p1/ [https://perma.cc/5K4V-ZANA].

26 The Justice Department decided not to charge Assange for his role in exposing the DNC emails and some of the CIA's most secretive spying instruments. Per the Justice Department's 2019 Press Release, officials provided no indication of indicting Assange for the DNC emails. *See WikiLeaks Founder Julian Assange Charged in 18-Count Superseding Indictment*, *supra* note 23. Regarding the Vault 7 leaks, reports indicate that the Justice Department decided against charging Assange for releasing the CIA documents due to concerns over the sensitivity of the leaked materials and the potential risks associated with introducing such classified information in court proceedings. *See* Natasha Bertrand, *Assange Won't Face Charges Over Role in Devasting CIA Leak*, POLITICO (June 2, 2019), https://www.politico.com/story/2019/06/02/julian-assange-cia-leak-1349425 [https://perma.cc/W8B9-EHYL].

27 *See* PRESS RELEASE 24-812, *WikiLeaks Founder Pleads Guilty and Is Sentenced for Conspiring to Obtain and Disclose Classified National Defense Information*, U.S. DEP'T JUST. (June 25, 2024), https://www.justice.gov/archives/opa/pr/wikileaks-founder-pleads-guilty-and-sentenced-conspiring-obtain-and-disclose-classified [https://perma.cc/4GL6-NJTN].

28 *See* Simon Lewis & Kanishka Singh, *U.S. Calls Julian Assange Actions Dangerous Even as Judge Notes No Victims*, REUTERS (June 26, 2024), https://www.reuters.com/world/us-state-department-says-julian-assanges-actions-put-people-risk-2024-06-26/ [https://perma.cc/9KU7-C79B] (presiding judge, Chief U.S. District Judge Ramona V. Manglona, stated that: "[T]he government has indicated there is no personal victim here. That tells me the dissemination of this information did not result in any known physical injury").

29 *See* Fern L. Kletter, *Validity, Construction, and Application of Federal Espionage Act, 18 U.S.C.A. §§ 793 to 794*, 59 A.L.R. Fed. 2d 303 Art. 1 § 2 (2011). Kletter notes that "information relating to the national defense" is not clearly defined by Congress, though courts have attempted to confine the scope of that phrase. The prerequisite of such material is that the information must be closely held or secretive and potentially endanger the country or be of use to an enemy of the nation. However, whether such information should be classified to be considered as "national defense" material is not a requirement. In addition, the burden of proof requires the State to demonstrate that individual "willfully" obtained unauthorized documents, photographs, models, and similar material relating to national defense, and "intentionally" revealed the material. *Id*.

30 *See* Susanna Granieri, *Julian Assange, The Espionage Act and the Dangerous Press Freedom Implications*, FIRST AMENDMENT WATCH (Dec. 15, 2022), https://firstamendmentwatch.org/julian-assange-the-espionage-act-and-dangerous-press-freedom-implications [https://perma.cc/3PQB-75VB];

unprecedented example: journalists or publishers could be charged simply for reporting on leaked documents, regardless of their role in acquiring those materials. The case prompted extensive commentary about the statute's application to publication-related conduct and its cross-border reach. These developments frame the questions examined in this Note: how far the Espionage Act extends to non-U.S. actors publishing abroad, its implications for the prescriptive principles of international law, and what it means for press freedom.

II. THE LEGAL LIMITS OF EXTRATERRITORIAL JURISDICTION

States routinely assert jurisdiction beyond their borders, but international law cabins those claims. "Jurisdiction" encompasses distinct powers that are often conflated: the authority to make rules (prescriptive), to hear cases (adjudicative), and to compel compliance (enforcement).[31] Treating these categories separately matters because a state may lawfully prescribe rules governing foreign conduct yet lack either the forum or the means to adjudicate or enforce them without assistance from other states.[32]

Prescriptive jurisdiction refers to a state's authority to apply its law to persons, conduct, or effects.[33] International law recognizes several bases: territoriality (including subjective and objective "effects"), nationality (active personality), passive personality, the protective principle, and universality.[34] Each has its own contour and level of acceptance. Whether a statute may reach foreign conduct is primarily a matter of prescriptive jurisdiction, informed by both international law and domestic canons.[35] Importantly, the power to prescribe does not by itself authorize coercive measures abroad.[36]

Adjudicative jurisdiction concerns a state's authority to subject a person to its courts.[37] In criminal matters, adjudicative jurisdiction is typically

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see also Jay Ward Brown, Dana R. Green & Gill Phillips, *The Press and National Security Redux*, MEDIA L. RES. CTR. (Oct. 2017).

31 Restatement (Third) of Foreign Relations Law § 401 (Am. L. Inst. 1987) [hereinafter Restatement (Third)]; Restatement (Fourth) of Foreign Relations Law § 401 (Am. L. Inst. 2018) [hereinafter Restatement (Fourth)].

32 William S. Dodge, *Jurisdiction in the Fourth Restatement of Foreign Relations Law*, 18 Y.B. PRIV. INT'L. L. 143, 146-48 (2016/2017).

33 Restatement (Third) §§ 402-03; Restatement (Fourth) §§ 401(a), 402.

34 Restatement (Fourth) §§ 408-12.

35 Restatement (Third) § 403 cmt. a; Restatement (Fourth) §§ 401 cmt. a, 402 cmt. b, 406. The comments explain that the extraterritorial reach of a statue turns on jurisdiction to prescribe. That customary international law imposes a general reasonableness limit so territorial or nationality links, though common, are not invariably sufficient. The United States practice both contributes to and follows these norms, with courts reading ambiguous statutes to avoid conflict with customary international law while a clear congressional directive controls as federal law.

36 Restatement (Fourth) § 431, reporter's note 1 (stating that a state's right to enforce its laws in another country requires that country's consent or acquiescence).

37 Restatement (Fourth) § 401(b); Dodge, *supra* note 32, at 157.

grounded in presence (arrest within the forum), lawful transfer (extradition), or comparable bases that ensure the defendant is properly before the court.[38] For foreign nationals whose alleged conduct occurred abroad, due process and fair warning principles impose additional limits on the exercise of adjudicative power.[39]

Enforcement jurisdiction is the authority to carry out coercive acts – arrest, search, seizure, confinement, and execution of judgments.[40] Generally, enforcement is territorial: a state may not exercise its police powers within another state's territory without that state's consent or a specific international authorization.[41] In practice, states rely on cooperation mechanisms such as extradition treaties, mutual legal assistance, letters rogatory, and informal channels to bridge this gap.[42] The availability (or denial) of such cooperation often defines the real-world limits of otherwise colorable prescriptive or adjudicative claims.[43]

Keeping the three strands distinct clarifies the analysis that follows: whether and how U.S. secrecy statutes may be *prescribed* to foreign publication conduct, and what international law limits apply.

The U.S. courts apply a presumption against extraterritoriality, requiring a clear congressional indication to apply statutes abroad.[44] While most doctrine arises in the civil context, criminal cases incorporate parallel concerns about fair warning and due process, especially for non-U.S. actors.[45] These interpretative limits do not exist in a vacuum; they operate against the text and history of the statute they constrain. The path from fair warning and due process to the Espionage Act runs through a moment of acute domestic insecurity.

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38 Restatement (Fourth) §§ 427-28; Dodge, *supra* note 32, at 161.

39 Courts have established that for non-citizens acting entirely abroad, a jurisdictional nexus exists when the aim of their activity is to cause harm inside the United States or to U.S. citizens or interest. These principles ensure that the application of criminal statutes to such individuals is neither arbitrary nor fundamentally unfair. The animating principle behind these due-process limits is that "no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." *See* United States v. Ali, 718 F.3d 929, 943 (2013) (ultimate question under the Due Process Clause is whether the application of a statute to a defendant would be arbitrary or fundamentally unfair; the nexus requirement serves as a proxy for due process, ensuring that a defendant could reasonably anticipate being hauled into court in the United States.).

40 Restatement (Fourth) §§ 401(c), 431-32.

41 Restatement (Fourth) §§ 431-32.

42 *Module 11: International Cooperation to Combat Transnational Organized Crime*, U.N. OFF. ON DRUGS & CRIME, https://www.unodc.org/cld/en/education/tertiary/organized-crime/module-11/key-issues/intro.html [https://perma.cc/P9CQ-V584].

43 CHARLES DOYLE, CONG. RSCH. SERV., PN 94-166, EXTRATERRITORIAL APPLICATION OF AMERICAN CRIMINAL LAW (2023).

44 Restatement (Fourth) § 404.

45 *See Ali*, 718 F.3d at 943; *see also* United States v. Ballestas, 795 F.3d 138, 148 (D.C. Cir. 2015); United States v. Al Kassar, 660 F.3d 108, 118 (2d Cir. 2011).

On December 7, 1915, President Woodrow Wilson stood before a joint session of Congress to deliver the State of the Union Address.[46] Distrust of immigrant communities from warring nations residing in the U.S. had risen to a new level. At the time, there was no federal legislation prohibiting subversive expression; there were no laws prohibiting the dissemination of information injurious to the national defense.[47] With the United States's entry into the war, two years later, Congress enacted the Espionage Act of 1917.[48]

The Espionage Act made it a crime to obtain information regarding national defense with intent or reason to believe that the information is to be used to the injury of the United States or to the advantage of any foreign nation.[49] Until 1961, the Act by its express terms applied only within the admiralty and maritime jurisdiction, on the high seas, and within the borders of the United States.[50] Prompted primarily by a highly publicized case of a citizen who had delivered secret information to foreign countries, Congress repealed this territorial limitation.[51] In *United States v. Zehe*, the District Court for the District of Massachusetts affirmed Congress's power to legislate extraterritorial jurisdiction, emphasizing that espionage is a crime inherently threatening national security and governmental functions.[52] It warranted prosecution on both citizens and noncitizens for espionage committed outside this country's territorial limits.[53] Moreover, the court noted that, under international law, a state may prescribe laws imposing legal consequences for an action occurring outside its territory that threatens its national security or the operation of its governmental functions, as long as such action is generally recognized as a crime under the law of states that have reasonably developed legal systems.[54]

The *Zehe* decision plays a key role in setting the foundation of the Espionage Act's extraterritorial reach. It highlights how the protective

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46 *December 7, 1915: Third Annual Message*, UVA MILLER CTR. , https://millercenter.org/the-presidency/presidential-speeches/december-7-1915-third-annual-message [https://perma.cc/VG83-PYPG].

47 *See* Stephen I. Vladeck, *Inchoate Liability and the Espionage Act: The Statutory Framework and the Freedom of the Press*, 1 HARV. L. & POL'Y REV. 219, 221 (2007) [hereinafter Vladeck, *Inchoate Liability and the Espionage Act*].).

48 Espionage Act of 1917, Pub. L. No. 65-24, 40 Stat. 217.

49 18 U.S.C. §793.

50 Former 18 U.S.C.A. § 791 (repealed 1961).

51 Pub. L. No. 87-369, 75 Stat. 795.

52 *See* United States v. Zehe, 601 F. Supp. 196, 198 (D. Mass. 1985) (reasoning that "[t]he legislative history of the Act unequivocally supports the application of the Act to citizens who commit acts of espionage against the United States while abroad." The court further holds that "Congress has the power to prosecute both citizens and noncitizens for espionage committed outside of this country's territorial limits. The defendant concedes that under principles of international law recognized by United States courts, Congress is competent to punish criminal acts, *wherever and by whomever committed*, that threatened national security or directly obstruct governmental functions.") Emphasis added.

53 *See id*.

54 *See id.* at 200; *see also supra* note 39 *and all accompanying texts*.

principle, effects doctrine, and national security imperatives can collectively override traditional jurisdictional limitations rooted in the foundation of international law. By prioritizing national security over traditional territorial limitations, this case established a framework that enabled the U.S. to prosecute noncitizens for acts committed abroad.[55] This framework, which provides critical legal grounding for the prosecution of Julian Assange, highlights the tension between national security objectives and established norms of jurisdictional restraint under international law.[56]

In today's increasingly interconnected world, the traditional constraints that once defined the limits of jurisdictions are beginning to weaken. As globalization progresses, the once-clear boundaries that govern overreaching state power are becoming blurred.[57]

The principle of "nationality" allows a state to exercise jurisdiction over its nationals abroad, based on the bond of allegiance between the individual and the state.[58] The U.S. rarely applies this principle to prosecute American citizens for crimes committed overseas.[59] Among the complexities of clashing national laws governing individuals, this principle would not reach Assange in any world. As an Australian national, he owes no direct allegiance to the U.S. Applying the Espionage Act to his actions on this principle alone creates friction, as it would involve prosecuting a foreign national for actions outside U.S. territory.

The "territoriality" principle limits a state's jurisdiction to conduct occurring within its own borders, and also fails to provide a clear basis for prosecuting Assange.[60] Though an accepted norm, states have adopted

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55 *See* Ellen S. Podgor, *Extraterritorial Criminal Jurisdiction: Replacing "Objective Territoriality" with "Defensive Territoriality"*, 28 STUD. L. POL. & SOC'Y 117, 122 (2003) (noting the international norms to determine criminal jurisdiction is premised upon "territoriality," "nationality," "passive personality," the "protective principle," and "universality." Courts typically do not only rely on only one base as exclusive authority for extraterritorial application.); *see also* Geoffrey R. Watson, *Offenders Abroad: The Case for Nationality-Based Criminal Jurisdiction*, 17 YALE J. INT'L L. 41, 43 (1992).

56 *See* Brown, Green & Phillips, *supra* note 30.

57 *See* Nico Krisch, *Jurisdiction Unbound: (Extra)territorial Regulation as Global Governance*, 33 EUR. J. INT'L L. 481, 482-84, 512-13 (2022); *see also* Joel Simon, *A New Paradigm for Global Journalism: Press Freedom and Public Interest*, COLUM. JOURNALISM REV. (Feb. 7, 2023), https://www.cjr.org/tow_center_reports/a-new-paradigm-for-global-journalism-press-freedom-and-public-interest.php [https://perma.cc/89LA-A6BU].

58 Restatement (Fourth) § 410.

59 *See* Watson, *supra* note 55, at 52-54 (explaining that nationality-based jurisdiction conflicts with "common law tradition of territorial jurisdiction," indicates a "lack of faith in another sovereign's system of law," "[subjects] U.S. nationals to two sets of laws while abroad," and "[runs] the risk of offending foreign states").

60 Restatement (Fourth) § 408; *see* Gerhard Kegel & Ignaz Seidl-Hohenveldern, *On the Territoriality Principle in Public International Law*, 5 HASTINGS INT'L & COMPAR. L. REV. 245, 252 (1982); *see* Podgor, *supra* note 55, at 119.

various ways of interpreting what constitutes a territory.[61] Traditionally, territoriality would preclude the U.S. from prosecuting actions such as publishing or revealing state secrets if they occur outside U.S. territory.[62] Assange's actions primarily took place outside the U.S., notably in the U.K. and other countries.[63] Under strict territoriality, the U.S. would lack jurisdiction over Assange. And yet, despite the historical presumption against extraterritoriality in criminal cases, the U.S. courts have never shied away from "[restraining] a prosecutor from proceeding with an extraterritorial prosecution."[64]

From the U.S.'s perspective, the application of extraterritoriality is based on statutory interpretation: either Congress has explicitly expressed in the language extending that jurisdiction or the courts infer from the text a congressional intent to apply statutes abroad. The effects doctrine (or "objective territoriality"[65]) asserts that a state may claim jurisdiction over conduct outside its borders if that conduct has substantial and direct effects within the state.[66] Though the doctrine is contentious under international law, it is recognized in certain contexts, particularly in cases involving national security or economic interests.[67] The U.S. stated that Assange's publication of national defense information severely impacted U.S. national security and military operations, thereby producing a tangible effect within U.S. borders.[68] The underlying protective principle has been adapted to fit within the tenets of U.S. jurisprudence now outlined in the Restatement (Fourth) of Foreign Relations Laws.[69]

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61 *See* Podgor, *supra* note 55, at 122 (giving an example that some states adopt the "doctrine of ubiquity" meaning offense could be committed partly at one location but may be considered wholly committed at that location).

62 *See* Brown, Green & Phillips, *supra* note 30.

63 *See Julian Assange Freed: What's the Deal the WikiLeaks Founder Struck with US?*, *supra* note 2 ("[T]he issue was of 'extraterritoriality' since Assange was not a US citizen and was not in the US 'when this felony, as what they said, was created.'").

64 *See* Podgor, *supra* note 55, at 120.

65 The "objective territoriality" doctrine is strictly an invention of the U.S. jurisprudence, molded after the generally recognized international law principle of protective jurisdiction. It is not recognized by other states and is not included among the five principles of jurisdiction recognized under international law.

66 Restatement (Fourth) § 409.

67 *Id*. cmt. b; *see* United States v. Al Kassar, 660 F.3d 108 (2d Cir. 2011).

68 *See WikiLeaks Founder Julian Assange Charged in 18-Count Superseding Indictment*, *supra* note 23 ("After obtaining classified national defense information from Manning, and aware of the harm that dissemination of such national defense information would cause, Assange disclosed this information on WikiLeaks . . . Assange's decision to reveal the names of human sources illegally shared with him by Manning created a grave and imminent risk to human life.").

69 Restatement (Fourth) § 412 ("International law recognizes a state's jurisdiction to prescribe law with respect to certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other fundamental state interests, such as espionage, certain acts of terrorism, murder of government officials, counterfeiting of a state's seal or currency, falsification of official documents, perjury before consular officials, and conspiracy to violate immigration or customs laws.").

The Espionage Act's priority over jurisdictional principles reflects a unique combination of national security imperatives, judicial deference, and statutory interpretation that effectively extends U.S. law far beyond its borders. These factors place the Espionage Act on a somewhat different footing than most laws, where national security concerns often override international jurisdictional limitations. With the rise of digital communication and globalized information flows, threats to national security increasingly originate outside a state's borders, and the Espionage Act has evolved to address these global risks. While the Act's expansive approach may address modern security challenges posed by globalized information flows, it raises significant concerns about sovereignty, press freedoms, and reciprocity in international law.

The application of the effects doctrine perhaps warrants reconsideration. It implies that any foreign individual or entity whose actions affect the U.S. could fall under its legal authority. In this complex web of reality, it is hard to find anything that remains untouched by the far-reaching influences of international trends. This begs the question: how can we disprove that conduct, such as journalists and publishers doing their jobs to disseminate information, does not have substantial effects on this country? Other nations, particularly those with robust press protections, may view this extension of jurisdiction as an infringement on their legal systems and journalistic norms.[70] What if other nations decide to prosecute U.S. journalists or citizens for publishing materials that critique or impact those nations' interests? If journalists in the U.S. publish critical information about foreign governments, those governments could theoretically claim jurisdiction, arguing that the publication impacts their own national security. Reciprocal claims of jurisdiction by foreign states could lead to an erosion of sovereign power, diplomatic norms, and human rights protections.[71]

For instance, Australia has expressed strong and assertive opposition to Assange's prosecution. Prime Minister Anthony Albanese has repeatedly called for a diplomatic solution. In a rare display of bipartisan unity, the Australian Parliament passed a motion urging the U.S. to cease its pursuit

70 *See* Patrick Farnsworth, *Chomsky: Prosecution of Assange Reflects "Extreme" Use of State Power,* TRUTHOUT (Nov. 25, 2019), https://truthout.org/audio/chomsky-prosecution-of-assange-reflects-extreme-use-of-state-power/ [https://perma.cc/3L4M-PNVH] (discussing the extreme use of state power to prevent and punish the release of information that power systems do not want the public to access); *see also* Jennifer Robinson, *Speech to the National Press Club: Let's Bring Julian Assange Home*, CROAKEY HEALTH MEDIA (Oct. 19, 2022), https://www.croakey.org/lets-bring-julian-assange-home-read-jennifer-robinsons-speech-to-the-national-press-club/ [https://perma.cc/F589-X96J] ("And around the world the media has responded – The New York Times, the Washington Post, and the Guardian – have warned that the US is criminalizing public interest journalistic practices . . . [Journalists] are able to differentiate between publishing and espionage; a distinction that the US government and its allies seem intent on erasing.").

71 *See* Robinson, *supra* note 70.

of Assange.[72] This collective support is bolstered by arguments that prosecuting Assange for publishing classified information undermines the principles of a free press and exposes Australian citizens to foreign legal risks for journalistic activities conducted abroad.[73] Human rights lawyer Jennifer Robinson, who represents Assange, emphasized that this case has galvanized Australians across the political spectrum, uniting them around a demand that the U.S. drop the charge against Assange.[74] The decision by the U.S. to pursue a citizen of one of its closest allies for the publication of information, while simultaneously denouncing authoritarian states for doing the same, was both hypocritical and damaging to American standing in the world. Robinson warned of the danger of setting a precedent that could incriminate public-interest journalism, not just in the U.S. but anywhere in the world.[75]

As the U.S. expands its jurisdictional reach to encompass actions taking place overseas, involving foreign nationals, it risks establishing a precedent that could fundamentally undermine the principle of national sovereignty. Such a move has profound implications, as it could erode long-established norms governing jurisdictional boundaries. In this shifting paradigm, an alarming potential emerges: states may feel empowered to pursue legal action against foreign individuals under the auspices of national security, even for actions deemed lawful in their own countries. This developing phenomenon could spark a cascade of retaliatory claims and create an international legal landscape fraught with tension and uncertainty, where the delicate balance between protecting national interests and respecting

72 *See* Daniel Hurst, *Julian Assange: More than 60 Australian MPs Urge US to Let WikiLeaks Founder Walk Free*, THE GUARDIAN (Sep. 13, 2023), https://www.theguardian.com/media/2023/sep/14/julian-assange-more-than-60-australian-mps-urge-us-to-let-wikileaks-founder-walk-free [https://perma.cc/Y3SB-FZ9C] (many Australian politicians had voiced their opposition regarding Assange's legal prosecution. A "total number of signatories – 63 Australian federal politicians – reflects an increasing cross-party consensus on the issue."); *see also Australian Parliament Calls for U.S. to Drop Case Against WikiLeaks' Assange Ahead of U.K. Court Hearing*, DEMOCRACY NOW! (Feb. 16, 2024), https://www.democracynow.org/2024/2/16/julian_assange_australia [https://perma.cc/RS6M-8RJW] (Australian MP Andrew Wilkie urged the government to "stand up and take a stand" for Assange. Jennifer Robinson stated that the Australian Parliament, supported by the prime minister and the government, calling for Assange "to be able to return home safely to Australia is a very strong signal to the United States that it is a priority for the Australian government, for the Australian people and our Parliament that Julian Assange be freed.").

73 *RSF Dispels Common Misconceptions in the Case Against Julian Assange*, REPORTERS WITHOUT BORDERS, https://rsf.org/en/rsf-dispels-common-misconceptions-case-against-julian-assange [https://perma.cc/WHP8-JSFQ] [hereinafter RSF Dispels Common Misconceptions].

74 *See Australian Parliament Calls for U.S. to Drop Case Against WikiLeaks' Assange Ahead of U.K. Court Hearing*, *supra* note 72 ("This precedent, if Julian is prosecuted, will be setting a precedent that any journalist anywhere in the world, not just in the United States, but anywhere in the world, could be prosecuted and extradited to the United States to face prosecution for publishing truthful U.S. information. This is the first time in history the U.S. is pursuing a publisher under the Espionage Act. It crosses all legal thresholds in terms of the First Amendment and will set a dangerous precedent not just for Julian and WikiLeaks, but for the entire media."); *see also* Robinson, *supra* note 70.

75 Robinson, *supra* note 70.

international boundaries becomes increasingly precarious. The overarching question looms: can we safeguard the integrity of jurisdictional norms in an age where digital interactions know no borders?

III. PRESS FREEDOM UNDER U.S. AND INTERNATIONAL LAW

In the U.S., the First Amendment to the Constitution guarantees freedom of the press, underscoring its role as a vital institution for democratic accountability.[76] The U.S.'s perspective requires a close examination of the evolution of court decisions on the publication of information. Although originally intended to apply primarily to individuals–such as government employees or intelligence agents– directly leaking national defense information to a foreign nation or to one did not entitle to receive such information, the Espionage Act granted the federal government sweeping authority to stifle dissent and silence anyone who opposed the war effort.

This tendency toward overreach manifested in *Schenck v. United States*.[77] The Supreme Court held that the distribution of leaflets urging resistance to the draft during wartime constituted a "clear and present danger" to the nation's security, and thus, the defendants' convictions under the Espionage Act did not violate the First Amendment.[78] This "clear and present danger" test, however, was criticized for its difficulty in administering and susceptibility to manipulation.[79]

The evolution of First Amendment jurisprudence eventually led to the *Brandenburg v. Ohio* decision, which replaced the "clear and present danger" test with the more protective "incitement to imminent lawless action" standard.[80] This standard significantly narrowed the government's ability to restrict speech, ensuring that abstract advocacy of ideas, even controversial or unpopular ones, remained protected unless it met the strict criteria for incitement.[81]

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76 U.S. CONST. amend. I.

77 *See* Schenck v. United States, 249 U.S. 47 (1919).

78 *See id.* at 51-52 (The Court's test stated: "Words which, ordinarily and in many places, would be within the freedom of speech protected by the First Amendment, may become subject to prohibition when of such nature and used in such circumstances as to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent. The character of every act depends upon the circumstances in which it is done." Wherein Justice Holmes also infamously wrote: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.").

79 *See* Leslie Kendrick, *On "Clear and Present Danger,"* 94 NOTRE DAME L. REV. 1653, 1655, 1657-58 (2019) (clear and present danger test was criticized as an unstable and manipulable standard, one that permitted suppression of speech based on judicial assessments of danger that were often uncertain and shaped by the political climate).

80 *See* Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) (speech is unprotected only if it (1) "is directed to inciting or producing imminent lawless action" and (2) is "likely to incite or produce such action").

81 *Id*.

Yet, the Espionage Act poses significant challenges to this framework. Since then, one of the most nefarious uses of the Act has been to silence journalists. Its broad language criminalizes unauthorized disclosure of information related to national defense, regardless of intent or harm. Over the years, critics have argued that the Act fails to adequately distinguish between espionage, intentional acts of betrayal or harm, and disclosures in the public interest, such as those made by journalists.[82]

The tension between the Espionage Act's sweeping scope and robust First Amendment protections became clearer–or, arguably, more ambiguous–during the Vietnam War era, most notably in *New York Times Co. v. United States* (better known as the "Pentagon Papers Case").[83] The Court's ruling that the Pentagon Papers could be published marked the first major decision shedding light on the tension between First Amendment rights and national security.

The case arose when the *New York Times* and the *Washington Post* sought to publish the Pentagon Papers, a classified government report detailing U.S. involvement in Vietnam. The Nixon administration argued that publication posed a national security risk and sought a prior restraint to prevent further publication.[84] In a 6-3 decision, the Court ruled against the government, emphasizing that prior restraints on the press carry a heavy presumption of unconstitutionality.[85] The Court held that the government failed to prove that the publication would cause direct, immediate, and irreparable harm to national security.[86] This reasoning aligns with the imminence requirement established in *Brandenburg*, reinforcing the principle that speech cannot be curtailed based on speculative or abstract threats.

The Pentagon Papers case underscores the essential role of the press in holding the government accountable, particularly when secrecy is used to conceal misconduct. Justice Black's concurring opinion in *New York Times* celebrated the press as a crucial watchdog.[87] While the First Amendment

82 *See* Geoffrey R. Stone, *Free Speech and National Security*, 84 IND. L.J. 939, 944-46, 956-58 (2009) (Stone describes how the Espionage Act was expansively applied to suppress antiwar expression and "genuine discussion" rather than only classic espionage, and explains in the secrecy context that publication of confidential information may serve the public interest and democratic accountability even where disclosure is unauthorized.); *see also* Stephen I. Vladeck, *The Espionage Act and National Security Whistleblowing After Garcetti*, 57 AM. U. L REV. 1531 (2008) [hereinafter Vladeck, *The Espionage Act*] (Vladeck has explored similar concerns, emphasizing the ambiguity in the Act's language and its implications for press freedom and whistleblowing).

83 N.Y. Times Co. v. United States, 403 U.S. 713, 714 (1971).

84 *See id*. at 718.

85 *See id*. at 714.

86 *Id.*

87 *See id.* at 717 (Black, J. concurring) ("In seeking injunctions against these newspapers and in its presentation to the Court, the Executive Branch seems to have forgotten the essential purpose and history of the First Amendment…The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.").

establishes strong protections for press freedom, it does not provide blanket immunity, particularly in cases involving classified information and national security concerns. By setting a high bar for government attempts to censor the press, the ruling remains a cornerstone of legal protections for journalistic freedom and a pivotal precedent in balancing national security concerns with the public's right to know.[88]

The tension between these competing interests has been magnified by the Espionage Act. Although the Court refused to enjoin publication of the classified Defense Department study on the war's conduct, it declined to opine definitively on whether journalists could face criminal penalties under the Espionage Act after publication. Thus, while the decision reinforced the prohibition on prior restraints, it left unresolved the question of whether post-publication prosecution might still be viable. This doctrinal lacuna means that reporters, editors, and publishers who disseminate classified information may remain subject to criminal sanction, despite the theoretical primacy of free expression.[89]

The implications of this ambiguity loom large in the digital era. As the Fourth Estate's function of holding the government accountable depends on journalists' and publishers' ability to expose clandestine practices, the unsettled boundaries of the Espionage Act's reach threaten to diminish press freedom. The legislative gap imbues the Espionage Act with a blunt prosecutorial instrument that can stifle legitimate newsgathering and reporting without a statutory safe harbor or judicially recognized doctrine differentiating harmful disclosures, such as those likely to produce imminent, concrete harm to national security, from disclosures that expose serious consequences for disseminating essential information.[90] Even if journalists are not involved in the dissemination of classified national security information, and regardless of whether the subject matter of the information were a matter of public concern, the Espionage Act itself makes the journalists' access to the secret information a criminal offense.[91] Hence in practice, this results in scenarios where individuals feel compelled to

88 *Id.*

89 *See* Stone, *supra* note 82.

90 *See* Vladeck, *The Espionage Act*, *supra* note 82, at 1532-37 (analyzing how the Act's broad language and prosecutorial discretion can chill speech related to government misconduct); *see also* Stone, *supra* note 82, at 954-55 (noting that the Supreme Court left unresolved the possibility of criminal sanctions for post-publication dissemination of classified materials, exacerbating uncertainty for journalists).

91 *See* Vladeck, *Inchoate Liability and the Espionage Act*, *supra* note 47, at 234; *see also* David S. Ardia, et al., *Panel Two: The Press, Whistleblowers, and Government Information Leaks*, 19 FIRST AMEND. L. REV. 253, 259-60 (2021) (explaining that Section (d) and (e) of the Act "separate out people who retrieved information from the government versus people who are the recipients of leaks." There was a "concern that this would have an impact on the press and their ability to report on" the government's conduct. The language itself did not explicitly intend] "to allow the censorship of the press," and it seems that Congress thought it was sufficient to acknowledge prosecutors should not use this law to go after the press.).

accept plea deals simply because they lack any feasible alternatives. This was the case of Julian Assange.

Although the legislative gap enables the government to target a broad range of disclosures, its inability to produce concrete evidence of harm from such revelations further calls into question the necessity and fairness of wielding this formidable statutory tool against journalists. A central contention in debates over the Espionage Act's application to journalistic activities is the government's frequent inability to substantiate claims that disclosures truly imperil national security.[92] In Assange's case, critics note that although the U.S. government voiced strong objections to the mass release of diplomatic cables and military records, it never conclusively demonstrated that these revelations caused tangible harm—such as loss of life, compromised intelligence operations, or irreparable diplomatic breaches.[93] This absence of verifiable injury weakens the argument that criminalizing such disclosures serves an essential defensive purpose and instead raises the possibility that broad punitive legal measures chill legitimate reporting without delivering any offsetting security benefits.

Moreover, by failing to document concrete damage arising from the WikiLeaks publications, the government's posture undermines the rationale for treating all unauthorized disclosures as equally culpable.[94] In other contexts, courts and scholars have recognized that not all speech posing a theoretical risk is sufficiently injurious to justify restriction.[95] Applying similar reasoning to national security leaks would demand a showing of actual, imminent harm before punitive action can be taken, thereby preventing the Espionage Act from becoming a blunt instrument against the press. The government's inability, or unwillingness, to provide specific evidence of harm in the Assange scenario thus reinforces the call for doctrinal or statutory reforms that recognize a meaningful distinction between malicious espionage and public-interest reporting.[96]

In international law, the recognition of press freedom as a cornerstone of human rights is rooted in historical contexts where oppressive regimes sought to stifle dissent through censorship and repression.[97] Under

92 *See* Vladeck, *The Espionage Act*, *supra* note 82, at 1542-45 (discussing prosecutorial discretion and the need for evidence-based assertions of harm).

93 *See* Yochai Benkler, *A Free Irresponsible Press: WikiLeaks and the Battle Over the Soul of the Networked Fourth Estate*, 46 HARV. C.R.-C.L. L. REV. 311, 345-46 (2011).

94 Stone, *supra* note 82, at 945-46.

95 *N.Y. Times Co*., 403 U.S. at 714; *Brandenburg*, 395 U.S. at 447-48 (1969) (per curiam).

96 Harold Edgar & Benno C. Schmidt, Jr., *The Espionage Statutes and Publication of Defense Information*, 73 COLUM. L. REV. 929, 939-44 (1973).

97 *See Freedom of Expression: History,* DEMOCRACY WEB, https://www.democracyweb.org/study-guide/freedom-of-expression/history [https://perma.cc/VQU2-AKAN] (Noting that in totalitarian regimes of the twentieth century, suppression of speech was a key means of consolidating power, prompting the international community to establish Article 19 of the UDHR as a global standard against censorship).

international standards, restrictions on expression must be provided by law, pursue a legitimate aim, and be necessary and proportionate.[98]

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of expression, encompassing the freedom to seek, receive, and impart information, irrespective of borders.[99] This provision forms the backbone of international press freedom protections, explicitly acknowledging the vital role the press plays in upholding human rights and democratic principles. Article 19 of the Universal Declaration of Human Rights (UDHR) additionally affirms freedom of expression as a universal right.[100]

These rights, however, are not absolute. Article 19(3) of the ICCPR permits restrictions on press freedom in limited circumstances, such as when necessary to protect national security, public order, public health, or the rights of others.[101] To ensure these restrictions are not abused, the Siracusa Principles–a set of interpretative guidelines adopted by the UN Economic and Social Council–mandate that any such limitations must be lawful, necessary, proportionate, and narrowly tailored to achieve legitimate objectives.[102] For example, a restriction aimed at safeguarding national security must demonstrate a direct and imminent threat, avoiding vague or overly broad measures that could suppress legitimate public disclosure.[103]

Regional jurisprudence similarly subjects national security speech restrictions to strict scrutiny of necessity and proportionality. The European Convention on Human Rights (ECHR), under Article 10, similarly enshrines freedom of expression, emphasizing its importance for the free exchange of ideas and public discourse.[104] In *Handyside v. United Kingdom*, the European Court of Human Rights held that freedom of expression protects not only information and ideas that are favorably received but also

98 G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights art. 19(3) (Dec. 16, 1966) [hereinafter ICCPR].

99 *Id*. at art. 19(2).

100 G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 19 (Dec. 10, 1948).

101 ICCPR, *supra* note 98.

102 AM. ASSOC. FOR THE INT'L COMM'N OF JURISTS, SIRACUSA PRINCIPLES ON THE LIMITATION AND DEROGATION PROVISIONS IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (Apr. 1985) [https://perma.cc/2K49-B839]; *see also* U.N. Econ. & Soc. Council, The Johannesburg Principles on National Security, Freedom of Expression and Access to information, 28, U.N. Doc. E/CN.4/1996/39 (1996) [https://perma.cc/R9TZ-STTA] (Building on the Siracusa Principles, the Johannesburg Principles provided more detailed guidance on the intersection of freedom of expression and national security. They reaffirmed that restrictions must not be used to shield governments from embarrassment or conceal human right violations.).

103 *See* U.N. Human Rights Comm., Mukong v. Cameroon, Communication No. 458/1991 (July 21, 1994) [https://perma.cc/6PPZ-Y9KJ] (The U.N. Human Rights Committee relied on the principles to hold that Cameroon's detention of a journalist for criticizing the government violated Article 19 of the ICCPR. The Committee emphasized that political criticism must not be unduly restricted under the guise of national security.).

104 European Convention on Human Rights art. 10, Nov. 5, 1950, 213 U.N.T.S. 221.

those that offend, shock, or disturb.[105] The case involved the seizure and banning of *The Little Red Schoolbook*, a publication deemed obscene under UK law. The court concluded that national authorities were best placed to assess the necessity of restrictions in their societies but underscored that such measures must be proportionate and justified by a pressing social need.[106] This case established the principle that robust protection for freedom of expression is vital for fostering public debate and challenging governmental authority. This principle resonates with Assange's case, as WikiLeaks' publications exposed significant governmental misconduct and sparked global disclosure on issues such as military accountability. However, the U.S. government argues that Assange's actions endangered national security, presenting a stark contrast to the ECHR's requirement that restrictions must address an immediate and specific threat to justify interference.

Similarly, in *Sunday Times v. United Kingdom*, the European Court of Human Rights ruled that restrictions on press freedom must be prescribed by law, serve a legitimate aim, and be necessary in a democratic society.[107] The ECHR examined whether an injunction preventing the newspaper from publishing details of the *Thalidomide* case violated Article 10. The court found that the injunction met the criteria but nonetheless emphasized that press freedom plays a vital role in ensuring the public's right to information, particularly in matters of significant public interest.[108] This case reinforced the requirement for clear legal justifications and proportionality when imposing limitations on journalistic activities. The U.S. reliance on the Espionage Act raises concern about whether the Act's broad provisions align with these principles.

Unlike the European framework, which emphasizes proportionality and the press's essential democratic function, the prosecution of Assange prioritizes national security over these considerations. While *Handyside* and *Sunday Times* protect the right to expose governmental wrongdoing, Assange's case highlights the tension between these rights and state imperatives, illustrating the limitations of existing protections for journalists operating in an interconnected, digital world.

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105 *See* Handyside v. United Kingdom, E.C.H.R., App. No. 5493/72, (Dec. 7, 1976) [https://perma.cc/6WXC-HS54] (highlighting the protective scope of freedom of expression, even for controversial content).

106 *Id.* ¶¶ 48-49 ("State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the 'necessity' of a 'restriction' or 'penalty' intended to meet them . . . Freedom of expression constitutes one of the essential foundations of [a democratic society] . . . that every 'formality', 'condition', restriction,' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued.").

107 *See* Sunday Times v. United Kingdom, No. 6538/74, ¶ 42(2) (Apr. 26, 1979) [https://perma.cc/K6WP-LFUU] (Any restriction on press freedom must be "prescribed by law and are necessary in a democratic society").

108 *Id.*

The Inter-American Court of Human Rights (IACtHR) has also recognized the press's role as a bulwark of democracy, describing it as a vehicle for individuals to exercise their rights to expression and information.[109] In *Herrera-Ulloa v. Costa Rica*, the IACtHR ruled that excessive penalties imposed on a journalist violated Article 13 of the American Convention on Human Rights, emphasizing the need to protect public-interest reporting from disproportionate state action.[110] Herrera-Ulloa, a journalist, faced a criminal defamation conviction for publishing articles linking a public official to corruption allegations. The court found that Costa Rica's defamation laws, as applied in the case, disproportionately restricted Herrera-Ulloa's freedom of expression under Article 13 of the ACHR.[111] Herrera-Ulloa's actions encompassed both an individual right and a social protection to freedom of expression. The court emphasized that public officials are subject to greater scrutiny and criticism due to their role in democratic governance.[112] It held that penalizing a journalist for reporting on matters of public interest, especially without adequate procedural safeguards, violated the right to freedom of expression.[113]

The IACtHR underscored the necessity of protecting the press in its role as a watchdog of public power, reiterating that disproportionate penalties undermine democratic accountability.[114] Though both cases involve the intersection of press freedom and the public's right to information on matters of significant public interest, the Assange case differs in its treatment of the public-interest defense. Unlike IACtHR's insistence that restrictions on press freedom must be narrowly tailored and proportional, the Espionage Act lacks explicit provisions for balancing national security with the democratic imperatives of transparency and accountability.

Extraterritorial assertion raises two additional questions: 1) whether and when human rights obligations apply to persons abroad, and 2) how the necessity/proportionality test accounts for cross-border press activity and the availability of less-restrictive means (e.g., targeted prosecutions of leakers, post-publication harm mitigation). These cases underscore the need

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109 Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (ser. A) No. 5 ¶¶ 69-70 (Nov. 13, 1985) [https://perma.cc/UF7B-56BR].

110 *See* Herrera-Ulloa v. Costa Rica, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 107 (July 2, 2004) [https://perma.cc/9QNY-RES5] (Disproportionate penalties for reporting on public-interest issues constitute a "violation of freedom of expression").

111 *Id.* ¶ 109 (The court stated that Article 13 protects freedom of expression over two dimensions: 1) an individual right to exchange thoughts freely to the greatest amount of people and 2) a social element that expands to protect an individual's right to receive information and news.).

112 *Id.* ¶ 128 (noting that public officials must tolerate greater scrutiny in the interest of transparency).

113 *Id.* (highlighting that freedom of expression can only be restricted for the necessity of the state; it cannot limit freedom of expression in an attempt to censor public debate).

114 *Id*. ¶¶ 125-29 (emphasizing the necessity of press freedom in democratic oversight).

for clearer international standards to reconcile press freedom with national security in an era of globalized information flows.

IV. INVESTIGATIVE JOURNALISM IN THE DIGITAL AGE: RISKS AND CHALLENGES

A. The Assange Case as a Turning Point

The case of Julian Assange and WikiLeaks epitomizes the friction between evolving modes of information dissemination and established legal frameworks governing national security and free speech. Unlike legacy news organizations that pass sensitive information through layers of editorial review, WikiLeaks operates within a decentralized, networked environment, often bypassing journalistic gatekeeping standards and protocols.[115] The 2010 release of the "Collateral Murder" video and vast repositories of classified military and diplomatic documents drastically expanded public knowledge of U.S. foreign and military policy. Supporters of Assange contend that these disclosures advanced the core democratic function of investigative journalism by illuminating governmental wrongdoing, including potential war crimes, human rights violations, and disingenuous policy narratives shielded from public scrutiny.[116]

Nevertheless, critics maintain that WikiLeaks' broad, unredacted releases disregarded the ethical responsibility to minimize harm–an established journalistic norm reflected in professional codes of conduct.[117] By failing to remove identifying information that could endanger human sources, jeopardize diplomatic relationships, or compromise ongoing military operations, WikiLeaks arguably flouted the careful balance that conventional journalists typically strive to maintain between the public's right to know and the risk of collateral damage.[118]

The U.S. government's decision to prosecute Assange under the Espionage Act marks a significant shift in how the law interacts with the press. With the Assange indictment, federal prosecutors targeted a self-

115 *See* Benkler, *supra* note 93, at 359-60 (discussing the broader implications for the networked press).

116 *See id.* (discussing how WikiLeaks' revelations exposed potential wrongdoing and contributed to democratic accountability); *see also* Stephen Rhode, *The Prosecution of Julian Assange and the Threat to Freedom of Press and Human Rights*, LARB (Jan. 3, 2021), https://lareviewofbooks.org/article/the-prosecution-of-julian-assange-and-the-threat-to-freedom-of-the-press-and-human-rights/ [https://perma.cc/K7CM-4AKA].

117 *See Code of Ethics*: *Minimize Harm*, SOC'Y OF PRO. JOURNALISTS, https://www.spj.org/ethicscode.asp [https://perma.cc/JC46-KUHU]; *see also* Benkler, *supra* note 93, at 345-46, 359-60 (examining the arguments that indiscriminate disclosures risked harm to individuals and the national interest; discussing how professional journalism standards typically involve balancing public interest with potential harm).

118 *See* Indictment, *United States v. Julian Assange*, No. 1:18CR00111 (E.D. Va. 2019); *see also* Benkler, *supra* note 93, at 345-46.

described publisher for the mere act of dissemination, a move that raises profound First Amendment questions about the legal status of digital platforms that function outside the traditional editorial hierarchies of established newspapers.[119] This prosecutorial approach stands in stark contrast to past precedents that generally insulated publishers from criminal liability for reporting newsworthy information, even if illicitly obtained. In the digital age, the prosecution of Assange tests these long-standing assumptions. If the Espionage Act can be extended without modification to platforms like WikiLeaks, established media outlets, ranging from legacy newspapers to emerging investigative websites, may likewise confront heightened legal risks for publishing sensitive material.[120]

Media organizations may also self-censor to avoid legal risks. Press freedom advocates have warned that Assange's prosecution under the Espionage Act risks producing a chilling effect on investigative journalism that relies on classified sources, threatening the public's right to know.[121] This shift would weaken the press' role as a watchdog, undermining transparency and democratic accountability. Investigative reporting in the mold of *The Pentagon Papers* or *Watergate* might now be considered too legally risky, jeopardizing the public's ability to scrutinize those in power.[122]

These implications extend beyond the United States. International human rights organizations, including Amnesty International and Reporters Without Borders, have warned that the Assange case sets a dangerous precedent for press freedom globally.[123] By prosecuting a foreign publisher operating outside its borders, the U.S. opens the door for other states to adopt similar measures against journalists critical of their regimes. Authoritarian governments, in particular, could use this precedent to justify suppressing dissent, framing journalistic activities as threats to national

119 *See* Indictment, *supra* note 118.

120 Benkler, *supra* note 93, at 372-73; *see also* Glenn Greenwald & Micah Lee, *Prosecution of Julian Assange is a Grave Threat to Press Freedom*, THE INTERCEPT (Apr. 11, 2019), https://theintercept.com/2019/04/11/the-u-s-governments-indictment-of-julian-assange-poses-grave-threats-to-press-freedoms/ [https://perma.cc/DN6B-NDLS].

121 *Press Freedom Coalition Calls for End to Assange Prosecution*, REPORTER WITHOUT BORDERS (2022), https://rsf.org/en/us-press-freedom-coalition-calls-end-assange-prosecution [https://perma.cc/VM5S-VQSF].

122 *See N.Y. Times Co.*, 403 U.S. at 713; *see also* CARL BERNSTEIN & BOB WOODWARD, ALL THE PRESIDENT'S MEN (Simon & Schuster 1974) (The Watergate scandal of the 1970s, which culminated in President Richard Nixon's resignation, remains a defining moment in U.S. history for exposing governmental abuses of power. Sparked by a break-in at the Democratic National Committee's headquarters, the scandal unraveled due to investigative reporting by Bob Woodard and Carl Bernstein of *The Washington Post*. Their reporting relied on leaked information from a confidential source and revealed a broader pattern of illegal surveillance, political espionage, and obstruction of justice. This episode underscored the press's role as a check on power, bringing critical governmental misconduct to light.).

123 Robinson, *supra* note 70; *see also* Rhode, *supra* note 116; *Press Freedom Coalition Calls for End to Assange Prosecution*, *supra* note 121.

security.[124] In Turkey, for example, journalist Can Dündar was prosecuted for reporting on government arms smuggling, with national security invoked to justify his conviction.[125]

The chilling effect of this prosecutorial action cannot be overstated. The Assange case signals to journalists that publishing materials critical of government actions–even when sourced from whistleblowers–could result in criminal liability. This risk is particularly acute in the digital era, where leaks can quickly spread across borders, increasing the likelihood of extraterritorial prosecutions.[126]

Reciprocal actions by foreign states also pose a significant risk. If the U.S. asserts jurisdiction over a foreign journalist for publishing materials that impact its national security, other states may claim similar authority over American journalists.[127] For example, a U.S. journalist investigating corruption in a foreign government could face legal consequences abroad, complicating protections for press freedom and creating a hostile environment for cross-border reporting.[128]

Moreover, the U.S.'s prosecutorial action challenges its compliance with its international human rights obligations. The ICCPR obligates states to respect freedom of expression, not only domestically but also in their extraterritorial actions.[129] By asserting jurisdiction over Assange, a foreign national operating outside of U.S. territory, the U.S. risks undermining the global free flow of information essential to modern journalism.[130] This precent encourages restrictive measures worldwide, further eroding the protections that underpin press freedom.

B. Gaps in International Legal Protections: Shrinking Safe Havens

Assange's case also illustrates the diminishing availability of safe havens for journalists in an increasingly interconnected world. The shortcomings of current international legal protections have profound implications for press freedom. First, the lack of robust enforcement mechanisms creates a permissive environment for extraterritorial prosecutions, undermining the principle of state sovereignty and international cooperation. Second, these gaps erode journalists' ability to operate independently, as they must navigate an increasingly hostile legal

124 Robinson, *supra* note 70.

125 *Exiled Turkish Journalist Can Dündar Sentenced to 27.5 Years in Prison*, COMM. TO PROTECT JOURNALISTS (Dec. 23, 2020), https://cpj.org/2020/12/exiled-turkish-journalist-can-dundar-sentenced-to-27-5-years-in-prison/ [https://perma.cc/3AAS-XH3U].

126 *See* Robinson, *supra* note 70.

127 *Id*.

128 *Id.*

129 ICCPR, *supra* note 98, at art. 19(2).

130 *See* Robinson, *supra* note 70.

landscape that discourages critical reporting. Finally, these shortcomings embolden states to exploit vague or outdated legal standards to suppress public interest journalism, particularly under the guise of protecting national security.

Traditional legal frameworks were designed for a pre-digital era, where information flows were geographically constrained and national boundaries provided clear jurisdictional limits.[131] The digital age has erased traditional boundaries, allowing information to circulate instantly across jurisdictions. While this global connectivity facilitates journalistic transparency, it also subjects reporters and publishers to overlapping and often conflicting legal regimes.[132] The rise of digital journalism and the global nature of information dissemination have exposed the inadequacies of existing international protections. WikiLeaks' disclosures, while primarily published online, had immediate effects across multiple jurisdictions. A single publication can violate the laws of several countries simultaneously.[133]

The digital age has also enabled sophisticated surveillance and cyber-monitoring tools, allowing states to track and target journalists more effectively. This technological evolution undermines traditional notions of safe havens. For years, Assange sought refuge in the Ecuadorian embassy in London, highlighting the precarious position of journalists attempting to evade extradition. His eventual arrest in the U.K. and subsequent extradition to the U.S. exemplify the narrowing options for individuals seeking to avoid prosecution under extraterritorial laws.[134] The extraterritorial application of the Espionage Act exemplifies how states can leverage these tools to pursue individuals across borders, raising critical questions about the adequacy of international legal protections in addressing these evolving threats.[135]

International legal frameworks, while robust in principle, fail to provide adequate protection for journalists operating in a globalized and increasingly hostile environment. The ICCPR's limitations on freedom of expression for reasons such as national security or public order are frequently invoked by states to justify actions that suppress press freedom.[136] These broad exceptions, often interpreted expansively, provide governments with significant leeway to curtail journalistic activities under the guise of protecting state interest.[137]

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131 *See id*.

132 *Id*; *see also* Rhode, *supra* note 116.

133 Robinson, *supra* note 70.

134 *See Press Freedom Coalition Calls for End to Assange Prosecution*, *supra* note 121.

135 *See* Rhode, *supra* note 116.

136 ICCPR, *supra* note 98, at art. 19(3).

137 U.N. Human Rights Comm., General Comment No. 34 ¶¶ 22-36 (Sep. 11, 2011) [https://perma.cc/97R8-E2LE].

Moreover, while the ICCPR establishes a universal baseline, its enforcement mechanisms are weak. The United Nations Human Rights Committee (UNHRC), which oversees compliance with the ICCPR, can issue non-binding recommendations but lacks the authority to compel states to align their practices with international standards.[138] This enforcement gap leaves journalists vulnerable to state overreach, particularly in jurisdictions where national security is invoked to justify the suppression of dissent. The Espionage Act's extraterritorial application to Assange underscores the challenges posed by weak international safeguards against cross-border prosecutions.

Regional human rights instruments, such as the ECHR and the American Convention on Human Rights (ACHR), provide additional protections but are limited in scope and effectiveness. The ECHR Article 10 guarantees freedom of expression but, like the ICCPR, allows restrictions that are "necessary in a democratic society for reasons such as national security or public safety."[139] This standard, though intended to be narrowly construed, is often stretched by states to suppress journalism critical of government policies.[140] Similarly, while the Inter-American Court of Human Rights has issued strong rulings defending press freedoms, its jurisdiction is confined to member states of the Organization of American States (OAS), leaving significant gaps in global coverage.[141]

Expert opinions have consistently called for stronger international protections. The UN Special Rapporteur on Freedom of Expression has warned against the misuse of national security laws to suppress journalistic activities, emphasizing the need for stricter legal tests to justify restrictions.[142] Robinson argues that cases like Assange's highlight the need for a binding international treaty that explicitly safeguards cross-border journalism.[143]

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138 U.N. Human Rights Comm., Decision of the Human Rights Committee Under the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 2058/2011 (Mar. 31, 2015) [https://perma.cc/ASQ8-7MDX].

139 European Convention on Human Rights art. 10, Nov. 4, 1950, 213 U.N.T.S. 221.

140 *See Handyside v. United Kingdom*, *supra* note 105.

141 Inter-Am. Ct. H.R., Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, ¶¶ 69-70 (Nov. 14, 1985).

142 U.N. Special Rapporteur on Freedom of Expression, Report on National Security and Press Freedom, ¶¶ 10, 28, 46-48, A/HRC/29/32 (2015) ("A free press is a cornerstone of democracy, serving to hold governments accountable and ensuring transparency in public affairs . . . Restrictions to freedom of expression justified on national security grounds are often overbroad, lack precision, and fail to demonstrate necessity and proportionality . . . The criminalization of journalistic activity under the guise of protecting national security sets a dangerous precedent for press freedom globally.").

143 *See* Robinson, *supra* note 70.

C. Pathways to Reform

1. Strengthening International Standards

The Assange case highlights the urgent need to modernize international legal frameworks to safeguard press freedom in a globalized world. Current instruments, such as the ICCPR, provide a foundation for freedom of expression but fall short of addressing the challenges posed by digital journalism and cross-border reporting.[144] Strengthening these frameworks requires a multi-faceted approach that includes developing binding international agreements tailored to the contemporary media landscape.

One potential reform is the adoption of an international protocol that specifically addresses press freedom and journalists' rights. This protocol could establish clearer limits on the extraterritorial application of espionage and substantial threats to their interests.[145] Additionally, it could codify protections for journalists who publish information in the public interest, shielding them from legal retaliation by authoritarian or overly zealous democratic states.[146] Such a protocol could draw on existing international norms while addressing gaps left by instruments like the ICCPR and regional conventions.[147]

Another critical reform involves empowering existing international bodies to enforce press protections more effectively. For example, the United Nations Human Rights Committee could be given binding authority to adjudicate cases involving press freedom violations, creating a deterrent against states that misuse national security laws to suppress journalism.[148] Regional courts, such as the European Court of Human Rights and the Inter-American Court of Human Rights, could also play a more proactive role by expanding jurisprudence to protect journalists operating across borders.[149] These courts could establish a precedent that holds states accountable for violating international norms, even when actions occur outside their territorial boundaries.

However, efforts to strengthen international standards may face considerable resistance from states that prioritize national sovereignty or view such agreements as constraints on their ability to protect classified information.[150] Authoritarian governments, in particular, are likely to oppose reforms that empower international bodies to challenge domestic

144 ICCPR, *supra* note 98, at art. 19.
145 *Id.* at art. 19(3).
146 *See* Robinson, *supra* note 70.
147 *See* Rhode, *supra* note 116.
148 General Comment No. 34, *supra* note 137, ¶¶ 22-36.
149 *See Handyside v. United Kingdom*, *supra* note 105.
150 *See* Robinson, *supra* note 70.

decisions.[151] Additionally, the consensus-building process required to adopt binding treaties or protocols may be protracted, given the diversity of legal traditions and political priorities among states.[152] Democratic nations with strong national security interests, such as the U.S., might argue that such measures undermine their ability to combat modern threats like cyberattacks or disinformation campaigns.[153]

2. Domestic Legal Reforms

Domestic reforms are equally crucial, particularly in the U.S., where the Espionage Act has been used to prosecute not only whistleblowers but also publishers like Assange. Originally designed to address wartime espionage, the Act's broad and outdated language makes no distinction between individuals leaking information and those who publish it in the public interest. Reforming the Espionage Act to clarify these distinctions would significantly enhance press protections while maintaining accountability for genuine security breaches.

A key reform proposal involves introducing a public interest defense. Such a provision would allow journalists and publishers to argue that their disclosures served a greater societal good, such as exposing government misconduct or human rights abuses.[154] This approach aligns with international standards emphasizing proportionality and necessity when restricting press freedoms.[155] Another reform could limit the scope of the Espionage Act by excluding third-party publishers, ensuring that liability focuses on those who unlawfully access classified information rather than those who report on it.[156]

Congress could also create an independent oversight body to review cases involving national security leaks before prosecution. This body would evaluate whether the harm caused by a disclosure outweighs its public benefit, introducing an additional layer of accountability.[157] These reforms would not only protect journalists but also bolster the U.S.'s reputation as a global leader in defending press freedom.

Reforming the Espionage Act is likely to encounter opposition from national security agencies, which may view these changes as undermining their ability to deter leaks and protect sensitive information.[158] Politicians may also frame such reforms as concessions to foreign actors or threats to

151 *See Press Freedom Coalition Calls for End to Assange Prosecution*, *supra* note 121.
152 Robinson, *supra* note 70.
153 *Id.*
154 *Id.*
155 *Id.*
156 *Id.*
157 *Id.*
158 Rhode, *supra* note 116.

national security, making bipartisan support difficult to achieve.[159] Additionally, the complexity of defining "public interest" could lead to inconsistent applications, creating legal uncertainty for journalists and publishers.[160]

3. Balancing National Security with Press Freedom

Achieving a balance between national security and press freedom requires innovative legal and institutional mechanisms that address the unique challenges posed by modern journalism. One proposal involves establishing independent review panels to assess whether prosecuting a journalist aligns with both domestic law and international human rights norms. These panels could include representatives from press organizations, human rights groups, and legal experts, ensuring that decisions are transparent and well-reasoned.

Another approach is to address overclassification. The U.S. government's excessive reliance on classified information contributes to conflicts between national security and press freedoms. Introducing stricter classification standards and establishing mechanisms for timely declassification would reduce the volume of sensitive information at risk of unauthorized disclosure, thereby minimizing the need for prosecutions.

Finally, governments could adopt policies that encourage greater transparency in how national security laws are applied to journalists. Regular reporting on the use of such laws, combined with independent oversight, could mitigate fears of abuse and demonstrate a commitment to balancing state interests with press freedoms.[161]

Efforts to balance these interests would also inevitably face criticism from both sides. National security advocates may argue that additional oversight weakens the government's ability to respond swiftly to threats, while press freedom advocates might contend that any restrictions undermine democratic accountability.[162] Resistance to declassification reforms may also arise from entrenched bureaucratic cultures that prioritize secrecy. Without sustained political will, these reforms risk being diluted or failing to achieve meaningful change.[163]

V. CONCLUSION

Journalists now find themselves at a crossroads, where the quest for truth intersects with the complexities of digital ethics and national security. This

159 *Id.*
160 *See* Robinson, *supra* note 70.
161 Rhode, *supra* note 116.
162 *Id.*
163 *See* Robinson, *supra* note 70.

evolving environment compels investigative journalists to adapt their techniques, embrace new technologies, and rethink their roles as both watchdogs and storytellers in a world where information is abundant, yet accountability often remains elusive. As we navigate this new frontier, the fate of investigative journalism hangs in the balance, urging us to reconsider its purpose and impact on society.

Merely encouraging citizens to express their opinions on social media about current events is not enough. We must get information from those with the knowledge and expertise to critically analyze the events unfolding around us and to evaluate the actions of our government. Particularly in today's digital age, where vast amounts of information are generated, the sheer volume of data–including countless documents and expansive databases–is staggering. Without the dedicated efforts of skilled experts who can meticulously sift through this wealth of information, interpret its implications, and help the public grasp its significance, how can we ensure that our democratic system remains functional and engaged?

The Assange prosecution underscores the fragility of press freedom when confronted with an expansive national security apparatus. His case not only underscores the risks of expanding extraterritorial jurisdiction but also highlights the vulnerabilities of journalists operating in an interconnected world. Conceived a century ago in a radically different geopolitical context, the Espionage Act remains a potent instrument whose broad language and lack of clear public-interest safeguards risk suppressing journalism that illuminates governmental wrongdoing. The use of laws like the Espionage Act to target publishers challenges established norms, potentially creating a chilling effect that extends far beyond U.S. borders. At its core, this case raises questions about the extent to which democratic values can be reconciled with state security imperatives.

Moving forward, a recalibration of both domestic and international legal frameworks is essential to preserve the integrity of press freedoms. International cooperation to establish clearer standards, alongside reforms to narrow the scope of national security laws, will be pivotal in safeguarding journalism in the digital age.