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Assessment of the Legality of the Saudi-led Intervention in Yemen

BACHELOR THESIS

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ABSTRACT

A coalition of primarily Arab states commenced airstrikes in Yemen at the behest of its interim government leader, Abd-Rabbu Mansour Hadi on March 25, 2015. Codenamed Operation Decisive Storm, this military operation garnered little to no international uproar, despite taking place in an active civil war. Merely noted by the United Nations Security Council, the operation was primarily justified on the basis of self-defense. However, legal assessment reveals that the justification is misapplied and unwarranted. Moreover, the invitation under closer examination proves to be a hasten attempt to remedy deeply rooted domestic problems with instruments of international law disregarding the already plummeting and hence questionable legitimacy of Yemen's ruler.

Key words: right to self-defense, intervention by invitation, jus ad bellum, Yemen

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SUMMARY

The multifaceted conflict in Yemen gained an international response in the form of a military intervention on the request from interim government leader, Abd-Rabbu Mansour Hadi. Albeit with no prior authorization from the United Nations Security Council (UNSC), the airstrike-focused intervention has significantly contributed to the debilitation of Yemen and unsurmountable suffering of its population. The intervention was justified by putting forward arguments of the right to self-defense, as well as the initial invitation by the interim government of Yemen. The purpose of this thesis, thereof, is to assess the legality of this military intervention commenced on March 25, 2015, by the name of Operation Decisive Storm by employing doctrinal analysis. Consequently, the research question is whether the Saudi-led intervention adheres to the principle of *jus ad bellum* of international law.

The first chapter provides insight into the causes and eventual timeline of the events leading up to the intervention. While some debate has been upheld that the conflict has derived from sectarian divisions among the Shia and Sunni constituents of Islam, it is evidenced that internal upheaval at the outset was essentially an indignant response to inadequate leadership. The Houthis gained noticeable traction through being an antigovernmental force, drawing on grievances regarding neglected Zaydi-populated regions. International interference in internal political matters in bid to form a transitional governance also proved to be a failure, cloaked by interests of the elite in power rather than the population. Thus, driven by various factors including asymmetry of power, Houthis seized the capital city Sana'a, which marked a turning point in domestic turmoil. Amidst this, the interim president Abd-Rabbu Mansour Hadi managed to resign and rescind his resignation, later requesting outside assistance.

The second chapter dives into the provided justifications. Firstly, by employing doctrinal analysis, the exercise of the right to both individual and collective self-defense is found to hinge on the attribution of its central constituent, namely armed attack. The traditional interpretation maintains that only state actors are capable of mounting an armed attack, a view that is still upheld today. Moreover, the exercise of this right must be within the means of necessity and proportionality in the attempt to stop and repel the attacking state and must be reported to the UNSC. To add, this chapter examines other elements of an armed attack, such as gravity and temporal aspects that provide a well-rounded understanding on the exercise of the right to use force.

Secondly, this chapter also surveys intervention by invitation from the perspective of the essential sovereign right to request assistance. Notwithstanding various substantive and procedural requirements, validity of consent in particular is found to be comprised of effective control as an essential constituent alongside international recognition, and even democratic legitimacy in certain cases. The circumstance of assisting states obtaining legally obscure consent or unreconciled consent is found to be a part of state practice, indicating the limits of the international legal system.

The third chapter implements the foregoing facts and interpretations on the case study of Saudi-led military intervention in Yemen. It is found that the exercise of both individual and collective self-defense does not pertain to the conflict in hand. Yemen's right to collective self-defense is met with the obvious domestic disposition of the Houthi rebels, which does not align with the scope of Article 51 of the United Nations Charter (UNC) governing self-defense actions of sovereign states. Moreover, the implausible nature of Saudi Arabia's right to individual self-defense against the Houthis is backed by extending attribution of armed attacks to non-state actors, by employing emerging standards in state practice beyond state attributability.

Regarding intervention by invitation, in light of the unsubstantiated grounds for self-defense, the third chapter goes on to determine that the interim government lacked effective control over Yemeni territory. Further, democratic legitimacy is scrutinized. The transitional period saw international interference in the establishment of interim government, which subsequently contradicted internal constitutional provisions. The interference proved to be a failed attempt at reconciling the state without consideration for existing realities and pressing societal issues. Against this background, the last condition of international recognition cannot be regarded as the sole viable criterion for legitimacy of state consent.

To conclude, the Saudi-led military intervention in Yemen is illegal since the misapplied justifications of both collective and individual self-defense to the disproportionate measures of force led to the assessment of consent-capacity of Yemen, which in turn demonstrated that Yemen is not of sound consent-capacity to even invite assistance as a sovereign and consolidated state.

LIST OF ABBREVIATIONS

GCC	Gulf Cooperation Council
ICJ	International Court of Justice; The Court
NDC	National Dialogue Conference
UN	United Nations
UNSC	United Nations Security Council; Security Council
UNGA	United Nations General Assembly
UNC	United Nations Charter
VCLT	Vienna Convention on the Law of Treaties

INTRODUCTION

The Yemeni civil war stems from a severe scarcity of cohesion among political actors and societal factions spanning over decades. The interim government, amidst failure to consolidate the revolt-stricken state and a loss of control over vast territories, appealed for international support, including that of military conduct. Request from interim president Abd-Rabbu Mansour Hadi was disclosed to the United Nations Security Council (UNSC), albeit was merely recognized without express authorization.¹ Consequently, on March 25, 2015, Saudi Arabia with the assistance of the United States of America, alongside coalition comprised of Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Sudan and the United Arab Emirates commenced Operation Decisive Storm.² Notably, although the intervention did not instigate domestic chaos, it significantly contributed to it. It has been documented that since the outset of the coalition efforts via intervention, the Saudi-led coalition has been responsible for the most civilian deaths.³

Thereof, in light of grave humanitarian impact on the Yemeni population, the deafening silence on the legality of this operation among the international community (notable example of a related intervention - the Crimea annexation in 2014 was spearheaded by an ousted leader) and the inaction of the UNSC give ground for this thesis to address a fundamental issue pertaining to this conflict – *does the Saudi-led intervention adhere to the principle of jus ad bellum of international law?* In order to weigh in on the proposed research question, this thesis aims to assess three possible justifications brought forward by the interim government and coalition states. In the assessment, scholarly opinions, as well as state practice and decisions of international adjudicative bodies will be juxtaposed in a doctrinal legal analysis to devise a critical account of the most appropriate and up-to-date framework for evaluation of the case in hand.

In the first chapter, timeline of the events leading up to the Saudi-led intervention, as well as the causes of the internal upheaval will be assessed in order to determine the relevant legal dispute. The second chapter will focus on theoretical deliberations of three possible exceptions to the prohibition of the use of force. Namely, it will determine the factors impacting the right to both individual and collective self-defense by employing relevant interpretations of mainly the International Court of Justice (ICJ), state practice and scholarly authors. Finally, the sovereign right to request assistance will be challenged by highlighting the importance of the legitimacy of state governments, validity of state consent and by presenting legal loopholes available to states, as evidenced by state practice and international law.

Given the vast amount of research already done on the Saudi-led intervention in Yemen, this thesis aims at diversifying the scope of analysis by focusing not only on the exercise of sovereign rights by states in the realm of the use of force, but also on the consent-capacity of said sovereigns, highlighting interrelation between domestic and international legal provisions and where certain limitations arise.

¹ UNSC Res 2216 (14 April 2015) UN Doc S/RES/2216.

² Operation Renewal of Hope. The Coalition, available on: <http://www.operationrenewalofhope.com/the-coalition/#sthash.kxMeE7hX.LvKk3Y5L.dpbs>. Accessed October 18, 2022.; Alexander Mercouris, “Yemen, Ukraine, and the US ‘Single Standard’”, *Sputnik International News*, available on: <https://sputniknews.com/20150327/1020086381.html>. Accessed October 21, 2022.

³ ACLED. Yemen Snapshots: 2015-2019, available on: <https://acleddata.com/2019/06/18/yemen-snapshots-2015-2019/>. Accessed March 27, 2021.

1. TIMELINE AND CAUSES OF THE YEMENI CONFLICT

Prior to a comprehensive legal assessment, the topic in question, namely, the Yemeni conflict has to be considered first. Therefore, deliberation of the infighting on ground and an insight into the history of Houthi relations and clashes with the interim government is necessary to determine the precise normative and juridical basis for the analysis.

1.1. Timeline of the Yemeni conflict

The outset of the current Yemeni conflict may be generally determined by the seizure of Sana'a, the capital of Yemen in late 2014.⁴ The insurgents in question are the local Houthi rebels, residing in the Northern part of Yemen, while the target of the attack was the interim government of the state at the time, led by President Abd-Rabbu Mansour Hadi.⁵ An estimated amount of 100 000 people have been killed by direct violence since 2015 and approximately 24 million people are in need of assistance as a consequence to the occurring warfare.⁶ In its eighth year, the current Yemeni non-international armed conflict does not seem to subdue.⁷ What's more, the gravest toll on the Yemeni population stems from an illegal blockade on humanitarian and commercial traffic imposed by Saudi Arabia.⁸ Therefore, it may be stated that the Saudi-led intervention in the Yemeni conflict bears the most responsibility on the suffering of the civilian population in the state.

1.1.1. The National Dialogue Conference (NDC) and Seizing Sana'a, 2014

To start with, the conflict or the civil war has its roots in dissimilarities and grievances of domestic parties. This is in part why the conference in question occurred - to solve the nation's political problems.⁹ The Gulf initiative that formed the conference framework had as an agenda the establishment of a transitional government for Yemen to be directed towards a more peaceful and safe state in the region.¹⁰ The Gulf Initiative essentially resembled a pact of the elite in power rather than a genuine plan to transform the Arabian Peninsula state. To elaborate, the established interim government and its newfound constitution did not recognize the grievances and questions of the Yemeni population. Rather it decided to propose a federal model with deep asymmetries between the regions, intensifying disparities.¹¹ Houthis wanted a more equal footing, insisting on access to ports and natural resources as their minimum requirement for their region.¹² What's more, the Gulf Initiative envisioned a superseding

⁴ Asher Orkaby, "Yemen's Humanitarian Nightmare", *Foreign Affairs*, Nov/Dec 2017, Vol. 96 Issue 6, p. 96.

⁵ *Ibid.* p. 93.

⁶ The Armed Conflict Location & Event Data Project (ACLED), available on: <https://acleddata.com/2019/10/31/press-release-over-100000-reported-killed-in-yemen-war/>. Accessed March 25, 2021.

⁷ Waseem Ahmad Qureshi, "The Crisis in Yemen: Armed Conflict and International Law", *North Carolina Journal of International Law* Vol 45 (2020): p. 248.

⁸ Will Picard, The Yemen Peace Project, available on: <https://www.yemenpeaceproject.org/invisible>. Accessed March 25, 2021.

⁹ Charles Schmitz, "Yemen's National Dialogue", *Middle East Institute*, available on: <https://www.mei.edu/publications/yemens-national-dialogue>. Accessed February 2, 2021.

¹⁰ *Ibid* 5; UN Peacemaker. Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council (GCC). Available on: https://peacemaker.un.org/sites/peacemaker.un.org/files/YE_111205_Agreement%20on%20the%20implementation%20mechanism%20for%20the%20transition.pdf. Accessed October 18, 2022.

¹¹ Peter Salisbury, *Federalism, conflict, and fragmentation in Yemen* (London: Saferworld, Oct. 2015), p. 17.

¹² Salisbury, *Federalism in Yemen*, p. 18.

mechanism for the transition, that is, the Constitution could not override any of its provisions.¹³ Thereof, albeit mistakably, the Houthis assumed that the outcome achieved from this conference would be irrevocably codified in legislation, thus they abducted a key political entity in charge of ratification.¹⁴ Moreover, the constitution in question was deemed dubious by several political participants of the conference, claiming that it did not follow its own procedural process¹⁵, hence unanimity was clearly not achieved, despite claims of the contrary.

To continue, it is generally accepted that the intervention by the Saudi-led coalition was sparked by Houthis taking over the capital city Sana'a in September of 2014 in bid to demand a change in state governance and economic considerations.¹⁶ It has been stated thereof that the political powers in charge of the transitional period concerned themselves with selling an unattainable solution without addressing current security, economic and humanitarian issues prevalent in Yemen.¹⁷ With this in mind, the eventual failure of the transitional process visible in current realities of the country has been said to be magnified by a political unwillingness to deliver accessibility to basic necessities.¹⁸

1.1.2. Saudi-led intervention, 2015 – now

Houthi forces advance to Aden after failed negotiations, where President Hadi resided. After the capture of the city, the president swiftly decided to flee to Saudi Arabia and appealed for an international intervention.¹⁹ In the midst of this, Hadi managed to both resign and rescind his resignation.²⁰ Hadi issued a letter on March 24, 2015, requesting willing countries to “provide immediate support in every form [...] to protect Yemen and its people” from the Houthis and terrorist organizations, primarily invoking Article 51 of the UNC.²¹ This letter was transmitted to the UNSC, which only acknowledged the letter but did not respond.²²

On behalf of the Yemeni government, Saudi Arabia in support of various Gulf Cooperation Council (GCC) and several Arab states,²³ as well as the US²⁴ commenced air strikes over Yemen codenamed Operation Decisive Storm. Moreover, Saudi-led coalition blames Iran for backing Houthis in the conflict.

¹³ UN Peacemaker. Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council (GCC).

¹⁴ Ibid, p. 21.

¹⁵ Salisbury, *Federalism in Yemen*, p. 21.

¹⁶ Orkaby, “Yemen’s Humanitarian Nightmare”, p. 1.

¹⁷ Salisbury, *Federalism in Yemen*, summary page.

¹⁸ Ibid, p. 3.

¹⁹ “Civil War in Yemen: Background and Current Conflict”, *Congressional Digest*, February (2019).

²⁰ Mohammed Alshuwaiter, “President Hadi and the future of legitimacy in Yemen”, *Middle East Institute*, available on: <https://www.mei.edu/publications/president-hadi-and-future-legitimacy-yemen>. Accessed October 18, 2022.

²¹ Statement Issued by the Kingdom of Saudi Arabia, the United Arab Emirates, the Kingdom of Bahrain, the State of Qatar and the State of Kuwait, Enclosure to Annex of Identical Letters Dated 26 March 2015 from the Permanent Representative of Qatar to the United Nations Addressed to the Secretary-General and the President of the Security Council (27 March 2015) UN Doc S/2015/ 217, 5 (Coalition statement in letters to UN, dated 26 March 2015), naming the Houthis, Al Qaeda and the Islamic State and Levant.

²² UNSC Res 2216 (14 April 2015) UN Doc S/RES/2216.

²³ Operation Renewal of Hope. The Coalition, available on: <http://www.operationrenewalofhope.com/the-coalition/#sthash.kxMeE7hX.dpbs>. Accessed August 13, 2022.

²⁴ Robert Chesney, “U.S. Support for the Saudi Air Campaign in Yemen: The Legal Issues”, *The Lawfare Institute*, available on: <https://www.lawfareblog.com/us-support-saudi-air-campaign-yemen-legal-issues>

One of the deadliest air strikes on behalf of the Saudi-led coalition happened on September 28 of 2015 when 131 people were killed during a wedding in Al Mukha.²⁵ Overall, the first year of fighting marked the highest in targeted civilian fatalities, estimated at 4 468 civilians.²⁶ These estimates do not include collateral damage or deaths related to other causes.

A calculated 67% of civilian fatalities since 2015 resulting from direct targeting were caused by Saudi-led coalition airstrikes²⁷ and more than 370 000 deaths have been reported since the infighting started, including indirect causes.²⁸ Therefore, political actors involved in the coalition are responsible for most civilian casualties to date.²⁹ Questions may be raised as to the reasoning of such severe civilian targeting throughout the infighting in Yemen.

It is crucial to note that the conflict within Yemen is subjected to continuous changes as the opposing parties rival each other, thereof the conflict being comprised of more than 5000 separate events of violence targeting civilians specifically,³⁰ which include air strikes, mob violence, as well as violent demonstrations.

One of the latest developments in the conflict zone between the parties has been a call for ceasefire by Saudi Arabia with the support of the UN. Saudi Arabia declared the ceasefire would take effect “as soon as the Houthis agree to it”.³¹ To add, the GCC has considered inviting both conflicting parties for consultations in Riyadh.³²

While the conflict does not have a tangible outcome in sight and the civilian populations of Yemen continue to be subjected to atrocious feats of armed conflict, an understanding of the intricacies of the battling parties and their grievances may provide a better outlook on its resolution. This is due to the fact that political actors tend to act on their own self-interest.

1.2. Causes of the Yemeni conflict

There are various quintessential aspects that framed the path to the current conflict in Yemen. The most prominent and essential part of the issue that must be examined is the domestic factors that incited mutual malevolence. Yemen is beleaguered by various different groups,³³ but the main party of belligerence - the Houthi rebels - have had a relatively long history of opposing the government of Yemen. Understanding their initial reasons for hostile behavior is pivotal for both the conflict itself and the counteractions other parties to the conflict decided to make.

²⁵ The Armed Conflict Location & Event Data Project (ACLED). Yemen war death toll exceeds 90’000 according to new ACLED data for 2015, available on: <https://acleddata.com/2019/06/18/press-release-yemen-war-death-toll-exceeds-90000-according-to-new-acled-data-for-2015/>. Accessed March 26, 2021.

²⁶ ACLED. Yemen Snapshots: 2015-2019, available on: <https://acleddata.com/2019/06/18/yemen-snapshots-2015-2019/>. Accessed March 27, 2021.

²⁷ Ibid.

²⁸ Kali Robinson, “Yemen’s Tragedy: War, Stalemate, and Suffering”, *Council on Foreign Relations*, available on: <https://www.cfr.org/backgrounder/yemen-crisis>. Accessed July 17, 2022.

²⁹ “Civil War in Yemen: Background and Current Conflict”, *Congressional Digest*, February (2019).

³⁰ ACLED. Research Hub: Yemen, available on: <https://acleddata.com/research-hub-war-in-yemen/>. Accessed March 27, 2021

³¹ “Saudi Arabia proposes ceasefire plan to Yemen’s Houthi rebels”, *Al Jazeera*, available on: <https://www.aljazeera.com/news/2021/3/22/saudi-arabia-proposes-nationwide-truce-to-yemens-houthi-rebels>. Accessed October 18, 2022.

³² Aziz El Yaakoubi, “Exclusive GCC officials consider inviting Yemen Houthis to consultations in Riyadh”, *Reuters*, available on: <https://www.reuters.com/world/middle-east/exclusive-gcc-officials-consider-inviting-yemen-houthis-consultations-riyadh-2022-03-15/>. Accessed October 18, 2022.

³³ Kali Robinson, “Yemen’s Tragedy: War, Stalemate, and Suffering”, (naming Houthis, the Southern Transitional Council, Al Qaeda).

Starting with Yemeni governance, before the unification and establishment of contemporary Yemen, both the Yemen Arab Republic and People's Democratic Republic of Yemen were states of weak authority, which enabled divisive attitudes among the population.³⁴ The unification did not deliver any substantial changes in terms of governance efficacy. The two merged parts proceeded to operate separately from one another.³⁵ Thus, an equilibrium of power was not achieved.

Since unification in 1990, under the rule of President Saleh, the country experienced governance that combined buying loyalty through patronage, co-optation and coercion.³⁶ In broad terms, Saleh's incentive as the leader of the state had never been the greater good of the population he ruled over but rather self-interest which essentially resembled a kleptocracy rather than a republic.³⁷

What's more, the religion of Islam in the Middle East is generally divided between Shia and Sunni, of which the majorities populate Iran and Saudi Arabia, respectively.³⁸ Hence, the conflict may be observed to be portrayed as a proxy war between the aforementioned states.³⁹

The Houthis derive their ideological beliefs from the Zaydi sect of Shia Islam, which generally determines that loyalty of their community must rely upon a leader descendant from the cousin of prophet Muhammad in the Quran.⁴⁰ The imam Zaydis relied upon for religious guidance and stability within their community was removed from power when the Yemen Arab Republic was established in 1962.⁴¹ What's more, the republic was governed by an elite that disregarded the needs of the population and the republic had been regarded as one of the most underdeveloped nations.⁴² The unification did not reap many benefits for Zaydis or the Northern population in general. Additionally, not only the unjust rule of Saleh had been exerted over the state, the Northern part of the territory where Houthis and the Zaydi community reside was left stagnant and lacked proper government funding.⁴³

The Houthis emerged in the 1990s in the North of Yemen and utilized the decreasing legitimacy of the governing bodies to their advantage over the years.⁴⁴ Even though the Houthi rebels were more or less prominent in Yemen, their aggression towards the governmental authorities was exacerbated in 2004, when Hussain Badr al-Din al-Houthi, the founder of the Houthi movement, was assassinated.⁴⁵ Taking into account these circumstances, it may be stated that

³⁴ Thomas Juneau, "Iran's policy towards the Houthis in Yemen: A Limited Return on a Modest Investment", *International Affairs*, (2016). pp. 647-663.

³⁵ Salisbury, *Federalism in Yemen* p. 8.

³⁶ Juneau, "Iran's policy towards the Houthis in Yemen", pp. 647-663.

³⁷ Robert Burrowes and Catherine Kasper, "The Salih regime and the need for a credible opposition", *Middle East Journal* 61:2, Spring 2007 pp. 264-265.

³⁸ World Directory of Minorities and Indigenous Peoples. Saudi Arabia, available on:

<https://minorityrights.org/country/saudi-arabia/>. Accessed October 18, 2022; World Directory of Minorities and Indigenous Peoples. Iran, available on: <https://minorityrights.org/country/iran/>. Accessed October 18, 2022.

³⁹ F. Gregory Gause, "Beyond Sectarianism: The New Middle East Cold War", *The Brookings Institution*, available on: <https://www.brookings.edu/research/beyond-sectarianism-the-new-middle-east-cold-war/>. Accessed October 18, 2022.

⁴⁰ Civil War in Yemen: Background and Current Conflict", *Congressional Digest*, February (2019).

⁴¹ April Longley Alley, "The Rules of the Game: Unpacking Patronage Politics in Yemen", *Middle East Journal*, Vol. 64, No. 3 (SUMMER 2010), pp. 385-409

⁴² Charles Dunbar, "The Unification of Yemen: Process, Politics, and Prospects", *Middle East Journal*, Summer, 1992, Vol. 46, No. 3 (Summer, 1992), pp. 456-476

⁴³ Orkaby, "Yemen's Humanitarian Nightmare", pp. 93-101.

⁴⁴ Juneau, "Iran's policy towards the Houthis in Yemen", pp. 647-663.

⁴⁵ Amnesty International. Yemen War: No End in Sight, available on: <https://www.amnesty.org/en/latest/news/2015/09/yemen-the-forgotten-war/>. Accessed February 2, 2021.

Houthis act on their claims of discriminatory treatment and marginalization of the Northern community, in other words it may be seen as displaying victimhood. This further on explains why the 2013 offer for a reformed political order in the state was turned down by the Houthis.⁴⁶

However, claiming military conflicts and hostile attitudes may be greatly impacted solely based upon religious considerations grossly overlooks self interest and other political forces as potential causes for conflicting situations among states and non-state actors. Houthis are an insurgent political actor with little incentive to conform to proclaimed societal norms or accept deals from the government in power. It may be further stated that Houthis take advantage of their religious affiliations and exert their power through their control over various notable and important regions of the Yemeni state, supporting the argument of advancement of self-interest rather than clinging on religious grievances and the support of their community as the core reasons for their belligerency.

1.3. Conclusion

To sum up, the disintegration of Yemen primarily rests within the internal inability to reconcile interests of the population and the provision of basic needs. The Houthis have taken advantage of this state of dissonance, which enables them to acquire support from the underprivileged population, primarily young men. Were it not for the disordered government policies and weak attempts at alleviating the economic, political and humanitarian situation, the Houthis would not have managed to acquire popular support as an anti-government force.⁴⁷ Therefore, the rather haphazard manner in which the NDC was conducted and the murky legal backing for the interim government and subsequent intervention by the Saudi-led coalition on the basis of request for assistance leads one to question how solid are the justifications of self-defense and intervention by invitation as the basis for justifying compliance with *jus ad bellum* of international law.

2. INTERNATIONAL ARMED VIOLENCE BY MILITARY INTERVENTION

Acts amounting to an interference by a state in the affairs of another by armed force constitutes a military intervention.⁴⁸ While military intervention entails acts that are prohibited by the principle of non-intervention and subsequently the principle of the non-use of force⁴⁹ enshrined in Article 2(4)⁵⁰ of the UN Charter, there are “lawful instances of states using force”⁵¹ in this manner.

While the Charter envisions two possible exceptions to its prohibition on the use of force, customary international law is seen to provide a third possibility - intervention by invitation. Since a UNSC authorization is not pertinent in this case, the possible justifications of individual

⁴⁶ Schmitz, “Yemen’s National Dialogue”.

⁴⁷ Salisbury, *Federalism in Yemen*, p. 21.

⁴⁸ Philip Kunig, *Prohibition of Intervention*, Max Planck Encyclopedia of Public International Law (MPEPIL), pp. 2, 6. In the context of this thesis, intervention is seen as “organized or systematic activities directed across recognized boundaries and aimed at affecting the political authority structures of the target”, see Oran R. Young, “Systemic Bases of Intervention”, in *Law and Civil War in the Modern World* (1974), ed. J.N. Moore, p. 111.

⁴⁹ *ibid* p. 4. The UN thereby prohibits the use of force, which is only one part of the prohibition of intervention.

⁵⁰ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005 (19 December) para. 266. (ICJ *Armed Activities* case).

⁵¹ Laura Visser, “Intervention by invitation and collective self-defence: two sides of the same coin?”, *Journal on the Use of Force and International Law* (2020), p. 307, doi: 10.1080/20531702.2020.1834767.

and collective self-defense, as well as that of intervention by invitation will be considered in the forthcoming chapters, given the prevalence of both justifications for the Saudi-led intervention.

While the case study of Yemen will employ mentioned theoretical aspects to assess legality of the actions by Saudi-led coalition, the analysis simultaneously will also look into the actions of the UN and whether the organization, dubbed most prominent forum for the evolution of international law⁵², abides by the same law it deems to protect.

2.1. Military intervention by individual and collective self-defense

In the words of Sir Humphrey Waldock, “there are few more important questions in international law than the proper limits of the right of self-defense”.⁵³ Conversely, Article 51 of the Charter, which encompasses the right of self-defense, is ambiguous, and the Charter lacks clarification on the attributes of that right. This fluidity has been the result of immense disagreement on the scope of self-defense,⁵⁴ leaving the right malleable by state actors.⁵⁵

Therefore, where one state sees substantial purpose to intervene militarily, another may disregard it. However, it has been indicated that this should not hinder a comprehensive interpretation to be formed⁵⁶, since there is a framework for invoking self-defense as a lawful reason for military action against another state or a non-state actor.

To start with, the prevailing purpose of the UN system and its Charter is halting unilateral acts of force by states when conducting international relations among themselves,⁵⁷ which is unequivocally stressed in the foremost provision of the Charter, asserting the importance of preserving “international peace and security”.⁵⁸ Against this background, Article 2(4) of the Charter stipulates that states must refrain from the “threat or use of force against the territorial integrity or political independence of any state”.⁵⁹ Therefore, while it is recognized that states should not exercise acts or threats of use of force towards one another, it is widely accepted that self-defense is an exception to this rule, in light of inviolability of state sovereignty.

Crucial to note that the ICJ in its jurisprudence on self-defense does not evaluate it within the context of Article 2(4),⁶⁰ emphasizing legal distinction between the two. The lawful exercise of self-defense is considerably more restricted than that of the use of force.⁶¹ Hence, it is precisely the conditions of codified self-defense – armed attack, necessity and proportionality, as well as

⁵² Philip Kunig, *Interpretation of United Nations Charter*, MPEPIL, p. 2.

⁵³ Christopher Greenwood, *Self-Defence*, MPEPIL, p.2.

⁵⁴ Christine Gray, “Self defence: the framework”, *International Law and the Use of Force* 4th Edition (Oxford University Press 2018), p. 2.

⁵⁵ Giovanni Distefano, “Key Issues in Times of Armed Conflict”, in *The Oxford Handbook of International Law in Armed Conflict*, ed. Andrew Clapham, Paola Gaeta, Tom Haeck, Alice Priddy et al. (Oxford University Press, 2014), p. 4.

⁵⁶ Georg Nolte, Albrecht Randelzhofer, “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 51”, *The Charter of the United Nations: A Commentary*, Volume II 3rd Edition, ed. Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf, p. 1401.

⁵⁷ Emily Crawford, Alison Pert, *International Humanitarian Law*. (Cambridge, 2020) p. 31.

⁵⁸ Charter of the United Nations (San Francisco, 26 June 1945), 3 Bevans 1153, 59 Stat. 1031, T.S. No. 993, entered into force 24 Oct. 1945, Preamble and Article 1.

⁵⁹ *Ibid*, Article 2(4).

⁶⁰ Nicholas Tsagourias, “Self-Defence against Non-state Actors: The Interaction between Self-Defence as a Primary Rule and Self-Defence as a Secondary Rule”, *Leiden Journal of International Law* 29, No.3 (September 2016): pp. 801-825. See *Case Concerning Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Judgment*, *I.C.J. Reports 2003* (hereinafter *ICJ Oil Platforms case*) and *ICJ Armed Activities case*.

⁶¹ Nolte, Randelzhofer, “Article 51”, p. 1402.

procedural reporting to the UNSC⁶² – that ultimately ascertain legality. Since collective self-defense needs to satisfy the ordinary requirements of individual self-defense in addition to supplementary procedural prerequisites, it will be considered after the former.

2.1.1. What constitutes an armed attack under Article 51 of the UN Charter?

The obvious starting point for any substantial analysis of self-defense starts with the notion of armed attack, since the terms "if an armed attack occurs"⁶³ make the condition essential to the admissibility of unilateral use of force.⁶⁴ Notwithstanding its paramount character, there is no clear-cut definition under the Charter or any treaty law.⁶⁵ It follows that an understanding may be attained by assessing state practice and judgements. It may be stated that the very lack of a definition is intended for a more flexible interpretation and assessment on case-by-case basis of the circumstances at hand.

In close proximity of an armed attack rests aggression. Whereas the Definition of Aggression does not provide a definition of armed attack per se, the ICJ has implied that it is of value in the ascertainment of armed attacks.⁶⁶ Enumerated in the definition were examples of aggression such as invasion, bombardment, blockade, as well as the use of force by irregular armed groups.⁶⁷ The last instance of aggression mentioned is particularly relevant due to its use by the ICJ, even asserting that it reflects customary law.⁶⁸

Use of force by irregular armed groups amounting to aggression is noted in Article 3(g) of the Definition of Aggression:

The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Both the term "sending by" and "on behalf of" in broad terms refer to a sufficiently close link between a state and mentioned armed groups, as to comprise a part of *de facto* organs of the state⁶⁹, and instructed or controlled by the state for the latter alternative.⁷⁰ As for the component of "substantial involvement", the Court in its rulings has repeatedly failed to elaborate on this aspect and at times omitted it from judicial deliberations.⁷¹ It has been noted that the latter constituent has gradually lost its relevance in international jurisprudence.⁷² This may be explained by the characteristics of the term – substantial involvement allows for far-reaching assistance, which does not require effective control of the armed groups. The main restriction is the knowledge of their intent. In the *Nicaragua* case, the ICJ insisted on a rather restrictive interpretation of the wording, stating that it excludes "provision of weapons or logistical or other support"⁷³ from this criterion.

⁶² Greenwood, "Self-Defence", p.3.

⁶³ Charter of the United Nations, Article 51.

⁶⁴ Nolte, Randelzhofer, "Article 51", pp. 1406 and 1408.

⁶⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Rep. 1986, para. 176. (ICJ *Nicaragua* case).

⁶⁶ Nolte, Randelzhofer, "Article 51", p. 1408.

⁶⁷ UN General Assembly, *Definition of Aggression*, 14 December 1974, A/RES/3314.

⁶⁸ ICJ *Nicaragua* case para. 195.

⁶⁹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 8.

⁷⁰ Nicholas Tsagourias, "Self-Defence against Non-state Actors", p. 814.

⁷¹ ICJ *Armed Activities* case para. 146; ICJ *Nicaragua* case para. 195.

⁷² Nicholas Tsagourias, "Self-Defence against Non-state Actors", p. 815; See *Independent Int'l Fact-Finding Mission on the Conflict in Georgia*, Report Vol. II (Sept. 30, 2009) (hereinafter *Report on Georgia*).

⁷³ ICJ *Nicaragua* case para. 195.

ICJ delivered its initial comprehensive verdict on the use of force in the *Nicaragua* judgment. In it, the Court proclaimed that solely state actors can be the authors held accountable for armed attacks. However, despite its claims that a “general agreement” exists on the notion of armed attack, the normative reality of international law does not mirror this assumption.⁷⁴ Therefore, it is reasonable to evaluate both state and non-state actor liability.

The traditional view as mentioned establishes the state as the only possible international actor capable of mounting armed attacks against another state. The ICJ at the time considered armed opposition to be comprised of state regular forces or, at best, involvement through proxy warfare,⁷⁵ reflected by the inclusion of Article 3(g) of the Definition of Aggression in its arguments. The ICJ has continued to be adamant in its jurisprudence about the requirement of state influence. It did not veer away from its conviction in the *Armed Activities* case, where the Court asserted that in light of a lack of involvement of state government, the legal requirements of the exercise of the right of self-defense were not met.⁷⁶ The Advisory Opinion on the *Construction of a Wall* saw similar conclusions.⁷⁷ Hence it is evident that the Court has not deemed it necessary to reevaluate its requirement for state influence given the increasing threat of belligerent actors operating independent of states. The ICJ has received ample criticism, as several independent judicial opinions⁷⁸ have steered towards an inclusion of autonomous belligerent adversaries in the scope of an armed attack.

The threat and acts of terrorism, while not a new occurrence, sparked unprecedented response from the international community in the aftermath of the terrorist attacks of September 11, 2001.⁷⁹ Against this background the UNSC decided to form Resolutions 1368 and 1373 in support of a new possibility to exercise the right of self-defense against non-state actors, namely, terrorists.⁸⁰ It has been asserted that the wording of these two Resolutions is to be read as allowing self-defense measures in context of Article 51 as “large-scale” non-state attacks.⁸¹ However, it is notable that the UNSC did not declare the terrorist attacks of September 11 as “armed attacks”. Given the *sine qua non* character of armed attack, it remains puzzling and increases the ambiguity of the conditions deemed as necessary for lawful self-defense. Even though state practice has indeed seen evolution in terms of treating non-state actor incited armed attacks as pertaining to the framework of the UN, the overall background of state practice provides no clear indication of a new custom towards the inclusion of non-state actors in the scope of self-defense measures.⁸² Thereof, it may not be concluded that a novel baseline for attribution has been unmistakably replaced the existing one at this point in time.⁸³ It may be said, however, that even if non-state actors could be afforded the attribution of armed attacks,

⁷⁴ Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter Evolutions in Customary Law and Practice* (Cambridge University Press, 2010), p. 32.

⁷⁵ Ruys, *Armed Attack*, p. 486.

⁷⁶ ICJ *Armed Activities* case para. 146, 147.

⁷⁷ Nolte, Randelzhofer, “Article 51”, p. 1416; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Rep. 2004 (July 9).

⁷⁸ Karl Zemanek, *Armed Attack*, MPEPIL, p. 5.

⁷⁹ Carsten Stahn, “Terrorist Acts as “Armed Attack: The Right to Self-Defense, Article 51(1/2) of the UN Charter, and International Terrorism”, *The Fletcher Forum of World Affairs*, Vol. 27, No. 2 (Summer/Fall 2003), p. 35.

⁸⁰ S.C. Res. 1368, U.N Doc. S/RES/1368(2001); S.C. Res. 1373, U.N Doc. S/RES/1373(2001).

⁸¹ ICJ *Oil Platforms* case (Sep. op. Simma) para. 11.

⁸² Ruys, *Armed Attack*, pp. 487 and 455; Stahn, “Terrorist Acts as “Armed Attack””, p. 36.

⁸³ Ruys, *Armed Attack*, p. 486.

an external component is still necessary, whether it be the attacks directed from outside the territorial state or otherwise.⁸⁴

Moreover, the ICJ has not accepted the view of the UNSC in regard to non-state attribution of armed attacks.⁸⁵ Firstly, the opinions of the UNSC cannot be held to reflect those of the international community due to its absence of general representation.⁸⁶ Secondly, Tom Ruys asserts correctly that the emergence of a single Resolution (in relation to UNSC Res 1368) cannot be held to establish a new custom.⁸⁷ Therefore, evolution of international terms concerning non-state actors remains complicated and incomplete, partly due to the foregoing arguments, as well as due to a lack of an international personality and a concrete definition of terrorism itself.⁸⁸

The second important constituent of an armed attack is gravity, indicated by the ICJ as “scale and effects.”⁸⁹ This discerns between a military operation entitled to an armed attack and that of a lesser character or a “mere frontier incident”.⁹⁰ The Court reiterated in the *Oil Platforms* case that ‘the most grave forms of the use of force’ amount to an armed attack, leaving action short of that outside of the scope.⁹¹ However, it did not follow up with any tangible criteria to fill that gap and discern the two. Criticism therefore arises from the lack of more specific characterization of a frontier incident, since it has been argued that such incidents of varying gravity may require different approaches, according to Sir Gerald Fitzmaurice.⁹² Also, the Court has not denied use of force in response to “less grave” military incidents,⁹³ contradictory to Article 51. Comments have been made on the haphazard nature of such opinion, since it leaves a whole category of military force open-ended.⁹⁴ While these normative ambiguities complicate assessment partially, there seems to be a general agreement that not every use of force warrants self-defense. For the most part, the gravity component is necessary to ascertain whether military measures may go beyond an immediate reaction. Also, it has been noted that even small-scale attacks may be in line with an armed attack as envisioned by Article 51, if they result in “destruction of property or loss of lives”.⁹⁵ To conclude, it has been suggested that any derived criteria may be relevant to the judicial rulings, but not so much as legitimate guidance in forthcoming situations of such nature.⁹⁶ W. H. Taft has emphasized that the gravity or scale of an armed attack should not impact the ultimate question of legality of such countermeasures.⁹⁷

A legal exercise of the right to use force in self-defense is also subject to temporal constraints or *rationae temporis*. It is generally viewed that reactive self-defense is self-evident, as it implies actions that require immediacy in terms of the necessity component. It denotes actions

⁸⁴ Tom Ruys and Luca Ferro, “Weathering the Storm: Legality and Legal Implications of the Saudi-led Military Intervention in Yemen”, *International and Comparative Law Quarterly*, 65(1), p. 72, doi:10.1017/S0020589315000536.

⁸⁵ Zemanek, “Armed Attack”, p. 5.

⁸⁶ Ruys, *Armed Attack*, p. 80.

⁸⁷ *Ibid.*

⁸⁸ Zemanek, “Armed Attack”, p. 6.

⁸⁹ ICJ *Nicaragua* case para. 195.

⁹⁰ *Ibid.*

⁹¹ ICJ *Oil Platforms* case, para. 51.

⁹² Yoram Dinstein, *War, Aggression and Self-Defence* (New York: Cambridge University Press, 2005) 4th Edition, p. 195.

⁹³ ICJ *Nicaragua* case para. 210.

⁹⁴ Ruys, *Armed Attack*, p. 145; see John Lawrence Hargrove, “The Nicaragua Judgment and the Future of the Law of Force and Self-Defense”, *American Journal of International Law*, 81(1), p. 141. doi:10.2307/2202142.

⁹⁵ Dinstein, *War, Aggression and Self-Defence*, p. 193.

⁹⁶ Zemanek, “Armed Attack”, p. 3.

⁹⁷ Dinstein, *War, Aggression and Self-Defence*, p. 195.

that come right after or during the use of armed force by another state.⁹⁸ This factor implies an existing reality of such attack that may be perceived or observed, thereof does not generate much controversy.

On the other hand, anticipatory military conduct includes preventive and pre-emptive self-defense, which do not follow such a clear-cut normative outline. Preventive measures convey action against an “imminent” threat, which may be traced back to the *Caroline* incident.⁹⁹ Through the correspondence pertaining to the incident of the 19th century, a general formula for anticipatory self-defense was conceived. Namely, that of “a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation”.¹⁰⁰ While it does reflect a norm of customary law, Brownlie has indicated that anticipatory self-defense is more a reflection of the right to self-preservation than that of self-defense.¹⁰¹ Criticisms may be observed in scholarly writings regarding the *Caroline* formula, particularly, that it counteracts the wording of Article 51 of the UNC and is outdated. Many are of the opinion that “if an armed attack occurs”¹⁰² does not permit anticipatory action. It may be asserted that by employing the ordinary meaning¹⁰³ of the terms within the context of the purposes of the UNC (maintenance of international peace and security), Article 51 does not allow for anticipatory action to be taken. A contrary view would entail jeopardizing key elements of the international community embodied within the UNC framework. This is seen in the opinion of McDougal and Feliciano, whereby they insist that a purely textual view contends that “if an armed attack occurs”¹⁰⁴ does not mean that it is the sole exclusive temporal circumstance which permits force.¹⁰⁵

Furthermore, while Brownlie agrees that states should be afforded the right to decide on military measures based on necessity, his main assumption is that this right should be impeded by “objective characteristics” rather than “estimates of intention”.¹⁰⁶ In light of the 9/11 attacks and the establishment of the National Security Strategy by the US in which a right to anticipatory self-defense was openly proclaimed, substantial increase in the support for anticipatory attacks could be noticed.¹⁰⁷ However, it still remains too soon to proclaim that a general acceptance throughout the international community has been achieved.

To add, pre-emptive measures envision a broader right to protect a state from a threat without any objective or tangible content.¹⁰⁸ Notably, the *Armed Activities* case distinctively declared that “the use of force in self-defense [...] does not allow the use of force by a State to protect perceived security interests”.¹⁰⁹ Allowing such measures would go against any provision established by the UNC, as it establishes a too low a margin for defensive action.

⁹⁸ Ruys, *Armed Attack*, p. 253.

⁹⁹ Michael Wood, “The *Caroline* Incident – 1837”, in *The Use of Force in International Law: A Case Based Approach*, ed. Tom Ruys, Olivier Corten, Alexandra Hofer et al. (Oxford University Press, 2018), p. 5.; see John Bassett Moore, *Digest of International Law* (Washington 1906) Vol I, p. 681.

¹⁰⁰ *Ibid.*

¹⁰¹ Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press 1963), pp. 259-260.

¹⁰² Charter of the United Nations, Article 51.

¹⁰³ The VCLT in its Article 31 envisions interpretation of treaties to primarily consider the ordinary meaning of the terms of the treaty, alongside the context, object and purpose of the treaty. Therefore, the VCLT enlists most methods of interpretation: literal, contextual and teleological.

¹⁰⁴ *Ibid.*

¹⁰⁵ Ruys, *Armed Attack*, p. 256.

¹⁰⁶ Ian Brownlie, *International Law and the Use of Force by States*, p. 260.

¹⁰⁷ Ruys, *Armed Attack*, p. 250

¹⁰⁸ Ruys, *Armed Attack*, p. 254

¹⁰⁹ ICJ *Armed Activities* case para. 148.

In the event that terrorist attacks would qualify as armed attacks¹¹⁰, the scope of Article 51 subsequently would apply and restrict military conduct to interceptive or reactive measures, short of pre-emptive deliberations.

To conclude, the very lack of directness in definitions affords the international community the latitude to fluidly adjust legal norms to their liking without having to establish a more rigid definition of armed attack, the existence of which would unequivocally make states susceptible to more strict normative rules without much leeway.

Since the constituents of armed attack could not be described as rigid, the law as the Court proscribes it in its judgments ebbs and flows alongside the evolvement of state practice and acceptable societal norms. Thus, whereas the established grounds for an armed attack provide an indication rather than a definition for further implementation, principles of necessity and proportionality have proven to be an integral part of the assessment of self-defense actions.

2.1.2. Necessity and proportionality

Codified Charter rules by no means cover the entirety of self-defense rules in international law.¹¹¹ Likewise, since the adoption of UNC, it may be observed that states consistently invoke self-defense rather than any other basis for their actions in these situations.¹¹² Employing realist notions of international relations theories, it may be argued that states primarily seek to advance their self-interests and self-help.¹¹³ Thereof, justifying their actions via the explanation of defending themselves in times of an attack or unrest that deems military counteraction sensible, states rely on their powers as sovereigns and relatively reduce further inquiries. Therefore, due to legal vagueness of the codified right which leaves state practice far from coherent, the quintessential components of necessity and proportionality are employed. While some authors identify immediacy as separate from the necessity principle¹¹⁴, the two will be evaluated jointly.

To start with, necessity implies that the counterattack must aim to halt the initial attack and repel any inclination of another.¹¹⁵ Furthermore, a state must not exceed the limits of the necessity to defend itself in light of an armed attack. By juxtaposing necessity encompassed in the law of state responsibility and the use of force, it may be observed that necessity is employed solely for safeguarding an “essential interest”, as envisioned in Article 25 of ARS as an exception to the compliance with international obligations. Crucial to note that self-defense measures are essentially a reaction to a prior wrongdoing, while ILC’s wrongfulness imagines no such preceding element.¹¹⁶ Thereof, the two do not coincide to one another directly.

Necessity in the context of self-defense demands three conditions to be met. Firstly, as outlined in the *Oil Platforms* case, and established in the foregoing, a military action must be of a character as to amount to an armed attack. Anything short of that does not suffice as grounds for self-defense. Secondly, the victim state must determine irrefutably the perpetrator liable for

¹¹⁰ Dinstein, *War, Aggression and Self-Defence*, p. 208.

¹¹¹ ICJ *Nicaragua* case para. 176; Terry D. Gill, “When Does Self-Defence End?”, in *The Oxford Handbook of the Use of Force in International Law*, ed. Marc Weller et al. (Oxford University Press, 2015), p. 743.

¹¹² Christine Gray, *International Law and the Use of Force* 4th Edition, p. 120.

¹¹³ Paul R. Viotti and Mark V. Kauppi, *International Relations Theory: Chapter 2, Realism: The State and Balance of Power*, 4th edition (Longman) p.45.

¹¹⁴ Ruys, *Armed Attack*, p. 99.

¹¹⁵ Nolte, Randelzhofer, “Article 51”, p. 1426

¹¹⁶ Sarah Heathcote, “Circumstances Precluding Wrongfulness in the ILC Articles on State Responsibility: Necessity”, in *The Law of International Responsibility*, ed. James Crawford, Alain Pellet, Simon Olleson, Kate Parlett et al. (Oxford University Press, 2010), p. 496

the initial attack, as to not counterattack mistakably towards a neutral party.¹¹⁷ Lastly and most importantly, all peaceful means of conflict resolution need to be exhausted or impossible to be achieved in order to then attempt to manage the conflict through military means of self-defense.¹¹⁸ The victim state resorting to the use of force in light of an armed attack directed at it must be certain that it is the only option and sought as a last resort.

Additionally, the immediacy criterion within necessity posits that self-defense measures may not be taken with significant delay. To expound on this, while it is not expected for a state to mobilize armed forces in a matter of minutes, an unusually long period of time to respond may only be afforded in warranted situations.¹¹⁹

With the increasing spotlight of terrorist or non-state actor incited cross-border use of force, the “unable or unwilling” doctrine sheds light on the necessity component in regard to an event where a territorial state is incapable of managing the non-state actors acting beyond its borders.

The UN Secretary-General said in relation to the strikes in Syria:

I am aware that today’s strikes were not carried out at the direct request of the Syrian Government, but I note that the Government was informed beforehand. I also note that the strikes took place in areas no longer under the effective control of that Government. I think it is undeniable – and the subject of broad international consensus – that these extremist groups pose an immediate threat to international peace and security¹²⁰

This line of argumentation pertains to the “unable or unwilling” test enshrined in state practice.¹²¹ It is a component of analysis utilized prior to the commencement of a military offensive in order to establish whether the use of force is necessary in a certain situation of an arisen conflict.¹²² The “unable or unwilling” test does not effectively portray international law practice, as it sets one of the lowest standards for employing self-defense against non-state actors in a third state¹²³, therefore undermining the legal order and the codified framework already set out in the UN Charter.

While the use of force in self-defense leaves ample ground for states to act on their military objectives, it is necessary for the exercise of force to be proportional to the aims pursued.¹²⁴ Consequently, as defined by Emily Crawford, proportionality implies that a “State’s acts must be a rational and reasonable exercise of means towards a permissible goal”.¹²⁵ Furthermore, based on the body of law utilized, proportionality as a principle of international law has distinctive ways of application. However, as with a plethora of legal assessment tools, proportionality has been subject to vast criticism, most potent of which indicates that legal

¹¹⁷ Dinstein, *War, Aggression and Self-Defence*, p.209.

¹¹⁸ Dinstein, *War, Aggression and Self-Defence*, p. 237 and Ruys, *Armed Attack*, p. 95.

¹¹⁹ Dinstein, *War, Aggression and Self-Defence*, p. 243.

¹²⁰ United Nations Secretary General. *Remarks at the Climate Summit press conference (including comments on Syria)*, Secretary-General Ban Ki-moon, UN Headquarters, 23 September 2014, available on: <https://www.un.org/sg/en/content/sg/speeches/2014-09-23/remarks-climate-summit-press-conference-including-comments-syria>. Accessed October 18, 2022.

¹²¹ Ashley S. Deeks, “Unwilling or Unable: Towards a Normative Framework for Extraterritorial Self-Defense”, *Virginia Journal of International Law* 52:3 (2012), p. 486.

¹²² Deeks, “Unwilling or Unable”, p. 483.

¹²³ Britta Sjöstedt, “Applying the Unable/Unwilling State Doctrine – Can a State Be Unable to Take Action?”, *Max-Planck-Institut, ZaöRV* 77 (2017).

¹²⁴ Theodora Christodoulidou and Kalliopi Chainoglou, “The Principle of Proportionality from a *Jus Ad Bellum* Perspective”, in *The Oxford Handbook of the Use of Force in International Law*, ed. Marc Weller et al. (Oxford University Press, 2015), p. 1191.

¹²⁵ Emily Crawford, *Proportionality*, MPEPIL, para. 1.

norms based on proportionality assessments are impaired in their effort to set a concrete point of reference for their intended objective.¹²⁶ Nonetheless, proportionality is regarded as a beneficial legal instrument in contemporary international law as an alternative perspective for analysis aside from codified considerations.

In international law practice regarding the use of force, proportionality becomes apparent in instances of countermeasures taken by states in effort to curb eruptions of further violence directed towards said state by a second party.¹²⁷ That is, if states employ self-defense measures in order to protect sovereign integrity, any military measures must not go beyond the extent of a proportional counterattack.

In 1989 in the *Nicaragua* case, the ICJ noted that “self-defense would warrant only measures which are proportional to the armed attack made upon it”¹²⁸ The ICJ interprets the acts of self-defense in light of the wrongful act that had provoked it.¹²⁹ Arguments of the Court connote that the scope and size of the initial armed attack are majorly given importance in the determination of proportional countermeasures.¹³⁰ This approach would entail overlooking the existing situation on ground in a particular zone of conflict and rather focusing on the initial military strike made upon the defending State.

There are several judges who have dissimilar views to that of the ICJ. Judge Ago argued that “the requirement of proportionality [...] concerns the relationship between [...] action and its purpose, namely [...] that of halting and repelling that attack”.¹³¹ Several other judges of international law have supported this view as well. Evaluating proportionality and hence legality of an intervention of self-defense based upon the initial military action or the threat lacks depth in terms of the measures that are necessary to halt the situation of unrest. To recite Article 51 of the Charter, the main aim of an intervention in this context is to establish peace or maintain it. Therefore, the ICJ view lacks hindsight regarding the purpose of these actions. To simply state that the self-defense action must be calculated upon the initial threat does not consider additional attacks or the persistence of the threat. Instead, by looking at the proportionality measure from the aspect of purposefulness, states may assert their military power to the extent that the threatening factor is eliminated.

It has been maintained that as long as the actions of the victim state preserve the initial repelling characteristics discernably and feasibly, they may amount even to a level of retaliation.¹³²

2.1.3. Procedural aspects of Article 51 of the UN Charter

The Article stipulates that measures taken by states while exercising their right to self-defense in case of an armed attack ought to be reported to the Security Council and that the Security Council takes the responsibility and authority for establishing or maintaining international peace and security.¹³³

¹²⁶ Enzo Cannizzaro, “Proportionality in the Law of Armed Conflict”, in *The Oxford Handbook of International Law in Armed Conflict*, ed. Andrew Clapham, Paola Gaeta et al. (Oxford University Press, 2014), p. 334.

¹²⁷ Thomas M. Franck, “On Proportionality of Countermeasures in International Law”, *The American Journal of International Law* 102, no. 4 (2008): 715–67. <https://doi.org/10.2307/20456680>.

¹²⁸ ICJ *Nicaragua* case para. 176.

¹²⁹ *ibid.*

¹³⁰ Christodoulidou and Chainoglou, “The Principle of Proportionality”, p. 1190.

¹³¹ Robert Ago, “Addendum to the Eighth Report on State Responsibility”, *Yearbook of the International Law Commission*, 1980, YB ILC 1980 II, para. 121.

¹³² Nolte, Randelzhofer, “Article 51”, p. 1426.

¹³³ Charter of the United Nations, Article 51.

Unmistakably, states have the duty under the Charter to give notification upon their actions when initiating self-defense. The Court in the *Nicaragua* judgment elucidated that “absence of a report may be one of the factors indicating whether the State ... was itself convinced that it was acting in self-defense.”¹³⁴ Thereby, only after the *Nicaragua* case judgement states started taking the duty to report their actions to the Security Council seriously.¹³⁵ Albeit not surprising, it does have a certain connotation to it. To elaborate, reiterating previously mentioned factors of self-interest and self-help, it once again may be observed that states regard their self-interest in the conflicts to be far more important than the very fact of having validly pursued their aims according to codified legislation.

Furthermore, collective self-defense invokes two additional procedural measures – “the declaration” and “the request”.¹³⁶ Namely, the attacked or victim state must declare that an armed attack has indeed occurred upon its sovereign territory. It must also request assistance of the third state, which subsequently intervenes in the territory. Therefore, the main difference between individual and collective self-defense measures lies within procedural requirements.

Ashley Deeks asserts that the UNSC should be more adamant on the provision of Article 51 letters on behalf of the victim states since it allows international law on the use of force to develop more coherently.¹³⁷

2.1.4. Conclusion

The aim of the foregoing chapter was to provide discourse on the exercise of the right to both individual and collective self-defense. To sum up, the right to individual and collective self-defense is primarily assessed through attribution of an armed attack, as well as the gravity and temporal considerations. This thesis accentuates that an armed attack within the framework of the UNC takes place with the involvement of another State, as evidenced by the existing threshold for *ratione personae* and the traditional interpretation.¹³⁸ However, the application of attribution of armed attacks to non-state actors as a novel emerging standard will provide an additional perspective. Moreover, it is argued that the gravity of an armed attack may be difficult to ascertain at the moment of such occurrence, therefore it should be devised in each case individually. To add, the ordinary meaning of Article 51 presupposes reactive and interceptive measures of self-defense, falling short of anticipation. Thereof, should this thesis find that the case study in hand, namely, the Saudi-led intervention in Yemen does not conform to the criteria outlined above, the validity of sovereign powers to request an intervention will be assessed, since the absence of a foreign threat poses questions as to whether the regime is not misplacing blame from existing internal problems.¹³⁹

¹³⁴ ICJ *Nicaragua* case para. 200.

¹³⁵ Christine Gray, *International Law and the Use of Force* 4th Edition, p.127.

¹³⁶ Visser, “two sides of the same coin?”, p. 302; ICJ *Nicaragua* case para. 195, 199 and 211.

¹³⁷ Ashley Deeks, “A Call for Article 51 Letters”, *The Lawfare Institute* (2014), available on: <https://www.lawfareblog.com/call-article-51-letters>. Accessed October 18, 2022.

¹³⁸ Ruys, *Armed Attack*, p. 486.

¹³⁹ Ashley Deeks, “International Legal Justification for the Yemen Intervention: Blink and Miss It”, *The Lawfare Institute*, available on: <https://www.lawfareblog.com/international-legal-justification-yemen-intervention-blink-and-miss-it>. Accessed July 14, 2022.

2.2. Military intervention by invitation

To start with, Article 2(4) of the UNC irrefutably prohibits the use of force in international relations.¹⁴⁰ Any exceptions thereto are provided within the Charter system, in line with its purposes and principles. However, a request for assistance by a state to another clearly does not diminish the credence of the peremptory norm mentioned. Emanating from the Friendly Relations Declaration sovereign equality elements, Article 3(e) of the Definition of Aggression and the *Nicaragua* case¹⁴¹, every state is entitled to utilize its sovereign territory to its liking. This includes foreign military conduct within the boundaries of the requesting state.

Lacking codification, except for treaty based interventions, a military intervention relies on customary principles of accrued state behavior and subsequent binding rules. Nevertheless, it is still bound by principles of necessity and proportionality of customary law, thereby mere internal disturbances do not constitute enough ground for intervention, nor are exaggerated measures of force allowed following a request.¹⁴²

Thereof, while an intervention by invitation has not managed to obtain a specific definition, the 2011 Resolution on Military Assistance on Request by the Institut de Droit International has derived an authoritative interpretation of relevant terms. Article 4 of the Resolution holds that a request has to be valid, specific and has to conform to international obligations of the state requesting the intervention. In broad strokes this view is evidenced by the *Armed Activities* case.¹⁴³ It may seem from the foregoing that an intervention by invitation is more persuasive of a justification than the reliance on self-defense, given the intrinsic characteristics involved. However, the prerequisite of state consent may display challenges in assessments of such interventions. Namely, the validity of state request, the debatable circumstances within conflicts amounting to civil war and situations of unreconciled consent are circumstances in which the intervention may become legally indeterminate or even illegal.

2.2.1. Substantive state consent

The magnitude of having foreign military forces present in a territorial state cannot be overstated. Much less when the forces are invited in, given that the typical circumstance of such intervention is an internal armed conflict stemming from a schism between factions of population.¹⁴⁴ Notwithstanding sovereign capacity to request assistance, the customary principle of self-determination provides that the territorial population has the right to “freely to determine, without external interference, their political status”.¹⁴⁵ Any consent given to outside interference thereof should be of utmost certainty and validity. Granted, intervention omitting consent would violate both primary rules and secondary rules, such as Article 20 of ARSIWA.¹⁴⁶ Hence, prior to dissecting relevant aspects of substantive consent, an outline of

¹⁴⁰ Charter of the United Nations, Article 2(4).

¹⁴¹ ICJ *Armed Activities* case para. 246.

¹⁴² Gerhard Hafner, “Present Problems of the Use of Force in International Law - Sub-Group: Intervention by Invitation”, *Institut de Droit International*, 10th Commission, Naples Session (2009), p. 436.

¹⁴³ ICJ *Armed Activities* case para. 46-52.

¹⁴⁴ Laura Visser, “two sides of the same coin?”, p. 296.

¹⁴⁵ Daniel Thürer and Thomas Burri, *Self-Determination*, MPEPIL.

¹⁴⁶ International Law Commission, “Draft Articles on Responsibility of States for Internationally Wrongful Acts” (November 2001), Available on:

https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf. Accessed October 18, 2022.

procedural attributes of validity of consent may provide additional understanding of the intricacies surrounding the legal field described as “chaotic”.¹⁴⁷

To assure compliance, various cumulative criteria pertain to validity. Namely, of paramount value stands the authority within. Consent may be granted by the highest authority.¹⁴⁸ Secondly, consent must not be tainted, particularly by coercive action.¹⁴⁹ Thirdly, the intervention must remain within limits of consent. Lieblich has concluded that contractual particularities of *pacta sunt servanda* and invalidation through coercion established in the VCLT pertain also to customary rules, thereof must be followed even without treaty obligations. Finally, temporal considerations maintain that the invitation must precede the intervention or be *ad hoc*.¹⁵⁰ An additional point may be made that withdrawal of consent may happen at any time by the requesting state and does not warrant specific execution.¹⁵¹ However, such announcements must be coherent and decisive.

While intervention has been perceived to be allowed by both sides of the revolt-stricken state once territory has been divided,¹⁵² the succeeding part on consent will adhere to the traditional interpretation accentuated in the *Nicaragua* judgment.¹⁵³

Validity of consent

As the sovereign authority and its government essentially exclusively represent the state, the implication is that the assisting state would be in unison as far as interests of the territorial state go.¹⁵⁴ The sovereign capacity to request assistance therefore highlights that the ability to embody the will of the state remains the most vital constituent in the exercise of such request. Consequently, two interrelated components of external legitimacy have been identified.

To start with, effectiveness has been at the core of traditional assessment for legality of state representation.¹⁵⁵ It implies a government’s control of territory in actuality.¹⁵⁶ The degree of effectiveness relates to a sufficiently representative part of the territorial state rather than absolute control.¹⁵⁷ Moreover, governments in exile are generally not afforded such rights of effectiveness.¹⁵⁸ Vladimir-Djuro Degan argues that “a government in exile lacks its effectiveness and it could not request a foreign military assistance.”¹⁵⁹ This presumption indicates that even if the sovereign leader in exile maintains loyalty of armed forces, such possibility is discarded without additional contemplation, implying that the control has to be asserted directly, albeit leaving exact parameters indeterminate.¹⁶⁰

¹⁴⁷ *Report on Georgia* p. 276.

¹⁴⁸ Christopher J. LeMon, “Unilateral Intervention by Invitation in Civil Wars: The Effective Control Test Tested”, *Journal of International Law and Politics* (2003) 35 NYU, pp. 741, 743.

¹⁴⁹ Vienna Convention on the Law of Treaties (Vienna, 23 May 1969) 1155 U.N.T.S. 331, entered into force 27 Jan. 1980. Articles 51-52.

¹⁵⁰ Gerhard Hafner, “Military assistance on request”, Article 4(1).

¹⁵¹ See ICJ *Armed Activities* case para. 51.

¹⁵² *Report on Georgia* p. 278.

¹⁵³ ICJ *Nicaragua* case para. 246.

¹⁵⁴ Louise Doswald – Beck, “The Legal Validity of Military Intervention by Invitation of the Government”, *British Yearbook of International Law*, Volume 56, Issue 1, 1985, p. 190.

¹⁵⁵ LeMon, “Unilateral Intervention by Invitation”, p. 745.

¹⁵⁶ *Ibid.*

¹⁵⁷ Georg Nolte, *Intervention by Invitation*, MPEPIL, para. 18; Petra Perisic “Intervention by Invitation – When Can Consent from a Host State Justify Foreign Military Intervention?”, *Russian Law Journal* December 2019, p. 19. DOI: 10.17589/2309-8678-2019-7-4-4-29.

¹⁵⁸ *ibid.*

¹⁵⁹ Hafner, “Intervention by Invitation”, p. 351.

¹⁶⁰ LeMon, “Unilateral Intervention by Invitation”, pp.741-793.

Effectiveness as a measure is inherently flawed as it presupposes no determination for the acquirement of control.¹⁶¹ Thus, if one supposes effective control to be the deciding factor in consent validity, it seems reminiscent of the belligerency doctrine¹⁶² no longer in force, where a valid display of defined territory would suffice for international legal personality.¹⁶³ Likewise, statehood within the 1933 Montevideo Convention highlights discrepancies within effectiveness. A defined territory, a government and the capacity to enter into relations with other states define statehood, the latter connoting an exception to subordinate entities rather than necessity to be recognized by other states.¹⁶⁴ Thereof, non-state actors with a formed government and effective control of certain realms of territory would supposedly constitute compliance to these criteria. This would also entail that an established government losing effective control by resistance in its territorial state would cease to hold legal ground on an international realm.¹⁶⁵ Thereof, effectiveness cannot be read to embody the totality of consent-capacity.

Nevertheless, early state practice indicates that effective control over territory holds imperative value, as seen in the Tinoco decision, where the arbitration decided upon favorable outcome with regard to its *de facto* control of territory, countervailing Great Britain's non-recognition.¹⁶⁶ Its continued relevance is further evidenced by the Draft Resolution of *Institut de Droit*, where in Article 8 it is maintained that the consent for an invitation of assistance "must be given by an effective and generally recognized government,"¹⁶⁷ reinforcing the evident correlation between the preceding and ensuing attributes of external legitimacy.

The second element of state's external legitimacy in the eyes of the international community is international recognition.¹⁶⁸ To be exact, this entails the recognition of the state's government rather than the state *per se*. The government has to show that it exercises effective control over territory and has the approval of the territorial population.¹⁶⁹ To elaborate, "substantial expression of national will"¹⁷⁰ is necessary for this to take effect. Generally, recognition is not disputed, with exception to newly found governments, where the *de facto* control is a decisive factor for recognition.¹⁷¹ To continue, in regard to already established governments with necessary criteria acquired, it is generally viewed that in light of internal turmoil, said government will continue to retain control and recognition.¹⁷² For example, in 1978, a peace-keeping mission was launched in Lebanon by the UN with clearance by the beleaguered government struggling to sustain control over negligible area of land.¹⁷³ By contrast, in 1978

¹⁶¹ Hafner, "Intervention by Invitation", p. 321.

¹⁶² Gregory H. Fox, "Intervention by Invitation", in *The Oxford Handbook of the Use of Force in International Law*, ed. Marc Weller et al. (Oxford University Press 2016), p. 2

¹⁶³ Eliav Lieblich, "Intervention and Consent: Consensual Forcible Interventions in Internal Armed Conflicts as International Agreements", *Boston University International Law Journal* 29:337 (2011), p. 377.

¹⁶⁴ Montevideo Convention on the Rights and Duties of States (Montevideo, 26 December 1933), entered into force 26 December 1934, Art.1.; Brad R. Roth, "Secessions, Coups and the International Rule of Law", *Melbourne Journal of International Law* Vol 11, 2010, p. 7.

¹⁶⁵ Hafner, "Intervention by Invitation", p. 321.

¹⁶⁶ Tinoco Claims Arbitration (*Great Britain v. Costa Rica*) (1923) 1 r.i.A.A. 369, 375; Perisic, "Intervention by Invitation", p. 19.

¹⁶⁷ Hafner, "Intervention by Invitation", p. 416.

¹⁶⁸ *Report on Georgia* p. 134

¹⁶⁹ Hafner, "Intervention by Invitation", p. 399.

¹⁷⁰ Ruys and Ferro, "Weathering the Storm", p. 82.; Hersch Lauterpacht, *Recognition in International Law* (Cambridge University Press, 1947), p. 141.

¹⁷¹ Louise Doswald – Beck, "The Legal Validity of Military Intervention", p. 197.

¹⁷² *Ibid.*

¹⁷³ Louise Doswald – Beck, "The Legal Validity of Military Intervention", p. 198.

Afghanistan experienced change of governance by a *coup d'état*,¹⁷⁴ whose new representatives were internationally recognized by other states despite, statistical research revealing a grave lack of territorial security and control over population.¹⁷⁵ These state practices connote that evaluation on a case-by-case basis is the general practice. Nevertheless, academics have concurred that unlike effective control, international recognition of a regime proves to be decisive in the valuation of consent. Evidently, the recognition by the UN particularly, as well as by regional organizations amass substantial corroboration of the government's legitimacy. Representation of a state within the UN reiterates legitimacy due to pertaining characteristics, mainly the envisioned primacy within Article 103 of UNC.

While still an emerging standard not accepted uniformly, democratic legitimacy merits assessment for the purposes of this thesis. It is the assumption that requesting regimes have been freely and fairly elected.¹⁷⁶ Democratic legitimacy gained prominence in a large part in context of effective control. Namely, it has been employed to counterbalance the latter, since it provides background information on the acquirement of control. To elaborate, in the event of a loss of effective control, if two distinct factions claim territory of a state, the UN favors the faction with clearly pertaining democratic considerations, such as electoral mandates.¹⁷⁷

This is exemplified by events in Sierra Leone, whereby ECOWAS utilized forcible measures to restore ousted leader of the state.¹⁷⁸ The president of Sierra Leone, Ahmad Tejan Kabbah was elected in multi-party elections before the coup d'état, hence obtaining presidency via legal democratic election.¹⁷⁹ The Security Council backed the intervention after the fact, which conveys amplified focus on restoration and protection of democratic values.¹⁸⁰ Nevertheless, it is deemed that democratic legitimacy per se does not constitute enough basis to be regarded as a separate condition for the assessment of valid consent, as it would entail overriding the realities of current international community. That is, instances of intervention in the countries of Chad, Gabon, Rwanda and Djibouti substantiate the view that regimes without being elected democratically are entitled to request assistance as well.¹⁸¹

It is maintained that consent is cloaked by legal obscurity.¹⁸² Particularly regarding legal rules that apply to each separate military operation of the assisting state, such as internal strife that amounts to a non-international armed conflict or civil war.¹⁸³ As observed beforehand, intervention by invitation lacks clarity on the status of conflicting parties. Ensuing from this opaqueness some commentators have insisted that the existence of civil war inhibits any party

¹⁷⁴ Ibid. p.198.

¹⁷⁵ Roger East, *Keesing's Contemporary Archives: Record of World Events* (Longman, 1979), p. 29878.

¹⁷⁶ Georg Nolte, *Intervention by Invitation*, MPEPIL, para. 17.

¹⁷⁷ Gregory H. Fox, "Intervention by Invitation", p.835.

¹⁷⁸ David Wippman, "Pro-democratic Intervention", in *The Oxford Handbook of the Use of Force in International Law*, ed. Marc Weller et al. (Oxford University Press, 2015), p. 805.

¹⁷⁹ Columbia University World Leaders Forum. Ahmad Tejan Kabbah, available on: <https://worldleaders.columbia.edu/directory/ahmad-tejan-kabbah>. Accessed October 20, 2022.; Final Communique of the Ministers of Foreign Affairs (Conakry, 26 June 1997), available on: <http://www.sierra-leone.org/Other-Conflict/ECOWAS-062697.html>. Accessed October 18, 2022.

¹⁸⁰ Hafner, "Intervention by Invitation", p. 323.

¹⁸¹ Hafner, "Intervention by Invitation", p. 324.

¹⁸² Ashley Deeks, "Consent to the Use of Force and International Law Supremacy", *Harvard International Law Journal* Vol 54, Winter 2013, p.17.

¹⁸³ ICRC observes that there is no real difference between the two terms, since civil war does not have a legal meaning per se. However, for the purposes of this thesis, non-international law and civil war will be used interchangeably. Kathleen Lawand, "What is a non-international armed conflict?", *ICRC*, available on: <https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm>. Accessed April 7, 2022.

of the conflict to request assistance, whereby the principle of self-determination is deemed to override military intervention, since it would preclude the already politically divided population to determine their future.¹⁸⁴ While it has been perceived that support for a beleaguered government is illegal,¹⁸⁵ it is maintained that such a presumption goes contrary to traditional international law.¹⁸⁶ Military intervention may help halt internal conflicts, bolster state-to-state relations and a prohibition as such would undermine sovereign powers.¹⁸⁷ State conduct deems military intervention permissible, albeit subject to further intricate rules.¹⁸⁸ Therefore, unreconciled interventions and how states abuse these powers merits assessment for the purposes of this thesis.

2.2.2. Unreconciled state consent

To start with, unreconciled consent encompasses circumstances when the assisting state has not assayed obtained consent and thereby has no clear information on whether the requesting state in the act of inviting assistance has complied with its domestic and international obligations.¹⁸⁹ Consequently, consent in breach of mentioned obligations may essentially render subsequent actions illicit, since the consenting state may only grant access to rights and privileges to the assisting state to the extent that the former itself possesses those qualities.¹⁹⁰ Issues arise, however, in the determination of the limits international rules may possess through their supremacy in relation to domestic rule of law. State constitution in particular has been said to aid in an attempt to reconcile the two due to its fundamental importance.¹⁹¹ To add, state practice may substantiate such attempt to ascertain possible restrictions on unreconciled consent.

States may employ their international responsibilities to veil themselves from overbearing internal chaos. To elaborate, the Resolution 1373 regarding acts of terrorism foresees states as being liable for inhibiting threats originating from their territorial boundaries.¹⁹² This may pose challenges when the territorial state fails to fulfill this duty, which eventually becomes a burden. Thereof, the application of current international law affords leeway to the state to alleviate the situation by essentially outsourcing competent foreign forces to suppress threats, at the same time disregarding domestic law of its own making. Namely, it has been asserted that the newfound global fight against terrorism after the 9/11 attacks provided international law with the possibility to impair the rule of domestic law and weaken its stability.¹⁹³ For instance, in 2009 the then president of Yemen, Saleh, allowed US forces to unilaterally conduct military operations against terrorist strongholds, emphasizing that “I have given you an open door on

¹⁸⁴ Gregory H. Fox, “Intervention by Invitation”, p. 827.

¹⁸⁵ Louise Doswald – Beck, “The Legal Validity of Military Intervention”, p. 251.

¹⁸⁶ Dinstein, *War, Aggression and Self-Defence*, p. 113.

¹⁸⁷ Laura Visser, “two sides of the same coin?”, p. 20.

¹⁸⁸ Waseem Ahmad Qureshi, “The Crisis in Yemen”, p. 243; Georg Nolte, *Intervention by Invitation*, MPEPIL, para. 27.

¹⁸⁹ Ashley Deeks, “Consent to the Use of Force” p. 21.; Gerhard Hafner, “Present Problems of the Use of Force in International Law - Sub-group: Military assistance on request”, *Institut de Droit International Tenth Commission*, Rhodes Session (2011), Article 4.

¹⁹⁰ Ashley Deeks, “Consent to the Use of Force”, p. 34.

¹⁹¹ *ibid* p. 39; Vienna Convention on the Law of Treaties, Article 46.

¹⁹² S.C. Res. 1373, U.N Doc. S/RES/1373(2001).

¹⁹³ Kim Lane Scheppelle, “The International State of Emergency: Challenges to Constitutionalism after September 11”, *Yale Legal Theory Workshop* (2006), p. 5.

terrorism, so I am not responsible.”¹⁹⁴ This irrefutably draws attention to the abuses of consent enabled by the flexibility of international law.

Traditional interpretation of the VCLT envisions that substantive norms within domestic law do not present concern within the realm of international conduct between states.¹⁹⁵ On the contrary, procedural competence of the relevant agencies of the state to consent holds imperative value. That is, for instance, an “objectively evident”¹⁹⁶ violation of a domestic norm incurring international conduct would include the incapacity to represent the state. Therefore, primacy of international law may undergo an override in case of paramount inconsistencies of state consent-capacity.

Furthermore, questions remain as to the constitutional powers exercised by a head of state and its government following a resignation and fleeing the territory, given that the government was still internationally recognized, as is the case in Yemen since 2015.

2.2.3. Conclusion

While the sovereign right to request assistance is not of dispute per se, given that the invitation is issued in a clear manner, without coercion, pursued within the limits of given consent and emanating from the highest authority, questions might arise when the authority of the government issuing such invitation is of debatable legitimacy. Specifically, validity of consent may pose challenges, if it is found that the government does not adhere to the outlined constituents necessary to substantiate its legitimacy.

Thereof, in the succeeding chapter, the thesis will proceed to assess the legality of the Saudi-led intervention in Yemen by implementing both comprehensive deliberations on the theoretical background of the legal justifications brought forward by the Yemeni interim government and the Saudi-led coalition states, namely, self-defense and intervention by invitation.

3. LEGALITY OF THE SAUDI-LED INTERVENTION IN YEMEN

Legal analysis for the Saudi-led intervention starts with the joint letter of March 26, 2015, by Saudi Arabia and coalition states prior to the Operation Decisive Storm.¹⁹⁷ In it, various premises are laid out serving as justifications for the military operation. Primarily, the explicit mention of Article 51 stipulates application of the UNC self-defense mechanisms. The very statement by Hadi entails a request for assistance, hence it will be examined subsequently.

3.1. Yemen’s right to collective self-defense

Yemen and the coalition states merit application of the exercise of the right to self-defense under the auspices of the UN, since all are member states of the organization.¹⁹⁸ Article 51

¹⁹⁴ Scott Shane, “Yemen Sets Terms of a War on Al Qaeda”, *The New York Times*, available on: <https://www.nytimes.com/2010/12/04/world/middleeast/04wikileaks-yemen.html>. Accessed October 18, 2022.

¹⁹⁵ Vienna Convention on the Law of Treaties, Articles 27 and 46; Ashley Deeks, “Consent to the Use of Force”, p. 8.

¹⁹⁶ Vienna Convention on the Law of Treaties, Article 46.

¹⁹⁷ Coalition statement in letters to UN, dated 26 March 2015.

¹⁹⁸ United Nations. Member States, available on: <https://www.un.org/en/about-us/member-states#gotoY>. Accessed October 18, 2022.

precisely stipulates protection to the members of the UN, therefore it is not of dispute that the provisions outlined in the UNC are applicable to the situation in Yemen.

The letter communicated to the UNSC referred to Hadi's request to lend assistance to "protect Yemen and its people from [...] Houthi aggression" and "help Yemen to confront Al-Qaida and Islamic State in Iraq and the Levant,"¹⁹⁹ invoking Article 51 of the UNC, as well as the Charter of the League of Arab States and the Arab Treaty on Joint Defence. The appeal to the GCC countries received almost unanimous approval, with almost all countries acceding to the request, except Oman. Consequently, Operation Decisive Storm was launched the next day, on March 25, 2015.²⁰⁰

It is clear, thereof, that Operation Decisive Storm from the outset of military action needs to comply to the requirements of a proper exercise of the right to self-defense in order to suffice as substantial legal justification. In view of this, Houthi militia aggression was accentuated various times in the letter to UNSC, making it the central piece of argumentation for the coalition.

3.1.1. 3.1.1. Procedural aspects of the exercise of the right of self-defense

The right to collective self-defense foresees that Yemen and the coalition conform not only to the substantive conditions under self-defense, but also to the requirement to report the actions to the UNSC. The UNSC Resolution 2216 (2015) expressly acknowledged that the reporting condition of self-defense actions was fulfilled.²⁰¹ Additionally, the provisos of "the declaration" and "the request" seem to be met by Yemen and the coalition, as Hadi mentioned in his letter "incessant attacks" on behalf of the Houthis.²⁰² However, the deliberation of whether those may be deemed as armed attacks will ensue in the forthcoming chapters. Additionally, an irrefutable request for assistance was made in the form of the letter mentioned.

3.1.2. 3.1.2. Substantive conditions of self-defense

To start with, the first condition under self-defense envisions that an armed attack has indeed occurred. The circumstance of a direct attack can be discarded due to absence of any credible evidence that another state has unequivocally breached the prohibition of the use of force by directly employing its regular armed forces.

The succeeding argument pertains to circumstances of indirect military aggression, envisioned by Article 3(g) of the 3314 Resolution. The article lays out two possible situations – that of sending by, on behalf of or substantial involvement of the third state.

As alluded to by the foreign minister of the Kingdom of Saudi Arabia, Adel bin Ahmed Al-Jubeir, Iran supposedly supports Houthis in Yemen.²⁰³ He also insisted that this alleged reinforcement by Iran has considerably contributed to the ongoing Yemeni civil war. Nevertheless, a comprehensive examination of Iran's support to Houthis, if any, is essential for the application of indirect military aggression.

¹⁹⁹ Coalition statement in letters to UN, dated 26 March 2015.

²⁰⁰ Charles Caris, "2015 Saudi-led Intervention in Yemen: Order of Battle", *Critical Threats*, available on: https://www.criticalthreats.org/analysis/2015-saudi-led-intervention-in-yemen-order-of-battle#_ednf79f2d90ad43dc51a5ce3ac478ffdbae1. Accessed May 18, 2022.

²⁰¹ S.C. Res. 2216, U.N Doc. S/RES/2216 (2015).

²⁰² Coalition statement in letters to UN, dated 26 March 2015.

²⁰³ Adel al-Jubeir, "Can Iran change?", *New York Times*, 19 Jan. 2016.

To start off, reportedly there has been very limited contact between Iran and the Zaydi community in Yemen throughout history. A link to Iran is the Houthi leader, Abdu Malik al-Houthi, who had visited Iran and allegedly derived his political outlook from that of monarchical Iran.²⁰⁴ For many years former president Saleh of Yemen accused Iran of supporting the Houthis.²⁰⁵ To add, it has been stated that Yemeni government strived for accruing hostilities among Yemeni cultural groups.²⁰⁶

There is an argument that suggests that the government of Yemen, more precisely corrupt officials of it, had provided Houthis with weapons and to mitigate their failure, a story implying Iran's support was corroborated.²⁰⁷ However, an April 2015 report to the UN Security Council's Iran Sanctions Committee backs up the claims stating that there is sufficient evidence that Iran has supported Houthis. The report had identified a pattern of shipments and elaborated on various incidents of these shipments.²⁰⁸ In 2014, President of Iran stated that the 2014 Sana'a takeover was a "brilliant and resounding victory".²⁰⁹ There have been additional statements by other administration officials directed towards the support for Houthis,²¹⁰ however there is limited tangible proof of Tehran's involvement in the conflict by support to the Houthis. The confidential report of the UNSC and statements by Iranian officials still support the notion of Iran's marginal influence.

Iran's endorsement for the Houthis, even if limited, backs the idea of adapting national views and portrayed identities according to certain self-interests. To elaborate, Iran has supported non-state actors prior to Houthis because it seeks to stand behind opposition of the status quo,²¹¹ which is not necessarily connected to religious considerations, that is, links to Shia Islam, as it is in the case with Houthis. Therefore, this would in part invalidate the proxy warfare arguments due to the lack of substantial support by Iran and the allegiance based upon previous practice to support likeminded political parties.

To add, in context of Article 3(g) of the 3314 Resolution, the aforementioned cannot be read to substantiate arguments seeking to connect Houthis to Iran. This marginal influence does not satisfy the requirement of a state having control in order to say that the military actions are done on behalf of a state. What's more, in the *Tadic* case, in line with the restrictive reading of the *Nicaragua* judgement, it was held that "mere provision of financial assistance or military equipment or training" cannot suffice as "control by a State over subordinate armed forces".²¹² To add, while Judge Jennings asserted that ICJ's interpretation in the *Nicaragua* case may be

²⁰⁴ Juneau, "Iran's policy towards the Houthis in Yemen", pp. 647-663.

²⁰⁵ "Sa'ada conflict: a proxy war of words between Iran, Saudi Arabia", US Embassy in Sana'a cable, *Wikileaks*, 2 Sept. 2009, 39; Barak Salmoni, Bryce Loidolt and Madeline Wells, *Regime and the Periphery In North Yemen: The Huthi Phenomenon*, RAND Corporation, 2010, p. 9.; Gregory D. Johnsen, "Foreign Actors in Yemen: The History, the Politics and the Future", *Sana'a Center For Strategic Studies*, available on: <https://sanaacenter.org/publications/main-publications/13042>. Accessed October 18, 2022.

²⁰⁶ Barak Salmoni, Bryce Loidolt and Madeline Wells, *Regime and the Periphery In North Yemen: The Huthi Phenomenon*, RAND Corporation, 2010, p. 9.

²⁰⁷ "Sa'ada conflict: a proxy war of words between Iran, Saudi Arabia", US Embassy in Sana'a cable, *Wikileaks*, 2 Sept. 2009, 39; Gregory D. Johnsen, "Foreign Actors in Yemen: The History, the Politics and the Future", *Sana'a Center For Strategic Studies*, available on: <https://sanaacenter.org/publications/main-publications/13042>. Accessed October 18, 2022.

²⁰⁸ Carol Landry, "Iran arming Yemen's Houthi rebels since 2009: UN report", *Middle East Eye*, available on: <https://www.middleeasteye.net/news/iran-arming-yemens-houthi-rebels-2009-un-report>. Accessed October 18, 2022.; Juneau, "Iran's policy towards the Houthis in Yemen", p.656.

²⁰⁹ Juneau, "Iran's policy towards the Houthis in Yemen", p. 658.

²¹⁰ *Ibid.*

²¹¹ Juneau, "Iran's policy towards the Houthis in Yemen", pp. 658.

²¹² Opinion and Judgment, *The Prosecutor v. Duško Tadic*, Case NoIT-94-1-T, Trial Chamber II, 7 May 1997, Para. 137. Available on: <https://www.eccc.gov.kh/sites/default/files/tadic.pdf>.

mended if coupled with “logistical or other support,”²¹³ this still falls short of the involvement by Iran.

For argument’s sake, supposing armed attacks may be recognized as emanating from non-state actors, the external component is not present. It has been correctly observed that non-state actors launching attacks from within the target state amounts to an internal armed conflict or domestic terrorism.²¹⁴ The wording of Article 51 does not posit that internal attacks may be equaled to armed attacks.

Additionally, the claims against the actions of Al Qaeda and the Islamic State and the Levant hold only subsidiary importance in the justification provided in the coalition statement. Saudi airstrikes have predominantly targeted the Houthis, while terrorist organizations of Al Qaeda and the Islamic State and the Levant have benefited from the belligerency, taking back territories they once held control over.²¹⁵ Therefore, it may be stated that any action against these terrorists cannot substantiate self-defense measures in another state.

What’s more, in context of the necessity principle, the Saudi-led coalition did not exhaust all possible courses of action before entering into a military conflict in Yemeni territory.²¹⁶ Before the intervention the GCC states, which form part of the coalition, in support of the Saudi-led intervention did not ascertain equity in the process of negotiations regarding a new government in Yemen and were in favor of asymmetric division of power.²¹⁷ Against this background, it may be stated that the coalition did not bother to enter into a more diplomatic communication and conflict resolution.

The immense civilian targeting during the infighting stands in direct contradiction to the principle of proportionality. Any counterattack towards Houthis or elimination of Houthi threat cannot suffice as justification for the reported direct targeting of civilian infrastructure.

Any deliberation on other conditions of armed attack is irrelevant since an armed attack within the understanding of Article 51 cannot be identified. Thus, Saudi Arabia and the coalition had no legal basis for collective self-defense actions as justifications for Operation Decisive Storm.

3.2. Saudi Arabia’s right to individual self-defense

In the coalition letter, circumstances claimed to endanger Saudi Arabia appeared several times. Firstly, Houthi militia presence near the border, “heavy weapons [...] beyond the control of the legitimate authorities”²¹⁸, as well as a prior attack in 2009 orchestrated by the Houthis. The coalition statement insisted that “Houthi militias have always been a tool of outside forces.”²¹⁹ These are the main instances which Saudi Arabia relied on, implying a broader threat to the peace and security of the region and itself.

²¹³ Dinstein, *War, Aggression and Self-Defence*, p. 202.

²¹⁴ Dinstein, *War, Aggression and Self-Defence*, p. 204.

²¹⁵ Gregory D. Johnsen, “Al-Qa’ida and the Islamic State Benefit as Yemen War Drags On”, *Combating Terrorism Center*, available on: <https://ctc.westpoint.edu/al-qaida-and-the-islamic-state-benefit-as-yemen-war-drags-on/>. Accessed October 18, 2022.

²¹⁶ Farea Al-Muslimi, “Analysis: How Can War-Torn Yemen Find Peace?”, *Canrgei Middle East Center*, available on: <https://carnegie-mec.org/2016/01/21/analysis-how-can-war-torn-yemen-find-peace-pub-62557>. Accessed October 18, 2022.

²¹⁷ Salisbury, *Federalism in Yemen* p. 16.

²¹⁸ Coalition statement in letters to UN, dated 26 March 2015.

²¹⁹ Ibid.

To start with, for the sake of the argument, if non-state actors were to be identified as individual instigators of an armed attack, an attack by Houthis would comply with the external component since Houthi conduct emanates from outside Saudi Arabia's territorial boundaries.

However, *rationae temporis* of armed attack comes into question, given that the instances relied on do not constitute a reactive self-defense measure. To elaborate, stating that an attack six years earlier allows for countermeasures goes contrary to the very principle of *jus ad bellum* and it may not be plausible as a legitimate reason for acts of self-defense.²²⁰ That is, immediacy within the principle of necessity stipulates that the repelling action must be taken within an "appropriate time frame"²²¹ from the original attack. Hence, the specific Houthi actions mentioned in the coalition statement cannot suffice for transboundary force six years later, as it constitutes a significant delay.

Additionally, anticipatory self-defense may come into question since the implication of threat to Saudi and regional security brings to light the possibility to act beforehand an expect attack. However, having established a lack of significant foreign state involvement in Houthi actions, the alleged threat to security of Saudi Arabia and the region descends into obscurity. It has been documented that Houthi military conduct was exacerbated following the intervention, not prior to it.²²² The 2009 attack addressed in the coalition statement pertains to a Houthi incursion in Saudi territory killing two Saudi border guards.²²³ Given the condition of the loss of lives in this incident, it may as well go beyond the category of a "mere frontier incident",²²⁴ invoking Article 51. However, given the strong inclination in the traditional doctrine on the use of force to the attribution of such attacks to states and the assertion that the scale of an attack must not be the ultimate determinator of the right to self-defense,²²⁵ this may not be regarded as an armed attack.

Following this occasion, the only follow-up military conduct on behalf of the Houthis in Saudi territory commenced after Operation Decisive Storm was launched in March 2015.²²⁶

Ensuing from this, employing the principle of proportionality and even invoking the broader view of Judge Ago, which stipulates that the initial attack and its purpose have to be reconciled in a proportional counterattack, no persistent threat from Houthis against Saudi Arabia in particular may be observed. An outright wave of airstrikes on behalf of Saudi Arabia targeting both Houthis and the civilian population²²⁷ cannot constitute a proportional countermeasure to a frontier military attack six years prior.

This indicates the failed assumption of the imminence of Houthi threats since no substantial evidence was provided by the coalition on any material preparation by Houthis in readiness to attack Saudi Arabia.²²⁸ Furthermore, objective characteristics are preferred in place of estimates

²²⁰ Ruys and Ferro, "Weathering the Storm", p. 77.

²²¹ Nolte, Randelzhofer, "Article 51", p. 1427.

²²² Andrew Hanna, "Timeline of Houthi Attacks on Saudi Arabia", *United States Institut of Peace Iran Primer*, available on: <https://iranprimer.usip.org/blog/2019/sep/16/timeline-houthi-attacks-saudi-arabia>. Accessed October 18, 2022.

²²³ "Iran military denounces Saudi killing in Yemen", *Reuters*, available on: <https://www.reuters.com/article/latestCrisis/idUSDAH749814>. Accessed October 18, 2022.

²²⁴ ICJ *Nicaragua* case para. 195

²²⁵ Dinstein, *War, Aggression and Self-Defence*, p. 195.

²²⁶ Cameron Glenn and Garrett Nada, "Iran, Yemen and the Houthis", *United States Institut of Peace Iran Primer*, available on: <https://iranprimer.usip.org/blog/2015/apr/29/who-are-yemens-houthis>. Accessed October 18, 2022.

²²⁷ Almidad Mojalli, "Civilians killed as Saudi Arabia bombs Yemen", *The New Humanitarian*, available on: <https://www.thenewhumanitarian.org/news/2015/03/26/civilians-killed-saudi-arabia-bombs-yemen>. Accessed October 18, 2022.

²²⁸ Coalition statement in letters to UN, dated 26 March 2015; Ruys and Ferro, "Weathering the Storm", p. 78.

of intention,²²⁹ given that self-defense is conserved for instances of the gravest forms of force. Thereof, military interference by Saudi Arabia and coalition only aggravated existing hostilities, not ease the situation.

Saudi Arabia did not have the right to self-defense against Houthis, neither as a reactive measure, nor as an anticipatory measure. This level of prolonged response is not a part of self-defense doctrine within the UNC, especially the immediacy requirement. Anticipatory attacks entail using force against a threat, meaning that there is no materialized detriment to the alleged victim state yet. Even if the precedent of the 9/11 attacks considerably shifted the outlook on anticipation of attack, the situation between Yemen and Saudi Arabia does not resemble the gravity of the former and may simply allow Saudi Arabia to take precautionary measures within its territorial boundaries.

3.3. Yemen's right to request assistance

Reference is made to Hadi's request to "provide support to protect Yemen and its people from the ongoing Houthi aggression".²³⁰ The coalition in its statement in response to Hadi's request emphasized a perceived regional influence on the Houthi rebels, thus endangering the peace and security of the region.²³¹ While it is clear that self-defense measures are not substantiated to the degree as to afford a solid basis for justifying Operation Decisive Storm, attention may be directed towards Yemen's inherent right to invite outside forces. The first aspect for deliberation thereby is that of Yemen's validity of consent. Legal doctrine presupposes effectiveness of territory as one of the primary conditions for the assessment of consent-capacity. For this, it is necessary to reiterate Hadi's whereabouts and decisions leading up to the Operation Decisive Storm. As the leader of the interim Yemeni government at the outset of Operation Decisive Storm, Abd-Rabbu Mansour Hadi decided to flee the country to Saudi Arabia, effectively putting his government in exile. As established, a government in exile does not constitute a sufficiently representative part of the state. Additionally, it has been reported that Hadi had lost control over significant territorial constituents before any invitation had taken place, as well as that the greater part of Yemeni armed forces did not consider Hadi as their military leader.²³² Therefore any debate on whether a government in exile may still retain effective powers can be settled as negative in this instance.

While some legal scholars have deemed it adequate "that the government would still be entitled to request assistance if it had left the country recently,"²³³ referring to governments in exile, Hadi and his government had irrefutably resigned on January 21, 2015.²³⁴ The constitution of Yemen stipulates in its Article 115 that an official resignation must be approved by the House of Representatives.²³⁵ Since instability loomed over Yemen, no such decision could be made.²³⁶

²²⁹ Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press 1963), p. 260.

²³⁰ Coalition statement in letters to UN, dated 26 March 2015.

²³¹ Ibid.

²³² Joe Dyke, "Is the Saudi war on Yemen legal?", *The New Humanitarian*, available on: <https://www.thenewhumanitarian.org/analysis/2015/04/03/saudi-war-yemen-legal>. Accessed October 18, 2022.

²³³ Hafner, "Intervention by Invitation", p. 429.

²³⁴ Adam Baron, "Crisis in Yemen: Hadi's great escape", *European Council on Foreign Relations*, available on: https://ecfr.eu/article/commentary_crisis_in_yemen_hadis_great_escape433/. Accessed October 18, 2022.

²³⁵ The Constitution of the Republic of Yemen (20 February 2001). Available on: <https://www.refworld.org/pdfid/3fc4c1e94.pdf>. Accessed October 18, 2022.

²³⁶ Mohammed Alshuwaiter, "President Hadi and the future of legitimacy in Yemen", *Middle East Institute*, available on: <https://www.mei.edu/publications/president-hadi-and-future-legitimacy-yemen>. Accessed October 18, 2022.

Hadi practically declared his unwillingness to continue his post as the head of state. Thereof, it maybe concluded that the resignation portrayed a political stance rather than a legal one, albeit leaving the decision in ambiguous legal waters. Hadi rescinding his resignation was to no avail since it contained no formal withdrawal on his part.²³⁷ To add, no procedural measures were available at that time. Therefore, Hadi's letter to the coalition states requesting assistance with the combination of interim government in exile and Hadi's resignation from the presidency is an evident marker for a violation of a domestic norm, as outlined in the VCLT. Sovereign powers to request assistance were not present.

What's more, according to United Nations Envoy to Yemen Jamal Benomar, a new political agreement was in the works²³⁸ amid turmoil surrounding the interim government, whose term was supposed to finalize in 2014.²³⁹ Therefore, any support for the interim regime was primarily based on the anticipation for stability in the country rather than genuine acclamation of the government in question.

This further relates to democratic legitimacy, as upon closer scrutiny of the interim government and contrary to claims that the transfer of power was legitimate, Hadi participated in an uncontested election in 2012,²⁴⁰ essentially breaching the constitution of Yemen from 2001 and falling short of fulfilling the democratic requirement for the established government. Yemeni constitution lays out in Article 108 (e) that elections must be of "direct popular voting in competitive elections".²⁴¹ Subsequently, the absence of such requirement in the 2012 elections may deem the presidency dubious as a whole. While the Gulf Initiative envisioned pre-eminence over any constitutional arrangements,²⁴² this primacy is situated on questionable reliability of the agreement. Two key aspects evoke doubts. Firstly, the first stage of the transition, the NDC, was deemed of murky legitimacy since it had not followed its own procedural requirements.²⁴³ Secondly, point 7(b) of the Gulf Initiative presupposed a term of two years for Hadi's presidential terms in which the NDC was to establish a new constitution so as to approach a "comprehensive democratic system".²⁴⁴ However, it may be asserted that the newfound legal framework sparked additional unrest and internal turmoil. Namely, Hadi's term was extended following failure of the NDC to form a Constitutional Commission.²⁴⁵ Therefore, the initial condition that the Initiative could not be challenged by utilizing legal instruments of the State cannot be read as bypassing, for instance, the constitution, since it failed to comply with its objectives, that is, to reconcile the needs of parties involved without the onset of armed conflict.

The Gulf initiative comprised of the UN and the support of the GCC countries transferred the presidency from Saleh to Hadi.²⁴⁶ Therefore, they were directly involved in this implausible

²³⁷ Patrick J. McDonnell and Nabih Bulos, "Yemeni president flees Houthi-controlled capital, denounces 'coup'", *Los Angeles Times*, available on: <https://www.latimes.com/world/middleeast/la-fg-former-yemen-president-flees-20150221-story.html>. Accessed October 18, 2022.

²³⁸ "UN Envoy to Yemen Says Deal Could End Crisis", *VOA News*, available on: <https://www.voanews.com/a/un-envoy-to-yemen-says-deal-could-end-crisis/2652442.html>. Accessed October 18, 2022.

²³⁹ Alshuwaiter, "President Hadi and the future of legitimacy in Yemen".

²⁴⁰ Christine Gray, *Intervention by Invitation*, in *International Law and the Use of Force* 4th Edition, p. 99.

²⁴¹ The Constitution of the Republic of Yemen (20 February 2001).

²⁴² UN Peacemaker. Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council (GCC), Article 4.

²⁴³ Salisbury, *Federalism in Yemen*, p. 19.

²⁴⁴ UN Peacemaker. Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council (GCC).

²⁴⁵ Alshuwaiter, "President Hadi and the future of legitimacy in Yemen".

²⁴⁶ Farea Al-Muslimi, "The Gulf's Failure in Yemen", *Carnegie Middle East Center*, available on: <https://carnegie-mec.org/2015/05/06/gulf-s-failure-in-yemen-pub-60022>. Accessed March 7, 2022.

process. Moreover, the authors of the transition in hindsight enabled the incompetent leadership of Hadi.²⁴⁷ In 2014, the UNSC placed sanctions on Houthis, which only proved to be a highly inefficient step, since Houthis primarily conduct their affairs domestically.²⁴⁸ Therefore, it has been stressed that the takeover of the most populous city of Sana'a governed by the Houthis since 2014, has been an effect of the continuously growing instability in the region, rather than the cause of it.²⁴⁹ This may be further substantiated by reiterating the implication that regional powers alongside the UN and support of the US were primarily concerned with the containment of hostilities as to not jeopardize their own interests. No concrete plan for the rehabilitation of Yemen as a competent nation-state and the further development of societal needs was brought forward.

Farea Al-Muslimi, whose research focuses on Yemen, has rather cynically articulated UN's involvement: "(the transitional period) has ultimately brought more violence than peace and killed any aspirations of democracy, social justice and cohesion."²⁵⁰

Nevertheless, Yemeni interim government spearheaded by Hadi amassed wide international recognition. The majority of states did not contest the intervention, despite the ambiguous and questionable validity of Yemen's consent in light of constitutional breaches.²⁵¹ The US went so far as to say that the military intervention is needed to "protect Yemen's legitimate government".²⁵² Against this background, it may be added that the international community and the UNSC seem to acquiesce to interventions characterized primarily by democratic intentions, if doing so does not entangle strategic interests of the more powerful states.²⁵³

International recognition as a crucial aspect of state consent validity is further complicated by the forthcoming. That is, the established practice to afford the internationally recognized regime leeway to act without effectively controlling the state undermines the system upon which international community is based. As is already established, the interim Yemeni government was established with the help of cooperation from the UN and GCC states through the Gulf Initiative.²⁵⁴ The aim of this was supposedly to come to an amicable agreement on the division and overall control of Yemeni territory among the different political factions. However, from the very outset of the Gulf Initiative favoritism towards established elites in power may be observed through the NDC process, which ultimately did not produce the desired results.²⁵⁵ Therefore, it may be settled that the very parties involved in internal legitimacy processes of the state government were also in charge of determining the external legitimacy of said state. Given the lack of effective control at the outset of Operation Decisive Storm and apparent democratic shortcomings in the processes of establishment of the interim government led by Hadi, it may be concluded that international recognition cannot override internal deficiencies of consent-capacity.

²⁴⁷ Ibid.

²⁴⁸ Al-Muslimi, "The Gulf's Failure in Yemen".

²⁴⁹ Al-Muslimi, "Analysis: How Can War-Torn Yemen Find Peace?".

²⁵⁰ Farea Al-Muslimi, "Welcome to Yemen, Where Only Violence is a Certainty", *Carnegie Middle East Center*, available on: <https://carnegie-mec.org/2015/03/22/welcome-to-yemen-where-only-violence-is-certainty-pub-59460>. Accessed March 7, 2022.

²⁵¹ Waseem Ahmad Qureshi, "The Crisis in Yemen", p. 245.

²⁵² The White House Office of the Press Secretary of the United States of America. *Statement by NSC Spokesperson Bernadette Meehan on the Situation in Yemen*, available on: <https://obamawhitehouse.archives.gov/the-press-office/2015/03/25/statement-ns-spokesperson-bernadette-meehan-situation-yemen>. Accessed October 18, 2022.

²⁵³ Wippman, "Pro-democratic Intervention", p. 805.

²⁵⁴ UN Peacemaker. Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council (GCC).

²⁵⁵ Salisbury, *Federalism in Yemen* p. 19.

CONCLUSION

The Yemeni conflict comprises various intricate realms of political, cultural and religious aspects and may be regarded as a primarily internal conflict. That is, Yemeni territory has long experienced divisions and asymmetric power distribution, remnant of the failed unification process. Likewise, the Yemeni population has long experienced internal instability, social disparity and a lack of basic services at the hands of corrupt political officials. Against this background, the Houthis gained significant traction and support as the main opposition to the government. The upheaval of years of instability and chaotic political structure afforded the Houthis the capacity to take over the capital city Sana'a. This was further exacerbated by external military interference by the Saudi-led coalition, comprised of various GCC member states and other Arab states, in March 2015. Prior to the initiation of military conduct through Operation Decisive Storm, the interim government appealed for international support, specifically for military means of intervention, invoking Article 51 of the UNC. Actions of the Saudi-led coalition from the outset of this military operation have only increased havoc on the civilian infrastructure and population, with more than half living in poverty and more than 370 000 casualties as a result of incessant infighting and subsequent scarcity of basic necessities.

In light of this, the legal issue pertaining to this thesis crystallized – whether the Saudi-led coalition intervention in Yemen complied with the *jus ad bellum* principle of international law. The thesis assayed three possible legal justifications. Firstly, Yemen's right to collective self-defense as encompassed in the UNC. Secondly, Saudi Arabia's right to individual self-defense. Thirdly, Yemen's right to intervention by invitation.

While this thesis employed the traditional view on collective self-defense, attesting that the main component activating the right of self-defense, namely, an armed attack within the framework of the UNC may only occur with the involvement of another State, emerging practice envisions the possibility of armed attacks originating from independent non-state actors. The Houthi aggression in Yemen has not been found to be attributable to any external state, nor was it found to emanate from abroad, falling short of the external component, respectively. Any action of the Saudi-led coalition thereof cannot be seen as necessary or proportional, given the internal character of the conflict and deliberate civilian targeting.

Regarding the exercise of the right to self-defense on behalf of Saudi Arabia mainly against Houthis, notwithstanding the traditional view of attribution, additional constituents of armed attack, that is, gravity and temporal considerations, have been utilized to highlight the understanding of the unfeasible nature of such justification. Houthi aggression has been primarily domestic, with few exceptions on the border regions. Thus, the principles of necessity and proportionality further undermine the applicability of Article 51 since the gravity of the counterattacks by Saudi-led coalition are not reasonable in this context.

Additionally, in light of the unlawfulness of self-defense measures in Yemen, an intervention by invitation, while within the limits of sovereign abilities, has been found to be grossly misapplied in this conflict. The sovereign consent-capacity of Yemeni interim government to request assistance comes into question, since the only solid basis of its legitimacy emanates from its international recognition. Namely, it has been found that the interim government had not retained effective control over Yemeni territory, nor did scrutiny of its democratic legitimacy affirm consent-capacity. Given the background of the failed transitional process of the Yemeni interim government and the states involved, it may be concluded that Yemen's external legitimacy was partly decided upon by states involved in its internal legitimacy,

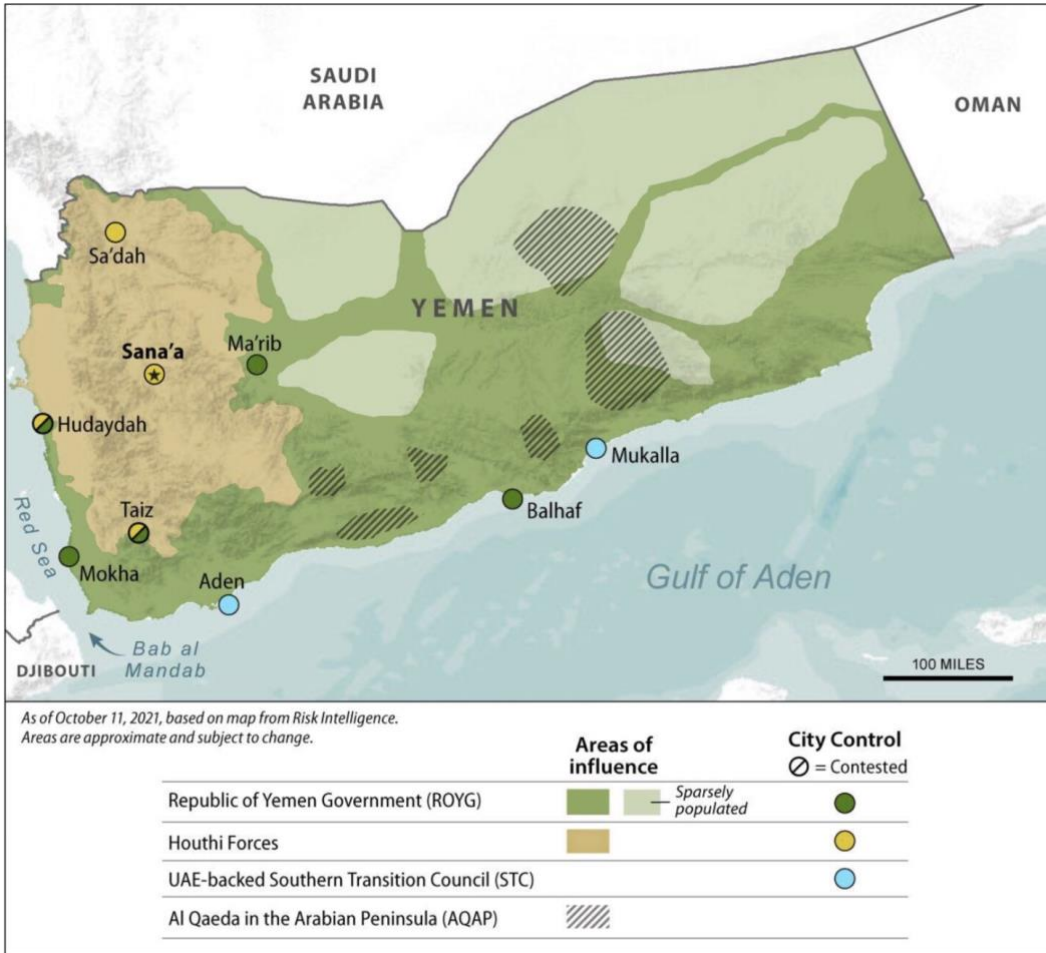
essentially evoking serious doubts on Yemen's governmental consent-capacity on any external level and revealing the ill-advised choice to blame internal problems on perceived external threats.

To answer the legal issue addressed in this thesis, Saudi-led military intervention in Yemen is illegal due to serious deficiencies regarding validity of consent given by Yemeni interim authorities. Any considerations regarding the applicability of Article 51 of the UNC may be discarded bearing in mind the domestic disposition of Houthi aggression. Thus, the principle of *jus ad bellum* of international law has not been complied with.

Today, the future of Yemen remains uncertain. The complicated and flawed attempts to reconcile factional interests reveal grave shortcomings of internal power distribution and consequent failure to accommodate territorial population with basic necessities. Prior international efforts prove to be ill-advised and miscalculated. At the moment, both the Houthis and Saudi-led coalition refuse to negotiate via mediation, as the former still holds control over regions surrounding the capital city Sana'a (*see Annex I*). It is clear that a comprehensive framework is necessary in order to tackle the ongoing conflict. However, given failed negotiations and continuous infighting, it is highly unlikely that the conflict will subdue in the foreseeable future.

ANNEXES

Annex I – Areas of control in Yemen, as of October 11, 2021



Source: Jeremy M. Sharp, “Yemen: Civil War and Regional Intervention” (Congressional Research Service report). Accessed on October 25, 2022. Available on: <https://crsreports.congress.gov/product/pdf/R/R43960>.

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