

MYKOLAS ROMERIS UNIVERSITY
FACULTY OF LAW
INSTITUTE OF INTERNATIONAL AND EUROPEAN UNION LAW

RŪTA BAJARŪNAITĖ
(INTERNATIONAL LAW)

AIRSTRIKES AGAINST THE ISLAMIC STATE: AN ASSESMENT UNDER
INTERNATIONAL LAW

Master thesis

Supervisor –
Lekt. dr. Lina Laurinavičiūtė

Vilnius, 2017

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	4
INTRODUCTION	5
1. THE FOUNDATION OF THE ISLAMIC STATE	9
1.1. The origin of the IS	9
1.2. The rise of the IS	10
1.3. IS Global Strategy	12
1.3.1. Iraq	14
1.3.2. Syria	16
2. THE INTERNATIONAL LAW AND THE USE OF THE FORCE	21
2.1. Doctrinal Approaches to Interpretation of the UN Charter	21
2.2. UN Charter provisions related to the use of force	24
2.2.1. The Article 2 (4) of the UN Charter	24
2.2.2. The Article 2 (7) of the UN Charter	25
2.3. The Chapter VII of the UN Charter	28
2.3.1. The Security Council Resolution	29
2.3.2. The Right To Self-Defence	30
2.3.2.1. The Criteria for the Self-Defense	31
2.3.2.2. Unwilling or Unable Doctrine	38
2.3.2.2. The Anticipatory Self-Defence	40
3. FIGHTING AT THE LEGAL BOUNDARIES: THE USE OF FORCE AGAINST THE ISLAMIC STATE	44
3.1. The statehood of the so-called Islamic State	44
3.2. The Global Coalition to Counter the Islamic State	47
3.3. The legality of the airstrikes against the Islamic State in Iraq	48
3.3.1. The validity of the Iraq's consent	50
3.3.2. The Global Coalition and the Right to Collective Self-Defence	53
3.4. The legality of airstrikes against the Islamic State in Syria	57
3.4.1. The Security Council Authorization	57
3.4.2. Self-defence	60
3.5. The Legality of the Russian Federation Airstrikes in Syria	68
CONCLUSIONS	73
LIST OF THE BIBLIOGRAPHY	75

ABSTRACT	90
SUMMARY	91
HONESTY DECLARATION	93

LIST OF ABBREVIATIONS

ADF-Australian Defence Force

AQI-al Qa'ida in Iraq or al-Qaida in Iraq, Nusra Front, Al-Nusra

ASD-Anticipatory self-defence

DASR-Draft Articles on States Responsibility

GA-General Assembly

ICC-International Criminal Court

ICJ-International Court of Justice

ICTY- International Criminal Tribunal for the former Yugoslavia

IDI-Institut de Droit International

ILC-International Law Commission

ISI-Islamic State of Iraq

ISIL-Islamic State of Iraq and Levant

ISIS-Islamic State of Iraq and Greater Syria; Islamic State of Iraq and al – Sham

IS-Islamic State

JIM-Joint Investigation Mechanism

OPCW-the Organisation for the Prohibition of Chemical Weapons

SAF-Syrian Armed Forces

SC-Security Council

U.S.-United States

UNSC-United Nations Security Council

UNSG-United Nations Secretary General

UNSMIS-United Nations Supervision Mission in the Syrian Arab Republic

UN-United Nations

INTRODUCTION

Relevance of the final thesis. The Islamic State took the global stage in 2014 and since then has become one of the biggest threats for international peace and security¹. By announcing the establishment of the “Islamic Caliphate” in 2014, the Islamic State of Iraq and Levant (“ISIL”) changed its name to the Islamic State (“IS”), emphasizing the fact they went acting globally². In 2016, the Islamic State conducted 472 attacks around the world, causing the death of 9340³ people. In a comparison, by the September 18 of 2017, the IS had already conducted 363 attacks causing 2743 fatalities on the global scale⁴. In response to the ongoing barbaric attacks, territorial gains made by the IS, as well as the violations of the human rights which were reported to be made by various human rights organisations, the international community decided to intervene⁵. On 14 August 2014, the Security Council of the United Nations adopted Resolution 2170, in which acting under Charter’s Chapter VII, it urged all the states to protect the civilian population and to cooperate in efforts in order to bring the ISIL to justice⁷. Followed by the Resolution 2170, on September 10, 2014, the United States announced the formation of the broad international coalition to defeat The Islamic State of Iraq and Syria (“ISIS”) ⁸. What is of extreme importance, is that the United Nations Security Council Resolution 2170 did not authorize the use of force against the ISIS. Despite the fact, that the Security Council did not authorize the use of force, President Barack Obama authorized two operations in Iraq on August 07, 2014. A month later, on 23 September 2014, the United States (“U.S”) conducted its first airstrikes inside the Syria. Since then, there have been hundreds of the airstrikes conducted against the Islamic State as a part of the U.S. led military intervention, as well as hundreds of the airstrikes launched by the Russian Federation, under the formal request of the Syrian President Bashar al-Assad.

¹ Michaela Martin, Hussein Solomon “Islamic State: Understanding the Nature of the Beast and Its Funding”, *Contemporary Review of the Middle East* (2017): <http://journals.sagepub.com/doi/pdf/10.1177/234779891668131>

² Matthew Weaver, Mark Tran, "Isis announces Islamic caliphate in area straddling Iraq and Syria," *The Guardian*, June 30, 2014, <https://www.theguardian.com/world/2014/jun/30/isis-announces-islamic-caliphate-iraq-syria>

³ Esri Story Maps, "Annual Terrorist Attacks", *Esri*, <https://storymaps.esri.com/stories/terrorist-attacks/?year=2016>.

⁴ Esri Story Maps, op.cit., <https://storymaps.esri.com/stories/terrorist-attacks/?year=2017>

⁵ OHCHR, “Statement by Mr. Paulo Sérgio Pinheiro Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic”, September 16, 2014,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15039&LangID=E>

⁶ W”Syria: ISIS Tortured Kobani Child Hostages”, Human Rights Watch, 2014 November 14, <https://www.hrw.org/news/2014/11/04/syria-isis-tortured-kobani-child-hostages>

⁷ “Security Council Adopts Resolution 2170 (2014) Condemning Gross, Widespread Abuse of Human Rights by Extremist Groups in Iraq, Syria | Meetings Coverage and Press Releases”, United Nations, 2014 August 15, <https://www.un.org/press/en/2014/sc11520.doc.htm>

⁸ “The Global Coalition to Defeat ISIS”, U.S. Department of State, 2014 September 10, <https://www.state.gov/s/seci/>

At present, Syria and Iraq are the key battleground of the fight against the Islamic State (“IS”), where regional and international actors collide. There exists various interpretations on whether the U.S. led airstrikes against the IS are justified under the international law. In this respect, it is noted that the U.S., being backed up by the Western States, strives to defeat the IS in Iraq by collaborating with the Iraqi government, however the Global anti-IS coalition in Syria fails in getting the necessary authorization from Damascus, thus putting in obscurity the legality of the military operations. On the other side, the Russian Federation continue to condemn the American-led intervention, while conducting cross-border operations in Syria with the support and consent from the Syrian President’s regime, whose legitimacy is being questioned by most of the international community. Additionally, there is no unanimous opinion also amongst the various legal scholars, whether the U.S. led airstrikes against the IS might be justified under the international law. Therefore, in this master thesis possible legal justifications will be provided and discussed, based on the interpretation of the provisions, embodied in the Charter of the United Nations, as well as in the customary international law.

Problem of research. The point of departure of the legal debate, regarding the legality of the U.S. airstrikes against the Islamic State, starts within the interpretation of the main UN Charter provisions, regarding the prohibition and exceptions to the use of force. The most important being the right to self-defence, in the author’s view, the turning point in the discussion is the adoption of either the stricter or the broader interpretation of the right to self-defence. Additionally, due to the fact, that the target of the armed attacks of the U.S. led Coalition is the terrorist organisation, the question of the legality of the cross-border military operations in the third State is being raised. Therefore, the main problems of the research to be scrutinized are the following: 1) whether the right to self-defence can be invoked against the non-state actor in terms of the Article 51 of the UN Charter? 2) whether the right to self-defence encompasses the right to conduct cross-border operations in the third country.

Scientific novelty and overview of the research on the selected topic. The main approaches regarding the interpretation of the UN Charter are discussed by Hersh Lauterpacht, Benedetto Conforti and Carlo Focarelli. The notion and content of the provisions, embodied in the UN Charter concerning the prohibition and exceptions to the use of force are most widely expressed in the ICJ case-law, for instance, in the cases of the *Military and Paramilitary Activities in und against, Armed Activities on the Territory of the Congo, Oil Platforms*, as well as, in the *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*. The right to self-defence and the criteria needed for the actions taken in self-defence to be lawful are discussed by the Yoram Dinstein, Peter Malanczuk, Christopher

Goodman, and scholars, as for example, Louise Arimatsu, Michael N. Schmitt and Ashley Deeks. The legality of the U.S. intervention against the Islamic State is addressed in the articles written by scholars Gabor Kajtar, Louise Arimatsu and Mohbuba Choudhury.

Significance of research. The significance of the thesis lays in the interpretation of the legal norms, embodied not only in the Charter of the United Nations, but also in the customary international law. The author of the thesis argues that the world has changed significantly since the adoption of the UN Charter as levels of the global terrorism have risen extremely altogether posing the huge risk for the international peace and security. This research critiques the strict interpretation of the Charter and asserts that it is of extreme importance to apply broader interpretation of the rules, enshrined in the Charter, in order for them to correspond in legally meaningful way to events, occurring on the global scale. Therefore, the interpretation and application of the legal provisions analysed in the thesis contributes to the development of the international law

The aim of research. The main goal of the research is to determine whether the United States led airstrikes, conducted against the Islamic State in Iraq and Syria, can be justified under international law.

The objectives of research. For the aim of research to be achieved, the following objectives are raised:

1. to discuss factual circumstances of the foundation of the Islamic State;
2. to address main approaches for the interpretation of the UN Charter and analyze provisions, regarding the prohibition and exceptions to the use of force;
3. to determine whether the actions taken in self-defence against the non-state actor are justified under the international law;
4. to apply the right to self-defence, in accordance with its criteria, for the evaluation of the legitimacy of American-led airstrikes conducted against the Islamic State in Iraq and Syria.

Research methodology. The following methods of research were used in the thesis: 1) Document analysis method was used to analyse UN Resolutions, as well as, letters and statements addressed to the UN, all of them being adopted regarding the situation in Syria and Iraq, 2) analytical method was applied in order to analyse the content of the provisions, concerning the prohibition and exceptions to the use of force, embodied in the Charter and customary international law, 3) the comparative analysis

method was used in the analysis of the case-law of International Court of Justice, where the Court adopted different views concerning the different provisions of the Charter.

Structure of research. The master thesis includes the introduction, three chapters, conclusions, abstract and summary written in English and Lithuanian. In the first chapter of the thesis, the main factual circumstances regarding the foundation of the Islamic State are presented. The second chapter includes the analysis of the provisions, embodied in the UN Charter, concerning the prohibition and the exceptions to the use of force. The final chapter of the thesis includes the evaluation of the legitimacy of airstrikes conducted against the Islamic State, based on the analysis of the possible legal justifications.

Defence statements 1. The right to self-defence can be invoked against the non-state actor in terms of the Article 51 of the UN Charter, therefore, the U.S. led military intervention in Syria is considered to be within the conformity of the international law. 2. The right to self-defence encompasses the right to conduct cross-border operations in the third country, thus, American-led airstrikes against the Syria in collective self-defence of Iraq are justified under the international law.

1. THE FOUNDATION OF THE ISLAMIC STATE

The organisation which is now known as the “Islamic State” has become a major threat to the peace and international security in the world. When Islamic State announced the establishment of the “Islamic Caliphate” in 2014, the international community was alarmed that organization went acting globally. This chapter seeks to provide a concise overview of the origins, ideology and operations of the IS in Syria and Iraq. Moreover, it focuses on the military and diplomatic actions of the international community as responses to acts of the cross-border violence committed by the Islamic State.

1.1. The origin of the IS

The roots of the IS trace back to Jordanian Abu Musab al-Zarqawi who first started training extremist militants in the early 2000s⁹ in Afghanistan¹⁰. Zarqawi-network people strongly participated in the Iraqi insurgency during American occupation¹¹. Being stated above, attention must be drawn to the fact that the fall of the Taliban made Zarqawi to leave Afghanistan and flee to Iraq where his network continued operating. Even though militants working for Zarqawi were usually named to be separate organisations, eventually the Department of State of the United States classified them under the name of the organisation called Jama’ at al Tawid wal Jihad¹²¹³. At that time, Jama’ at al Tawid wal Jihad was mainly made of non-Iraqis. In 2004, the name of the organisation was changed to al-Qa’ida, primarily reflecting not only the fealty to Osama bin Laden¹⁴ but also the merger with al-Qaida in Iraq (“AQI”)¹⁵¹⁶. Responding to the ongoing changes, the United Nations Security Council Committee *pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities* listed this radical Islamist organization for the international sanctions such as an asset freeze, travel ban and arms embargo, firmly confirming organization’s ties with the AQI¹⁷.

⁹ Daniel Cassman, "The Islamic State." *The Islamic State | Mapping Militant Organizations*, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/1>

¹⁰ Bobby Ghosh "ISIS: A Short History." *The Atlantic*, August 14, 2014, <https://www.theatlantic.com/international/archive/2014/08/isis-a-short-history/376030/>

¹¹ Daniel Cassman, *supra* note, 9.

¹² *Ibid.*

¹³ Richard Boucher, “Foreign Terrorist Organization: Designation of Jama’at al-Tawhid wa’al-Jihad and Aliases”, U.S. Department of State, 2004 October 15, <https://2001-2009.state.gov/r/pa/prs/ps/2004/37130.htm>

¹⁴ *Ibid.*

¹⁵ "Middle East | Profile: Tawhid and Jihad group", *BBC News*, October 08, 2004, http://news.bbc.co.uk/2/hi/middle_east/3677658.stm

¹⁶ *Ibid.*

¹⁷ "Sanctions List Materials Security Council Subsidiary Organs", United Nations, https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list

In 2006, major progress was made when Sunni insurgent groups joined the organization, which later were consolidated into the Islamic State of Iraq (“ISI”)¹⁸. Soon later, Zarqawi was killed by the American troops¹⁹ and after the death of Zarqawi, the organization announced the commencement of the leadership of Abu Omar al-Baghdadi, who took over the control of ISI and AQI²⁰. During the following years the organization was weakened not only by the United States military but also by local Sunni groups. As a result, the first so called “Islamic State” project created in junction with the AQI was a failure. At that time, the ISI did not have enough resources and people for ruling out the territory and people²¹. By the end of the 2008²², the ISI was almost defeated, therefore Iraq started regaining stability and security. Moreover, it is important to note that Iraqi insurgent groups who composed the majority of people in the AQI and ISI were not interested in the creation of the “Islamic State”, instead they strived for the liberation of Iraq by fighting American troops.

1.2. The rise of the IS

On April 18, 2010, Abu Omar al-Baghdadi, was killed in a joint U.S.-Iraqi raid²³ and Abu Bakr al-Baghdadi, an Iraqi, took control of the ISI. At that time, the ISI was mainly composed of the Iraqi Sunni Muslims, many of whom had previously been commanders and soldiers under Saddam Hussein’s regime²⁴. Al-Baghdadi continued operating not only in Iraq but expanded its operations to Syria, “where there was a largely secular uprising against President Bashar al-Assad”²⁵. What was important at the time being for Baghdadi is that President Bashar al-Assad represented Alawites-Muslim minority group, which accounted for a little percentage of Syria’s population²⁶. Highest positions in Assad’s forces were occupied by officers representing the Alawite, which even more sharpened political rather than religious tension between Sunnis and Alawites in Syria²⁷. The ISI then was much more powerful force to fight against al-Assad than any other secular group in Syria. Thus, the ISI lead Syrian Government Forces to the deadlock in many areas of Syria²⁸. Moreover, as the

¹⁸ Johan D. van der Vyver, “The ISIS Crisis and the Development of International Humanitarian Law,” *Emory International Law Review* 30 (2016): 535.

¹⁹ Robert G. Rabil, “The ISIS Chronicles: A History”, *The National Interest*, July 17, 2014, <http://nationalinterest.org/feature/the-isis-chronicles-history-10895>

²⁰ “The Islamic State: From al-Qaeda Affiliate to Caliphate”, Middle East Policy Council, <http://www.mepc.org/islamic-state-al-qaeda-affiliate-caliphate>

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ Bobby Gosh, *supra* note, 10.

²⁵ *Ibid.*

²⁶ Manfreda Primoz. “Critical Differences Between Syria's Alawites and Shiites”, *ThoughtCo*, August 18, 2017, <https://www.thoughtco.com/the-difference-between-alawites-and-sunnis-in-syria-2353572>

²⁷ *Ibid.*

²⁸ *Ibid.*

ISI's predecessor Zarqawi, al-Baghdadi imposed harsh Sharia law as well, only this time on the territory of Syria where operations of the organization were widely spread. In addition to this, in 2012, al-Baghdadi announced a "Breaking the Walls" campaign which main goal and priority was to make free the imprisoned members of the ISIS²⁹, who later had a great impact on strengthening the organization. Furthermore, a year later, Baghdadi started another campaign called "Soldier's Harvest" which main target was the Iraqi security forces³⁰. Until 2013, the ISI had strengthened and developed solid network of well-trained militants, who successfully conducted attacks in various city in Syria and Iraq.

In 2013, Al-Baghdadi changed organization's name into the "Islamic State in Iraq and Levant"³¹. The new name, addressed the focused attention of Al-Baghdadi's great ambitions in the territory of Syria. What shall be emphasized here, is that success of the ISIL after Abu Bakr al-Baghdadi took the leadership was based on the two main factors: first, the micromanaging of subordinates and second, hierarchical and centralized organizational structure³². The organizational structure of the ISIL had let its subordinates to have large amplitude in their operating field, meaning they have a discretion to act if they follow the guidelines of the mission established by the leader. Furthermore, the ISIL was clearly structured and centralized by having the executive al-Baghdadi and his advisers working as the governing body of the ISIL and first (military)-second (finance)-echelon structures acting as supervisors for the subordinates³³. In April 2013, al-Baghdadi moved completely to Syria and thus he changed organization's name to the "Islamic State in Iraq and Syria"³⁴.

While operating in Syria, al-Baghdadi announced that the AQI and ISIS were merged and acting together³⁵. Despite the fact that al-Baghdadi and the AQI co-founder Zawahiri continued having disputes about the ongoing operations held under the leadership of Baghdadi, the ISIS and AQI continued working closely with each other until 2014. However, on February 2014, AQI informed about breaking links with the ISIS due to the power struggle between both organizations³⁶.

²⁹ Suadad Al-Salhy, "Al Qaeda says it freed 500 inmates in Iraq jail-break" Reuters, July 23, 2013, <http://www.reuters.com/article/us-iraq-violence-alqaeda/al-qaeda-says-it-freed-500-inmates-in-iraq-jail-break-idUSBRE96M0C720130723>

³⁰ Middle East Policy Council, *supra* note, 20.

³¹ Johan D. van der Vyver, *supra* note, 20:535.

³² *Ibid.*

³³ *Ibid.*

³⁴ Daniel Cassman, *supra* note, 9.

³⁵ *Ibid.*

³⁶ Oliver Holmes, "Al Qaeda breaks link with Syrian militant group ISIL", Reuters, February 03, 2014, <http://www.reuters.com/article/us-syria-crisis-qaeda/al-qaeda-breaks-link-with-syrian-militant-group-isil-idUSBREA120NS20140203>

Afterwards, the ISIS continued its operations in Syria by introducing strict restrictions on various towns and villages in Syria, especially in the province of Raqqa³⁷-first capital city where organization gained full control³⁸. Furthermore, the takeover of city of Mosul marked new period in the expansion of ISIS, as “it was now able and willing to seize and control territory, not simply send suicide bombers to their death”³⁹. Given the situation, on June 29, 2014, the organization changed its name again, this time to the ““Islamic State” declaring a Caliphate and naming its leader Abu Bakr al-Baghdadi the Caliph”⁴⁰. Establishment of the Caliphate made it clear to the international community that al-Baghdadi was ready to dominate the whole region from the Mediterranean to the Gulf⁴¹. Equally important, he was more than ready to dominate and sustain “terror campaign” all over the world.

In conclusion, it is important to note, that by now the IS is clearly a major threat to the peace and international security on a global scale. Despite the failure of creating the Islamic State in 2008, eventually the group managed to construct solid, centralized and hierarchy based organization under the leadership of Abu Bakr al-Baghdadi. Although now the organization is called the “Islamic State”, however such names as the ISIL/ ISIS are still being used when referring to the organization.

1.3. IS Global Strategy

Since declaring a caliphate in June 2014, the IS went globally outside its bases in Iraq and Syria⁴². As stated by Harleen Gambhir⁴³, the Counterterrorism Analyst at the Institute for the Study of War, since then IS has been focusing on three parallel tracks: 1) instigating regional conflict attacking inside Iraq and Syria, 2) building relationships with jihadist groups that can execute military operations across the Middle East and North Africa and 3) inspiring and helping those who support ISIS to conduct attacks in the Western world⁴⁴. What shall be emphasized here is that these three parallel tracks are being spread across three geographical rings: 1) The first one being the IS “Interior” ring, the center of fighting, including territory merely named Iraq and Al-Sham-i.e. Jordan, Israel, Palestine, Lebanon, Iraq and Syria. This terrain is of extreme importance for IS in order to defend the

³⁷ Bobby Ghosh, *supra* note, 10.

³⁸ "Syria Iraq: The Islamic State militant group", BBC News, August 02, 2014, <http://www.bbc.com/news/world-middle-east-24179084>

³⁹ Bobby Ghosh, *supra* note, 10.

⁴⁰ Daniel Cassman, *supra* note, 9.

⁴¹ Bobby Ghosh, *supra* note, 10.

⁴² Karen Yourish, Derek Watkins, Tom Giratikanon, "Where ISIS Has Directed and Inspired Attacks Around the World", The New York Times, June 17, 2015, <https://www.nytimes.com/interactive/2015/06/17/world/middleeast/map-isis-attacks-around-the-world.html?smid=tw-nytimes&smtyp=cur>

⁴³ "Harleen Gambhir", Linktank, <https://www.linktank.com/expert/harleen-gambhir>

⁴⁴ Karen Yourish, Derk Watkins, Tom Giratikanon, *supra* note, 42.

main lands of its established “Caliphate”⁴⁵; 2) The second one called the “Near Abroad” ring⁴⁶ consists of lands which are situated from Morocco in the West to Pakistan in the Far East, where IS seeks to expand its influence and has established so called “governorates” in order to control this region and 3) Third one geographical ring – the “Far Abroad” ring, which mainly encompasses the rest of the world, most importantly Europe, The United States and Asia⁴⁷. In addition to this, Islamic State is transposing and broadening its attacks also to the cyberspace as another form of global strategy execution across those three geographical rings described above. Moreover, these parallel tracks which are spread across three geographical rings includes three main tactics which the IS are using to maintain its power globally: 1) for the “Interior” ring – “Defend and Expand” strategy is being used, emphasizing the need to expand IS control inside Iraq and Syria while trying to sustain lands which are already being controlled; 2) for the “Near Abroad” ring – “Affiliate and Confuse” strategy is being used. This means that IS’s main goal is to establish as more affiliates as it can in the Middle East, North Africa and in the territory extending to Pakistan and Afghanistan⁴⁸. However, if the IS fails in the process of the affiliation with other groups, then it will strive to increase disorder in order to weaken other groups in the region and 3) for the last “Far Abroad” ring – “Attack and Polarize” tactics is applied. Main advantage of this strategy is that via constant attacks, the IS manages to create the atmosphere of fear and hatred especially in the Western world, consequently this inflames and provokes society’s pushback against Muslim populations⁴⁹. Therefore, Muslims in the Far Abroad are forced to mobilize on the IS’s behalf and it is exactly what the Islamic State is aiming for.

This thesis will focus on the two main countries of the Interior Ring-Iraq and Syria. Both States, being the key battlegrounds of the fighting, are of extreme importance for the IS in order to defend the main lands of its established “Caliphate”⁵⁰. Although situated in the one region and seen as the common center of the combat against the IS, the development of the conflicts in Iraq and Syria remain different regarding the roots of their domestic situations. They are shaped by contrasting political events, however unified by the significant rise of the IS in both countries. The threat of the IS, as viewed particularly by the West, is considered to emerge explicitly from Iraq and Syria, therefore these countries are the spot of convergence where regional and international actors collide.

⁴⁵ Jessica Lewis McFate, Harleen Gambhir, “Islamic State’s Global Ambitions”, The Wall Street Journal, February 22, 2015, https://www.files.ethz.ch/isn/192300/ISIS%20INTSUM_Final.pdf

⁴⁶ Harleen Gambhir, “ISIS Global Intelligence Summary”, Institute for the Study of War, (2015):1, http://www.understandingwar.org/sites/default/files/ISIS%20INTSUM_Final.pdf

⁴⁷ Ibid.

⁴⁸ Jessica Lewis McFate, Harleen Gambhir, *supra* note, 45.

⁴⁹ Harleen Gambhir, *supra* note, 46.

⁵⁰ Jessica Lewis McFate and Harleen Gambhir, *supra* note, 45.

Western States, being led by the United States, strive to defeat the IS in Iraq by the collaboration with the Iraqi government, however the Global anti-IS coalition in Syria fails in getting the necessary authorization from Damascus, thus putting in obscurity the legality of the military operations conducted by the U.S. led Air Force in Syria. Conversely, the Russian Federation conducts cross-border operations in Syria against the so-called Islamic State with the support and consent from Syrian President's regime, whose legitimacy is being questioned by the majority of the international community.

The following subchapters of the thesis will address the summary of principal events in Iraq and Syria and the emphasis will be placed to the international response, which was triggered by the important developments of the situations in both countries.

1.3.1. Iraq

The takeover of city of Mosul in June 2014 marked new period in the expansion of the IS. After taking over the control of Mosul, fighters of the IS pushed forward and on the next day they took over their second major gain in Iraq-the city of Tikrit, which lies halfway between Baghdad and Mosul and is known as Saddam Hussein's hometown⁵¹. Iran, reacting to the situation, the next day, has deployed an elite unit of its Revolutionary Guard to help Iraqi troops, fighting against the IS, to retake back the city of Tikrit⁵². That happened since Iraqi Shiite-led government and Iran, which was also mainly dominated by Shiites, had close ties, therefore Iran had shifted troops to Iraq for fighting back the IS, who had already seized several areas in the northern Iraq⁵³. Later soon, the IS insurgents attacked Iraq's biggest oil refinery in the city of Baiji⁵⁴ and thus, 18 June of 2014 marks the date when Iraqi government for the first time asked the U.S. to intervene and formally requested to launch air strikes against IS militants⁵⁵. While the White House was deciding to intervene or not to, four more Iraqi towns fell to the control of the ISIS, as well as a strategic border crossing near Al-

⁵¹ Fazel Hawramy, "Isis militants seize central Iraqi city of Tikrit", The Guardian, June 11, 2014, <https://www.theguardian.com/world/2014/jun/11/isis-militants-seize-control-iraqi-city-tikrit>

⁵² Howard Koplowitz, "Iran Deploys Quds Forces to Support Iraqi Troops, Helps Retake Most of Tikrit", International Business Times, June 12, 2014, <http://www.ibtimes.com/iran-deploys-quds-forces-support-iraqi-troops-helps-retake-most-tikrit-1599766>.

⁵³ Ibid.

⁵⁴ Mark Tran, "Isis insurgents attack Iraq's biggest oil refinery", The Guardian, June 18, 2014, <https://www.theguardian.com/world/2014/jun/18/isis-fighters-iraq-oil-refinery-baiji>

⁵⁵ "Iraq asks US for 'air power' against rebels," BBC News, June 18, 2014, <http://www.bbc.com/news/av/world-us-canada-27911924/iraq-asks-us-for-air-power-against-rebels>

Qaim, proving that militants of the IS were moving forward and strengthening their positions in Iraq⁵⁶. A month later, fighters of the IS conquered two Kurdish towns on Mountain Sinjar where minority Yazidi sect was attacked facing major violence and brutal treatment⁵⁷. Following the ongoing situation in the Mount Sinjar where Yazidi sect people were trapped without food and water, the White House finally made the decision to intervene and President Barack Obama authorized two operations in Iraq on August 07, 2014⁵⁸. The President backed his decision by the request of the Iraq government and the need to protect not only American personnel but also to help a humanitarian effort to save thousands of Iraqi people facing certain death⁵⁹.

The expansion of the IS in Iraq resulted not only in the need of the international assistance⁶⁰, but also in the forced resignation of the Iraqi Prime Minister Nouri al-Maliki, who had “lost the support of his party, of the president, the parliament, the Americans, Saudis and finally the Iranian government, his biggest foreign ally and sponsor”⁶¹. Followed by the resignation of Al-Maliki, Haider al-Abadi was nominated by the Iraqi President as the new Iraqi Prime Minister, having the right to form a new government. With the confirmation of the new prime minister, al-Abadi received the difficult task to find the consensus between the Shia-led government, the Sunnis and the Kurds whilst fighting the IS, that caused political instability and distrust in the country.

Since 2014, the U.S. led coalition increasingly targeted the area of Mosul, the stronghold of the IS in Iraq. As of August 9, 2017, in three-years period the American-led intervention has conducted 13331 strikes in Iraq resulting in 70% loss of the territory the IS controlled in Iraq compared to the August, 2014⁶². The latest milestone regarding the IS presence in Iraq was announced to be reached on 9 December 2017, when Iraqi Prime Minister al-Abadi declared the victory over the IS⁶³. Iraq,

⁵⁶ Michael Martinez, "Four western Iraqi towns fall to ISIS militants", CNN, June 22, 2014, <http://edition.cnn.com/2014/06/21/world/meast/iraq-crisis/index.html>

⁵⁷ Loveday Morris, "Families flee as Islamic State extremists seize another Iraqi town, pushing back the Kurds", The Washington Post, August 03, 2014, https://www.washingtonpost.com/world/islamic-state-seize-town-of-sinjar-pushing-out-kurds-and-sending-yazidis-fleeing/2014/08/03/52ab53f1-48de-4ae1-9e1d-e241a15f580e_story.html?utm_term=.882daa18ef01

⁵⁸ "Statement by the President", National Archives and Records Administration, August 07, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/08/07/statement-president>

⁵⁹ Ibid.

⁶⁰ Permanent Representative of Iraq to the U.N., U.N. Doc. S/2014/440 (June 25, 2014).

⁶¹ Martin Chulov, Julian Borger, Spencer Ackerman, "Embattled Iraqi prime minister Nouri al-Maliki to step aside", The Guardian, August 14, 2014, <https://www.theguardian.com/world/2014/aug/14/iraqi-prime-minister-maliki-step-aside-abadi>

⁶² "Daesh Areas of Influence-May 2017 Update", The Global Coalition Against Daesh, http://theglobalcoalition.org/en/maps_and_stats/daesh-areas-of-influence-may-2017-update/

⁶³ Margaret Coker, Falih Hassan, "Iraq Prime Minister Declares Victory Over ISIS", The New York Times, October 4, 2017, <https://www.nytimes.com/2017/12/09/world/middleeast/iraq-isis-haider-al-abadi.html>

being the mainland of the IS established Caliphate, with the support of the American-led coalition, regained the control over the border areas, which had been under the command of the IS for more than three years. Hereby, to date, the war against the IS in Iraq is declared to be ended, though the threat of the IS attacks in Iraq is still being posed.

1.3.2. Syria

The initial issue to be addressed regarding the situation in Syria is that Syria has been undergoing the devastating civil war since 2011. The first protests in Syria took place in March 2011 in the area around the city of Damascus⁶⁴, however, later, protests spread to other parts of the country and the number of people participating in them was constantly growing. People continued to hold peaceful demonstrations and many civilians were beaten and arrested⁶⁵. Reacting to the ongoing situation in Syria, on the 3 August 2011, the President of the UN Security Council (thereafter the “UNSC”) issued a statement condemning the widespread violations of human rights and the use of force against civilians by the Syrian authorities⁶⁶. With the deterioration of the situation in Syria, couple months later, the Syrian government agreed to end the violence against the protesters in accordance with the Action Plan prepared by the League of Arab States⁶⁷. However, eventually the Syrian Government did not comply with the Action Plan and the violence in the country continued to escalate. Thus “on 12 November 2011 the Arab League voted to suspend Syria’s membership for failing to implement the Arab peace plan and at the same time it imposed sanctions”⁶⁸.

On 16 February 2012, the UN General Assembly (thereafter “UNGA”) adopted Resolution 66/253, which condemned the “continued widespread and systematic violations of human rights and fundamental freedoms by the Syrian authorities [...]”⁶⁹. The Resolution expressed full support to the Action Plan, adopted by the League of Arab States for facilitating the commencement of a political dialogue between the Government of Syria and the whole spectrum of the Syrian⁷⁰. Following the Resolution, the appointed of Joint Special Envoy for the United Nations and the League of Arab States, submitted the initial six-points proposal to the Syrian authorities, which mainly required the

⁶⁴ Louise Arimatsu, Mohbuba Choudhury, “The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya”, *Chatham House*, (2014): 7.

⁶⁵ “Report of the UN High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic”, A/HRC/18/53, Section E, 15 September 2011.

⁶⁶ “Statement by the President of the Security Council”, U.N. Doc. S/PRST/2011/16, 6598th meeting., 3 August 2011.

⁶⁷ Arab League Council Resolutions 7436 and 7437, 2nd November 2011.

⁶⁸ Louise Arimatsu, Mohbuba Choudhury, *supra* note, 64:8.

⁶⁹ UNGA U.N. Doc. A/RES/66/253., 66th session., 16 February 2012.

⁷⁰ *Ibid.*

Syrian government to cease the armed violence and the use of heavy weapons in population centers⁷¹. With the approval from the Syrian authorities, on 14 April, the Security Council (thereafter the “SC”) unanimously adopted the Resolution 2042⁷², which authorized advance team to monitor the ceasefire in Syria. Despite the huge efforts of the UN, the independent international commission of inquiry on the Syrian Arab Republic on 16 August 2012 reported to the General Assembly (thereafter the “GA”) that the security situation deteriorated significantly in Syria, with armed violence increasing in intensity and spreading to new areas⁷³. As a result, on 7 August 2012, the GA adopted the Resolution 66/253⁷⁴, which deplored the Security Council’s failure to act on Syria and called for a political transition.

In 2013, the situation in Syria reached the unprecedented brutality when the country faced one alleged chemical weapons attack on 19 March and another major chemical weapons attack on 21 August. On 22 March 2013, the United Nations Secretary-General (thereafter the “UNSG”) addressed the letter to the President of the SC, where he announced his decision to conduct an investigation into the alleged use of chemical weapons in the Syrian Arab Republic⁷⁵. Due to the continued Syrian Government’s rejection of Ban Ki-moon’s proposals on arrangements for the UN probe of the alleged use of chemical weapons in Syria, the aforementioned investigation remained unconduted until the 18 August when the UN Chemical Weapons team arrived in Syria to begin the investigation. On 21 August, a massive chemical weapons attack was launched around the area of Damascus causing more than 1300 peoples’ death⁷⁶. The next day, the UNSG has officially requested the Syrian Government to allow a team of the UN experts, already in the country, to investigate the use of chemical weapons regarding the August 21 attacks⁷⁷.

On 13 September 2013 the UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic reported to the GA and the SC that on the basis of the evidence obtained during the investigation, the conclusion is that, “on 21 August 2013, chemical weapons have

⁷¹ “Statement by the President of the Security Council”, U.N. Doc. S/PRST/2012/6, 6736th meeting., 21 March 2012.

⁷² “Security Council Unanimously Adopts Resolution 2042 (2012), Authorizing Advance Team to Monitor Ceasefire in Syria | Meetings Coverage and Press Releases.” United Nations. April 14, 2012, <http://www.un.org/press/en/2012/sc10609.doc.htm>

⁷³ “Report of the Independent International Commission of Inquiry on the Syrian Arab Republic”, A/HRC/21/50, 15 August 2012, para. 21.

⁷⁴ UNGA U.N. Doc. A/RES/66/253, 66th session., 7 August 2012.

⁷⁵ Letter dated 22 March 2013 from the Secretary-General addressed to the President of the Security Council S/2013/184, 25 March 2013.

⁷⁶ “Syria chemical attack: What we know”, BBC, September 24, 2013, <http://www.bbc.com/news/world-middle-east-23927399>

⁷⁷ “Syria: Ban sending official request to allow UN probe of alleged chemical weapons use”, United Nations, August 22, 2013, <http://www.un.org/apps/news/story.asp?NewsID=45677&Cr=syria&Cr1=#.Wh7c4ZTEfX>

been used in the ongoing conflict between the parties in the Syrian Arab Republic, also against civilians, including children, on a relatively large scale”⁷⁸. In this sense, it was noted that the environmental, chemical and medical samples provided clear and convincing evidence that surface-to-surface rockets containing the nerve agent Sarin were used in Ein Tarma, Moadamiyah and Zamalka in the Ghouta area of Damascus⁷⁹. However, the report could not determine who was exactly responsible for the conducted massive chemical weapons attack. Reacting to the investigation’s result, on the next day the Russian Federation and the United States, agreed on the Framework for Elimination of Syrian Chemical Weapons⁸⁰. On the same day, Syria deposited with the UNSG its instruments of accession to the Chemical Weapons Convention (thereafter the “CWC”) and declared that it will comply with its clauses and observe them responsibly, applying the Convention provisionally pending its entry into force in the Syrian Arab Republic. On 27 September 2013, the Organisation for the Prohibition of Chemical Weapons (thereafter the “OPCW”) Executive Council adopted a historic decision EC-M-33/DEC.1⁸¹ on the destruction of Syrian chemical weapons program, which was supported also by the unanimous adoption of the UN SC Resolution 2118 (2013)⁸² on the same day. In conformity with adopted decisions, the accelerated programme was composed in order to achieve the elimination of Syrian chemical weapons by the mid-2014. The final milestone of the program was reached on 23 June 2014 when a final consignment of declared chemical weapons was shipped out of Syria for destruction, bringing the total of declared chemical weapons materials destroyed or removed from Syria to 100 percent⁸³.

The presence of the civil war with armed violence increasing in intensity and spreading to new areas inside Syria, served as the moment for the IS to shift their operations from Iraq to Syria, therefore the takeover of the city of Al-Qaim was the commencement of the IS military operations’ conversion. On August 24, 2014, fighters of the IS seized the Tabqa air base in the northern Syria from President’s al-Assad forces, solidifying their control in the Raqqa province. Later soon, the IS advanced on the Syrian border town of Kabani attacking the Kurdish people and causing more than 70,000 Kurds to

⁷⁸ Report of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013, U.N. Doc. A/67/997-S/2013/553, September 16, 2013.

⁷⁹ Ibid.

⁸⁰ “Background”, OPCW, <https://opcw.unmissions.org/background>.

⁸¹ OPCW Executive Council Decision EC-M-33/DEC.1, 33rd meeting., September 27, 2013.

⁸² Security Council Resolution S/RES/2118 (2013), 7038th meeting., September 27, 2013.

⁸³ Ibid.

flee from northern Syria into Turkey⁸⁴. This attack was a proof that the Islamic State was following its set pattern-attacking minorities earlier in Iraq and shifting now to Syria.

Reacting to these systematic attacks against minorities, as well as occurrence of the chemical attacks in Syria, on September 23, 2014, The United States launched its first air strikes against the IS in Syria⁸⁵. Differently from the U.S. led intervention in Iraq, the U.S. military operations in Syria were conducted without any formal request from the Syrian government, thus leaving the international community to question the legality of the U.S. conducted airstrikes. In any case, the U.S. continued its military intervention in Syria and conducted more than 200 strikes on some dozen targets in Syria⁸⁶ together with five Arab countries-Bahrain, Jordan, Saudi Arabia, Qatar and the United Arab Emirates⁸⁷. The conducted airstrikes against the IS in Syria, did not stop IS from the further expansion in the region and later that year, the fighters of the IS seized another Syrian city, Palmyra, as well as six villages near the city of Aleppo. What shall be emphasized here is that until September 2015, only the U.S. and its led alliance were conducting air attacks in Syria. However, on September 30, 2015, the Russian Federation launched its first airstrikes in Syria⁸⁸. It claimed to target the IS, but the U.S. officials accused Russia in attacking the Syrian opposition⁸⁹. Differently from the U.S. led alliance's airstrikes in Syria, the Russian air force was dispatched to Syria after Syrian President Bashar al-Assad formally requested military aid from Russia in a form of letter, thus Russia was acting under the authorization of Damascus⁹⁰. Due to the fact, that both, the U.S. led alliance and Russia, were conducting airstrikes in the region, the United States and the Russian Federation on October 20, 2015 signed a memorandum of understanding ("MOU") on air safety in Syria in order to minimize the risk of inflight incidents among the coalition's and Russian aircrafts operating in Syrian airspace⁹¹. The

⁸⁴ Martin Chulov, "Kurds flee into Turkey in their thousands to escape Isis offensive", *The Guardian*, September 21, 2014, <https://www.theguardian.com/world/2014/sep/21/isis-kurds-escape-into-turkey-from-syria-kobani>

⁸⁵ Craig Whitlock, "U.S. begins airstrikes against Islamic State in Syria", *The Washington Post*, September 23, 2014, https://www.washingtonpost.com/world/national-security/us-begins-airstrikes-against-islamic-state-in-syria/2014/09/22/8b677e26-42b3-11e4-b437-1a7368204804_story.html?utm_term=.2fcef01f2754

⁸⁶ CBS/AP, "U.S. launches more airstrikes against ISIS in Syria, Pentagon says", *CBS News*, September 24, 2014, <https://www.cbsnews.com/news/u-s-launches-more-airstrikes-against-isis-in-syria-pentagon-says/>

⁸⁷ David Martin, "How the U.S.-led airstrikes in Syria went down", *CBS News*, September 23, 2014, <https://www.cbsnews.com/news/how-the-u-s-led-airstrikes-against-isis-in-syria-went-down/>

⁸⁸ Tim Sweijts, Barin Kayaoğlu, Willem Theo Oosterveld, Willem Bloem, Nicholas Farnham, "The Rise and Fall of ISIS: from Evitability to Inevitability", Report, *The Hague Centre for Strategic Studies* (2016-2017):8, <https://hcss.nl/report/volatility-and-friction-age-disintermediation>

⁸⁹ Kareem Shaheen, Shaun Walker, Ian Black, Spencer Ackerman. "Russia admits targeting non-Isis groups in Syria as airstrikes continue", *The Guardian*, October 02, 2015, <https://www.theguardian.com/world/2015/oct/01/russia-targeting-non-isis-groups-syria-airstrikes>

⁹⁰ "Damascus confirms Assad request for military assistance from Russia", *The Arab Weekly*, September 30, 2015, <http://www.thearabweekly.com/?id=2208>

⁹¹ "U.S., Russia Sign Memorandum on Air Safety in Syria", U.S. DEPARTMENT OF DEFENSE, October 20, 2015, <https://www.defense.gov/News/Article/Article/624964/us-russia-sign-memorandum-on-air-safety-in-syria/>

MOU at that time included “specific safety protocols for aircrews to follow, including maintaining professional airmanship at all times, the use of specific communication frequencies and the establishment of a communication line on the ground”⁹². However, the turning point in two countries’ relationship was the U.S strike launched in reprisals to the suspected chemical weapons attack on 4 April 2017 in the northwestern part of Syria. Russia condemned the U.S. missile strikes against Al-Assad forces and considered it as the attack against its ally, therefore the MOU was suspended, herewith posing increased tension in the skies over Syria⁹³.

In any event, since the day Russia started to act under the “military intervention upon invitation” ground in Syria, tension between Moscow and Washington significantly increased. Russian officials continue to condemn U.S. led alliance’s strikes in Syria calling them as an illegitimate action under the international law. The officials of the U.S. instead claim that it is in vital national and global security to combat terrorism and deter the use of chemical weapons in Syria. As of August 9, 2017, The U.S. led coalition has already conducted 11235 strikes in Syria during the period of three years resulting in 51% loss of the territory the IS controlled in Syria compared to the August, 2014⁹⁴.

In conclusion, it must be stressed that American-led intervention in Iraq eventually resulted in the end of the war against the IS in Iraq. The consent given by the former Iraqi Prime Minister for the U.S. led alliance’s cross-border operations in Iraq, assisted the Iraqi government in defeating the IS over the border areas of Iraq. However, the situation in Syria remains extremely volatile. The U.S. led coalition has already conducted thousands of airstrikes in Syria without the authorization of Damascus. The Russian Federation and Syrian Government continues to condemn the U.S. led military intervention in Syria, calling their actions as an illegitimate under the international law. Therefore, the following part of the thesis will discuss the main provisions, which determine the use of force and the exceptions to it under the United Nations Charter and customary international law. The attention will be given to the different approaches of the UN Charter interpretation and the consequences thereof for the interpretation of the provisions regarding the use of force in the international relations.

⁹² Ibid.

⁹³ David Filipov, Anne Gearan. "Russia condemns U.S. missile strike on Syria, suspends key air agreement." The Washington Post, April 07, 2017, https://www.washingtonpost.com/world/europe/russia-condemns-us-missile-strike-on-syria/2017/04/07/c81ea12a-1b4e-11e7-8003-f55b4c1cfae2_story.html?utm_term=.82111858ea7b

⁹⁴ "Daesh Areas of Influence – May 2017 Update," The Global Coalition Against Daesh, accessed October 03, 2017, http://theglobalcoalition.org/en/maps_and_stats/daesh-areas-of-influence-may-2017-update/

2. THE INTERNATIONAL LAW AND THE USE OF THE FORCE

2.1. Doctrinal Approaches to Interpretation of the UN Charter

“Since its foundation in 1945, the United Nations has been the most important forum for the universal evolvement of international law (International Law Development through International Organizations, Policies and Practice)”⁹⁵. Due to its particular standing, The United Nations Charter “has a unique position among the existing international treaties”⁹⁶, therefore it is discussed that the Charter should not be considered only as an ordinary international treaty but more as the constitution of the world’s community⁹⁷. Any legal text as well as the United Nations Charter has frequently to be interpreted in order to establish a less ambiguous or less contradictory meaning of its certain provisions. Thus, whenever the uncertainties arise regarding the particular provision of the UN Charter, the starting point for an interpretation is to understand what the parties wanted to achieve at the moment the treaty was signed. There have always been different approaches regarding where to find the evidence of the parties’ intentions, therefore various schools of thoughts on treaty interpretation will be considered below⁹⁸.

The main theories of the treaty interpretation are represented by the teleological, the “intentions of the parties” and the textual schools⁹⁹. Main goal of the teleological school is to emphasize the importance of the object and purpose of the treaty. In this respect, it shall be stressed that for the teleological approach the most important is the aim of the treaty, therefore such treaty interpretation may set aside the original intentions of the party at the time of the conclusion of the treaty. The author supports this view, because by applying the teleological approach, gaps can be filled, and texts must be interpreted along the lines of the object and purpose of the treaty. In addition to this, the author notes, that in the conformity within the teleological theory, the well-known and valuable rule “*ut res magis valeat quam pereat*” or the principle of “maximum effectiveness” is applied. This allows the treaty to be interpreted in accordance with its aim and in that way as it could have the definite force and effect or, in other words, the fullest value and effectiveness, which certainly

⁹⁵ “Interpretation of United Nations Charter”, Oxford Public International Law, October 13, 2017, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e542#law-9780199231690-e542-p-6>

⁹⁶ Ibid.

⁹⁷ Benedetto Conforti and Carlo Focarelli, *The law and practice of the United Nations*, Fifth ed., vol. 57 (Brill | Nijhoff, 2016), 10.

⁹⁸ David Schweigman, *The authority of the Security Council under Chapter VII of the UN Charter: legal limits and the role of the International Court of Justice* (Brill | Nijhoff, 2001), 9.

⁹⁹ Ibid., 10.

must be consistent with other parts of the text¹⁰⁰. The opinion of the ICJ in the *Reparation for Injuries*¹⁰¹ case, was also mainly based on the principle of effectiveness, as the Court was of the view that it was necessary to render the Article 100 of the Charter fully effective in order to protect the functions and status of the officials of the UN¹⁰².

In contrast to the teleological approach, there is “intentions of the parties” school, which main statement is that treaty must be interpreted as to ascertain the intention of the parties to a treaty¹⁰³. According to the one of the most important representatives of this school, Hersch Lauterpacht, “The intention of the parties-express or implied-is the law”¹⁰⁴. Therefore, the intentions of the parties cannot be substituted or transformed by the application of the principle of effectiveness as sometimes parties to treaties desire the treaty to be only partly effective. As a result, principle of effectiveness cannot exist independent of the intention, explicitly or legitimately implied, of the parties¹⁰⁵. However, the author notes, that in the absence of the clear intentions of the parties, the treaty shall be interpreted in accordance with the principle of effectiveness and the purpose of the treaty. In any case, the subjective school adopts the view, that to establish correct meaning of the provision of a text, firstly it is important to look at parties’ intentions when drafting and signing the treaty. For example, a concise expression of subjective school assumptions might be found in the Article 19 of the Harvard Law School’s proposed 1935 Draft Convention on the Law of Treaties, where it is stated that “A treaty is to be interpreted in the light of the general purpose which is intended to serve. The historical background of the treaty, *travaux preparatoires*, the circumstances of the parties at the time the treaty was entered into, [...], the conditions prevailing at the time interpretation is made are to be considered in connection with general purpose which the treaty is intended to serve”¹⁰⁶. Therefore, the main tool in the interpretative process should be the recourse to *travaux preparatoires* where historical background and the circumstances in which treaty was signed are discussed¹⁰⁷.

The final approach to the interpretation of the treaty is the textual school, which presumes that “the intention of the parties is adequately expressed in the text of the treaty”¹⁰⁸. The main goal of this

¹⁰⁰ G. G. Fitzmaurice, “Law and Procedure of the International Court of Justice: Treaty Interpretation and Certain Other Treaty Points”, *British Year Book of International Law* 1, 28 (1951): 8.

¹⁰¹ Hersh Lauterpacht, “Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties”, *British Year Book of International Law* 48, 85 (1949): 72.

¹⁰² *Ibid.*, 72.

¹⁰³ David Schweignam, *supra* note, 98:11.

¹⁰⁴ Hersch Lauterpacht, *supra* note, 100:73.

¹⁰⁵ *Ibid.*, 74.

¹⁰⁶ David D. Caron, et al., *Practising virtue inside international arbitration* (Oxford: Oxford University Press, 2016), 436-437.

¹⁰⁷ David Schweignam, *supra* note, 98:11

¹⁰⁸ *Ibid.*

approach is to analyze the text in accordance with the ordinary meaning of the words used in the treaty. Emer de Vattel, Swiss philosopher, diplomat and legal expert, was an early proponent of this approach, “as he argued that “when a deed is worded in clear and precise terms, when its meaning is evident and leads to no absurdity, there is no ground for refusing to accept the meaning which the deed naturally presents”¹⁰⁹¹¹⁰. Moreover, E. de Vattel set out five interpretive maxims, from which the most well-known is: “If text is clear, no additional ‘interpretation’ should be done”¹¹¹. It is, therefore, submitted that Vattel’s textualism was motivated primarily by the honesty, transparency and faithfulness of the parties, as he believed, that in most cases parties express themselves very clearly when drafting the text of the treaty. Thus, only in particular circumstances the treaty interpreter needs to use interpretive tool in order to determine the actual meaning of the intention of the parties¹¹².

As it was stated above, in the opinion of the author, the UN Charter must be interpreted putting the emphasis on the purpose and object of the organization. Therefore, the teleological approach must be adopted. The UN Charter shall be interpreted in the way to reflect and to adapt to the ongoing changes on the global scale, as the international relations are dynamic, therefore particular situations constantly occur, raising certain changes within the international community, Moreover, the language of the Charter is inherently ambiguous¹¹³, thus, there will always be problems arising from the interpretation of provisions embodied in the Charter. Furthermore, the author asserts that the United Nations is highly politicized organization, therefore sometimes the Charter interpretations are based on the political assumptions rather on the legal considerations. This view is similarly observed by Goodrich, Hambro and Simons, who noted that “[...] since the responsibility for interpretation is vested in organs and members alike, the process is more likely to be political than judicial [...]”¹¹⁴. Eventually, “interpretation is a process [...] it cannot be reduced to a few propositions capable of purely automatic application in all circumstances”¹¹⁵. Thus, even if the teleological approach is applied, when interpreting particular provisions of the Charter, the author wants to note, that in general, it is argued that the rules of interpretation serve rather as guidelines, than strict rules to be followed.

¹⁰⁹ Ibid., p. 12

¹¹⁰ Andrew Tutt, “Treaty Textualism”, *Yale Journal of International Law* 39 (2014):295, <http://digitalcommons.law.yale.edu/yjil/vol39/iss2/4>

¹¹¹ Ibid., 297.

¹¹² Ibid., 298.

¹¹³ Ibid.

¹¹⁴ Benedetto Conforti, et.al., *supra* note, 97:20.

¹¹⁵ Ian Sinclair, *The Vienna convention on the law of treaties*, 2nd ed. (Manchester: Manchester University Press, 1984), 153.

2.2. UN Charter provisions related to the use of force

2.2.1. The Article 2 (4) of the UN Charter

One of the most important purposes of the United Nations, according to the Article 1 (1) of the Charter is the maintenance of the international peace and security. Additionally, “the central feature of the modern international legal system in comparison with “classical” international law is the normative attempt to control the use of force”¹¹⁶. Therefore, in order to achieve the aforementioned goal, the Article 2 (4) of the UN Charter provides that: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”¹¹⁷. As it was stated by the ICJ in the *Case Concerning the Military and Paramilitary Activities in Nicaragua* (thereafter *Nicaragua vs. USA*), the prohibition of the use of force which is found in the Article 2 (4) of the Charter of the United Nations is also customary international law, therefore it binds all states and is the rule of the universal validity¹¹⁸. In addition to this, this rule is recognized as the *jus cogens* by the ICJ and the International Law Commission (thereafter the “ILC”)¹¹⁹. When interpreting this provision, several important issues must be addressed.

Firstly, the Article 2 (4) talks about the “threat or use of force”, but not about the “war”¹²⁰. In this respect, it must be noted that when states engage in the hostilities they usually do not declare the war. And this is done because of that the declaration of the war has particular consequences as, for instance: the termination of diplomatic relations, the termination of certain categories of treaties between states and others. Thus, the Article 2 (4) applies “to all force regardless of whether or not it constitutes a technical state of war”¹²¹. Additionally, the word “force” used in the Article 2 (4) does not specify what kind of the force the term includes. The main question which arises in this regard is whether it encompasses only military type of force or also includes force which is of non-military in the nature. According to the commentary on the UN Charter, the *travaux preparatoires* of the Charter indicate that the prohibition on the threat and use of force is primarily directed with the military

¹¹⁶ Peter Malanczuk, *Akehursts modern introduction to international law*, 7th ed. (New York: Routledge, 1997), 309.

¹¹⁷ “Art. 2(4) of the Charter of the United Nations”, October 24, 1945, 1 UNTS XVI,
<http://legal.un.org/repertory/art2.shtml>

¹¹⁸ *Military and Paramilitary Activities in und against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986,14., para. 187-201, 88-96.

¹¹⁹ *Nicaragua v. USA*, *supra* note, 118: para. 190-191, 101-102; “Report of the of the International Law Commission on the work of its Eighteenth Session 4 May - 19 July 1966”, Official Records of the General Assembly, Twenty first Session, Supplement No. 9, U.N. Doc. A/6309/Rev.1.

¹²⁰ Peter Malanczuk, *supra* note, 116:309.

¹²¹ *Ibid.*

force¹²². Furthermore, the Article 2 (4) prohibits the threat and use of force only against “the territorial integrity or political independence” of any state or in any other manner which is inconsistent with the Purposes of the UN¹²³. Therefore, in the author’s view, the force used for other wide variety of purposes such as, for example, to protect human rights may be legal under the international law if it is in the consistency with the purposes of the UN. On the contrary, any force used against the interests of the international peace and security is inconsistent with the purposes of the United Nations. This kind of “broad normative scope of prohibition”¹²⁴ of the use of force can be find in the Friendly Relations Declaration which was adopted by the UN General Assembly (thereafter the “UNGA”) in 1970 where it is stated that: “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law”¹²⁵. Nevertheless, the prohibition of the use of force and its limits in international law remains the subject of controversy, an actual state practice which will be discussed in more details in the last chapter of the thesis, as well as the ineffectiveness of the UN SC raises the question whether the norm embodied in the Article 2 (4) remains still valid.

2.2.2. The Article 2 (7) of the UN Charter

According to the Article 2 (7) of the UN Charter, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”¹²⁶. This provision embodied in the UN Charter is the legal basis for the non-intervention principle, which is the part of the customary international law¹²⁷. However, in the author’s view, the non-intervention provision embodied in the Article 2(7) of the UN Charter does not refer to the duty of the non-intervention which is established in the general international law. This particular provision puts an emphasis on the intervention by the organs of the United Nations rather than the intervention

¹²² Brunno Simma, *The Charter of the United Nations: A Commentary*, 2nd ed. (New York: Oxford University press, 2002), 462.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ UNGA “*Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nation*”’s, 24 October 1970, U.N. Doc. A/RES/2625(XXV).

¹²⁶ “Art. 2(7) of the United Nations Charter”, October 24, 1945, 1 UNTS XVI.

¹²⁷ *Nicaragua v. USA*, supra note, 118: para. 246, 126.

of one State to another's affairs. Therefore, the following issues regarding the Article 2 (7) shall be addressed.

Firstly, according to the Article 2 (7), the United Nations do not have the right to intervene in domestic affairs on any State, thus it is determined that domestic affairs of every State shall be respected. In addition to this, matters of the domestic nature cannot be submitted for the UN peace dispute settlement. Finally, the Article 2 (7) embodies the exception to the rule of the non-intervention, which is limited to the enforcement measures under the Chapter VII of the Charter. It is, therefore, submitted that enforcement measures undertaken by the UN based on the Chapter VII of the Charter does not constitute the breach of the Article 2 (7) of the Charter.

The intervention upon invitation

The general dictum of the principle of non-intervention in the general international law is embodied in the GA Resolution 2625 (XXV), which approved the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States¹²⁸. It was reaffirmed in the *Nicaragua v. USA* case, where the ICJ stressed that the principle of non-intervention prohibits the State "to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another State"¹²⁹. However, the author asserts that international law recognizes the right of the government to request foreign assistance, including also military intervention. This was confirmed by the ICJ in the *Nicaragua v. USA* case, where the Court observed that intervention is "[...] allowable at the request of the government of a State"¹³⁰. The same view was reaffirmed in the *Congo v. Uganda* case¹³¹. In this respect, the author declares that for the intervention upon invitation to be justified under the international law, the consent issued by the State must be invoked properly.

The international law establishes certain conditions for the consent to be regarded as valid. As the author noted above, any use of the force in the foreign country's territory would constitute a breach of the international obligation. However, the State may give the consent for the intervention, which must be valid for it to preclude wrongfulness. The ILC's adopted Draft articles on Responsibility of States for Internationally Wrongful Acts (thereafter the "DASR"), which "formulate, by way of codification and progressive development, the basic rules of international law concerning the

¹²⁸ UNGA U.N. Doc. A/RES/25/2625 (October 24, 1970).

¹²⁹ *Nicaragua v. USA*, supra note, 118: para. 205, 107.

¹³⁰ Ibid.

¹³¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, para. 42-53, 196-199.

responsibility of States for their internationally wrongful acts”¹³². According to the Article 20 of the DASR, which reflects the basic international law principle of the consent, “Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent”¹³³. In this respect, it must be noted that “The consent must be freely given and clearly established. It must be actually expressed by the State rather than merely presumed on the basis that the State would have consented if it had been asked. Consent may be vitiated by error, fraud, corruption or coercion [...]”¹³⁴. Additionally, for the consent to be considered as a valid, it must be issued by the agent or person, who is authorized to do so on behalf of the State. Moreover, the consent must be issued before the intervention or at the time it is occurring, but not after the intervention is already conducted¹³⁵. It is, therefore, submitted that for the consent to be valid four conditions must be satisfied: 1) consent for intervention must be issued by the agent or person, who is authorized to do so on behalf of the State, 2) prior or at the current time of intervention; 3) without error, fraud, corruption or coercion, and 4) the assistance must remain within the limits of that consent.

Another important issue to be addressed regarding the principle of the intervention upon invitation is whether it is allowable during the civil war. Firstly, it must be noted that in the *Nicaragua v. USA* case, the ICJ was concerned about the effectiveness of the principle of non-intervention due to the fact that “the threshold of giving consent to intervention was so low it could be met by any entity, anytime”¹³⁶. The Court stressed in the same case, that “[...] This would permit any State to intervene at any moment in the internal affairs of another State, whether at the request of the government or at the request of its opposition. Such a situation does not in the Court's view correspond to the present state of international law”¹³⁷. However, in the opinion of the author, there is no clear ICJ ruling on this matter. This view is supported by the scholars, such as Y. Dinstein, G. H. Fox, L. Visser, who agrees that a government can issue a valid invitation even during the civil war¹³⁸. Additionally, it must be stressed that in the *Nicaragua v. USA* case, the ICJ linked the legality of the intervention with the right of self-determination by stating that “[...] The principle forbids all States

¹³² Commentaries to the draft articles on Responsibility of States for internationally wrongful acts adopted by the International Law Commission at its fifty-third session (2001), 31.

¹³³ *Ibid.*, p. 72.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ Gabor Kajtar, “The Use of Force against ISIL in Iraq and Syria - A Legal Battlefield”, *Wisconsin International Law Journal*, Vol. 34, Issue 3 (2017), 560.

¹³⁷ *Nicaragua v. USA*, *supra* note, 118: para. 246, 126.

¹³⁸ Gabor Kajtar, *supra* note, 136: 560.

or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty to decide freely [...].”¹³⁹. Moreover, according to the UNGA Resolution 2265, which is considered to be as a declaratory of customary international law¹⁴⁰, “[...] all peoples have the right freely to determine, without external interference, their political status [...] and every State has the duty to respect this right in accordance with the provisions of the Charter”¹⁴¹. In this respect, the author notes, that in the *East Timor* case, the Court observed that “[...] the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character”, therefore the right of peoples to self-determination is regarded as specifically determined obligation that states have towards the international community as a whole.

To conclude, it must be stressed that the intervention upon invitation is justified under the international law, if the State’s consent is invoked properly. Additionally, the author agrees with the position that there is no general rule prohibiting the government to issue a valid invitation even during the civil war unless military assistance on request do not deprive the right of peoples to self-determination.

2.3. The Chapter VII of the UN Charter

Chapter VII of the UN Charter embodies the responsibility and power of the Security Council to maintain international peace and security by interfering in situations when there is existence of any threats to the peace, breaches of the peace or acts of aggression. Moreover, exceptions to the prohibition of the use of force, are also enshrined in the Chapter VII of the UN Charter.

To start with, the Security Council may adopt provisional measures in conformity with the Article 40, which states that “In order to prevent an aggravation of the situation, the Security Council may, [...] call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable [...]”¹⁴². The term “call upon” is often used in the United Nations resolutions “as a synonym for the word “recommend””¹⁴³, however, when on 15 July 1948 UN Security Council passed a resolution¹⁴⁴ ordering to cease fire between Arabs and Israel, this was clearly understood as creating the legal obligation for both parties to obey. Usually, such resolutions are not followed, unless

¹³⁹ *Nicaragua v. USA*, *supra* note, 118: para. 205,106.

¹⁴⁰ *Ibid.*, para. 188, 99.

¹⁴¹ *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, October 1970, A/RES/2625(XXV).

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ U.N. Doc. S/902, S/RES/54 (15 July 1948).

they are based on more severe measures if the parties do not cease fire between themselves¹⁴⁵. Therefore, most of cease-fire resolutions are understood as recommendations, rather than creating legal obligations for the States involved in the resolution. This understanding is mainly based on the assumption that members of SC feel morally obligated to enforce certain action against states which disobeyed the order, however, on the contrary, they are unwilling to take an enforcement action against states which they consider as their allies¹⁴⁶. What is more, “enforcement action *stricto sensu* can take two forms”¹⁴⁷: the first one- non-military enforcement action and the second one-military enforcement action, which are included in the Articles 41 and 42 accordingly. Decision to apply certain non-military enforcement actions such as economic sanctions are binding for the member states called upon¹⁴⁸.

2.3.1. The Security Council Resolution

The first exception to the prohibition of the use of force under the Article 2 (4) is the Security Council Resolution adopted in accordance with the Article 42 of the Charter. The Article 42 can be invoked when “measures provided for in Article 41 would be inadequate or have proved to be inadequate [...] to maintain or restore international peace and security”¹⁴⁹. Additionally, the Article 42 of the Charter shall be read together with the Article 43, which mainly enables the SC’s decisions based on the Article 42 to undertake military enforcement actions by making a special agreement or agreements necessary for the aim of maintaining the international peace and security. Even though Member States have never made special agreements on a basis of the Article 43, that does not preempt Member States of the disposal of *ad hoc* troops at the SC disposal. Moreover, emphasis shall be added to the differentiation between the obligation of the Member State to participate in military enforcement actions and its participation in non-military enforcement actions.

The author asserts that the Security Council cannot order for the State to participate in the military enforcement action under the Article 42, unless that State made specific agreement under the Article 43. But, the SC can authorize the State to use the force under the circumstances which would normally be illegal, if the authorization meets the criteria under the Articles 42 and 43 accordingly¹⁵⁰.

¹⁴⁵ Peter Malanczuk, *supra* note, 116:388.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid., 389.

¹⁴⁸ Ibid.

¹⁴⁹ “Art. 39-51 of the United Nations Charter”, United Nations, <http://www.un.org/en/sections/un-charter/chapter-vii/index.html>

¹⁵⁰ Peter Malanczuk, *supra* note, 116:390.

Furthermore, if the Article 42 empowers the SC to use the force in the circumstances described in the Article 39, it is considered that this decision *a fortiori* enables the SC to authorize member states to do the same¹⁵¹. However, the SC's decision to use the force can only be a recommendation and it does not bind members to implement military measures without their consent¹⁵². On the other hand, the SC's decision has a legal effect and is binding upon the target state of the resolution as the state in that case is prohibited of invoking the self-defense under the Article 51 of the Charter. What shall be emphasized here is that, in any case, enforcement measures applied in the SC's resolution requires the explicit reference to the Article 42 and Article 43 (or in general to the Chapter VII of the Charter) to determine parties' legal obligations under the adopted resolution¹⁵³. It is, therefore, submitted that the Security Council's decision (obligatory with reference to Chapter VII of the Charter) has a double effect, as from one side the decision is binding upon the target state, on the other side it is a recommendation regarding authorized member states justifying the use of force, which otherwise would be prohibited by the Article 2 (4) of the Charter.

2.3.2. The Right To Self-Defence

The right to the use the force under the Article 51 of the United Nations Charter in individual or collective self-defence is another exception to the prohibition of the use of force, however its extent is quite controversial.

To start with, the Article 51 of the Charter provides that “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security”¹⁵⁴. In accordance with the “armed attack” criterion embodied in the Article 51 of the Charter and for the invoked self-defence to be lawful, two more criteria must be met. As it was stated by the ICJ in the *Nicaragua vs. USA* case “[...] whether the response to the attack is lawful depends on observance of

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ United Nations Charter, *supra* note, 149

the criteria of the necessity and the proportionality of the measures taken in self-defence”¹⁵⁵. The Court reiterated the same assertion in the *Case concerning oil platforms*, by stating that “[...] the criteria of necessity and proportionality must be observed if a measure is to be qualified as self-defence”¹⁵⁶.

2.3.2.1. The Criteria for the Self-Defense

Necessity

The ICJ in the Advisory Opinion on the *Legality of The Threat or Use of Nuclear Weapons* ruled that “The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law”, thus the conditions of the proportionality and necessity is the part of the customary law¹⁵⁷. The criterion of necessity means that it is incumbent on the State invoking the self-defence to establish in the unequivocal manner that an armed attack was conducted by a certain country against which it is forcibly responding¹⁵⁸. In addition to this, the author asserts that the State must also verify that the armed attack of the other State was not a mere accident or mistake, but, instead, armed attack was of the intentional nature. The ICJ reiterated this assertion in the *Case concerning oil platforms*, when the Court ruled that the armed attack must be “aimed specifically”¹⁵⁹ at the target country.

The following issue to be stressed is that in the *Nicaragua vs USA* case, the ICJ observed that “there is a specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in international law”¹⁶⁰. It is, therefore, submitted that in the case of self-defence, firstly, the principle of necessity means that the State has no alternative to the use of force in order to rectify the situation, which constitutes an armed attack and secondly, the use of force is restricted to the necessary minimum in order to repulse the armed attack¹⁶¹.

Proportionality

Regarding the principle of proportionality, it must be noted that the proportionality in the context of self-defence refers to the *jus ad bellum* and it must be distinguished from the principle of

¹⁵⁵ *Nicaragua v. USA*, *supra* note, 118: para. 194., 103.

¹⁵⁶ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I. C. J. Reports 2003, para. 43, 183.

¹⁵⁷ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I. C.J. Reports 1996 para. 41, 245.

¹⁵⁸ Yoram Dinstein, *War, Aggression and Self-defence*, 5th ed. (Cambridge, United Kingdom: Cambridge University Press, 2012), 231.

¹⁵⁹ *Oil Platforms*, *op.cit.*, para. 64., 192.

¹⁶⁰ *Nicaragua vs USA*, *supra* note, 118: para. 176., 94.

¹⁶¹ Peter Malanczuk, *supra* note, 116:317.

proportionality as applied by the *jus in bello* in the international humanitarian law¹⁶². Additionally, as it was stated above, the ICJ in the *Nicaragua vs USA* case, stressed that the principle of the proportionality in the concept of self-defence “limits a response to what is needed to reply to an attack”¹⁶³. However, in the author’s view it is not quite clear how the proportionality shall be measured. The question arises whether the proportionality shall be measured regarding the view to the end of the restoration of *status quo* situation or the danger of the repetition of the attack shall be taken into consideration¹⁶⁴. The Judge Schwebel in his Dissenting Opinion in the *Nicaragua vs USA* case argued that, “It would be mistaken [...] to think that there must be proportionality between the conduct constituting the armed attack and the opposing conduct”¹⁶⁵. The author agrees with this position that the principle of proportionality refers to actions, undertaken in order to repel to the attack without comparing them to the mode of the initial attack or to the mode of the actual response. Therefore, with the respect to self-defense, the author agrees with the position that the principle of proportionality refers to the situation when no more force than required to repel the attack is used.

“Armed attack” Criterion

Turning back to the aforementioned “armed attack” criterion, it must be stressed that the Article 51 of the Charter indicates the “armed attack” as the condition for the exercise of the self-defence. As the ICJ ruled in the *Nicaragua vs USA* case, “[...] a definition of the "armed attack" which [...] authorizes the exercise of the "inherent right" of self-defence, is not provided in the Charter, and is not part of treaty law”¹⁶⁶. The author notes, that the statement of the Court was linked mainly to the argument that the Article 51 of the Charter was referring to the customary international law which exist alongside with the treaty law¹⁶⁷. Therefore, customary international law determines the content of the term of “armed attack”.

On 14 December 1974, the GA adopted the Resolution 3314 (XXIX) “Definition of Aggression”, where the Article 3 of the “Definition of Aggression”, annexed to the resolution, provided a list of acts which qualify as an act of the aggression¹⁶⁸. The ICJ in the *Nicaragua vs USA* case, argued that “[...] the description, contained in the paragraph (g) of the Article 3 of the Definition of Aggression annexed to GA 3314 (XXIX) may be taken to reflect customary international law

¹⁶² Yoram Dinstein, *supra* note, 158: 233.

¹⁶³ *Nicaragua vs USA*, Dissenting Opinion of Judge Higgins, para. 5., 583.

¹⁶⁴ Peter Malanczuk, *supra* note, 116:317.

¹⁶⁵ *Nicaragua vs USA*, Dissenting Opinion of Judge Schwebel, para.212., 67.

¹⁶⁶ *Nicaragua vs USA*, *supra* note, 118: para. 176., 94.

¹⁶⁷ *Ibid.*

¹⁶⁸ U.N. Doc. A/RES/29/3314, Resolution 3314 (XXIX), “Definition of Aggression” (14 December 1974).

[...]”¹⁶⁹. Moreover, in the case of the *Armed Activities*¹⁷⁰, the ICJ, as well as in the *Nicaragua vs USA*¹⁷¹ case, applied the GA Resolution 3314 as the basis for its analysis regarding the definition of the armed attack. Furthermore, the author notes, that in the *Nicaragua vs USA* case, the ICJ defined the “armed attack” as “the most grave form of the use of force”¹⁷². The Preamble of the GA Resolution states similarly to the ICJ that “aggression is the most serious and dangerous form of the illegal use of force”. In the author’s view, the GA Resolution 3314 as well as the ICJ’s practice on the meaning of armed attack is of extreme importance when defining the meaning of the armed attack in the international law.

The ICJ has distinguished the relationship between the terms “armed attack” and the “use of force” when in the *Nicaragua vs USA* case the Court ruled on a difference between the “most grave forms of the use of force” and “other less grave forms”¹⁷³. As a result, in the opinion of the author, this indicates that there exists certain threshold which is required for the act to qualify as the armed attack. Therefore, the author asserts that not all attacks where the use of force is used illegally against the State guarantee the right for the State to invoke the self-defence. Put another way, “It follows that minor violations of the prohibition of the use of force falling below the threshold of the notion of armed attack do not justify a corresponding minor use of force as self-defence”¹⁷⁴. The ICJ supported this view in the aforementioned case, when making an example that “mere frontier incident”¹⁷⁵ because of its scale and effect do not necessary imply to be considered as the armed attack. Nevertheless, the author asserts that there is no universally accepted demand of the use of force which is need in order to meet the certain threshold of “scale and effects” as to be regarded as the armed attack. For example, according to Y. Dinstein, “the gap between “use of force” under the Article 2 (4) and “an armed attack” under the Article 51 ought to be quite narrow”¹⁷⁶. In his opinion, any use of the force that cause casualties or serious damage to the property constitutes an armed attack¹⁷⁷. Furthermore, according to the authors of the Chatham House Principles of International Law on Use of Force in Self-Defence, “[a]n armed attack means any use of armed force, and does not need to

¹⁶⁹ *Nicaragua v. USA*, *supra* note, 118: para. 195., p. 103.

¹⁷⁰ *Democratic Republic of the Congo v. Uganda*, *supra* note, 131: para.146., 222.

¹⁷¹ *Ibid.*

¹⁷² *Nicaragua vs USA*, *op.cit.*, para. 191., 101.

¹⁷³ *Ibid.*

¹⁷⁴ Enzo Cannizzaro, “Contextualizing Proportionality: Jus ad Bellum and Jus in Bello in the Lebanese War”, *International Review of the Red Cross* 88(864), (2006):782.

¹⁷⁵ *Nicaragua vs USA*, *supra* note, 172.

¹⁷⁶ David Kretzmer, “The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum”, *The European Journal of International Law* Vol. 24 no. 1 (2013):243, <http://www.ejil.org/pdfs/24/1/2380.pdf>

¹⁷⁷ *Ibid.*

cross some threshold of intensity”¹⁷⁸. The author notes, that the ICJ has never expressly suggested a general approach on evaluating whether particular attack reached the threshold in order to be defined as an armed attack. But in the *Oil Platforms* case, the Court indicated that, for instance, “the cumulative nature of a series of forcible actions could possibly turn them into an ‘armed attack’¹⁷⁹. It is, therefore, submitted that not all attacks where use of force is used illegally against the State constitutes an armed attack. The author asserts that, in general, certain scale and effects of an armed attack evaluated on case-by-case basis implies that the act may be considered as the armed attack and the State acquires the right to invoke the self-defence.

In addition to the criterion of an armed attack, the Article 51 sets out two other criteria for the exercise of self-defence¹⁸⁰. The first criterion is of the procedural nature and requires measures taken in regard to the self-defence to be reported to the Security Council¹⁸¹. Second criterion emphasizes, that under the Article 51 of the Charter, the use of the force in the self-defence must be terminated once “the Security Council has taken measures necessary to maintain international peace and security”¹⁸². It is, therefore, submitted that actions taken in the self-defence must be ended once the Security Council has taken measures to mitigate the necessity of the defence.

Armed Attack by the State

The Article 51 of the Charter implies that an armed attack which occurs against the Member State of the United Charter is launched by the “attacker”, that is naturally considered to be government or State, because they have the power to control armed forces at their disposal. This view was confirmed by the ICJ in the *Congo v. Uganda*¹⁸³ case and in the ICJ’s Advisory Opinion on the *Wall* case, where the Court ruled that “Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State”¹⁸⁴. However, the author disagrees with the assertion that the right to self-defence exists in the cases where armed attack is exclusively launched by one State against another State. Even the ICJ in the *Nicaragua v. USA*¹⁸⁵

¹⁷⁸ Ibid.

¹⁷⁹ Ibid., 244.

¹⁸⁰ James Green., Francis Grimal, “The threat of force as an action in self-defence under International law”, *Vanderbilt Journal of Transnational Law* 44 (2) (2011):299, 301.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ *Democratic Republic of the Congo v. Uganda*, *supra* note, 131: para. 146-7., 223.

¹⁸⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I. C. J. Reports 2004, para.139., 194.

¹⁸⁵ *Nicaragua vs USA*, *supra* note, 118: para. 195.,103.

case supported this view and provided an opinion, that was different from the one stated in the *Wall* case.

In the aforementioned case the Court also stressed that an attack by the non-state actor is attributable to the State, if the State has effective control of it¹⁸⁶. However, the author notes that this view was disputed by the International Criminal Tribunal for the former Yugoslavia (thereafter the “ICTY”) in the *Tadić* case, where the Tribunal held that the overall control of the State is enough to attribute certain attack to the State¹⁸⁷. Despite the ICTY decision, the ICJ did not change its opinion and later in the judgment on the *Genocide in Bosnia*, ruled that “The Court has given careful consideration to the Appeals Chamber’s reasoning in support of the foregoing conclusion, but finds itself unable to subscribe to the Chamber’s view” as “[...] the “overall control” test has the major drawback of broadening the scope of State responsibility well beyond the fundamental principle governing the law of international responsibility [...]”¹⁸⁸. In the author’s view there are several reasons why the ICJ in *Genocide in Bosnia* case supported the “effective control” test and, accordingly, in the *Tadić* case the ICTY applied the “overall control test”.

Firstly, in the *Tadić* case, the ICTY had to determine whether an armed conflict was of the international nature and “not with regard to the different issue of state responsibility”¹⁸⁹. Secondly, the “overall test” as the ICJ ruled in the *Genocide in Bosnia* case, would have broadened the scope of the State’s responsibility “well beyond the fundamental principle governing the law of international responsibility”¹⁹⁰. In addition to this, the author notes that in regard to the ICTY decision, there were no rules of the international humanitarian law to be used in order to determine whether the armed conflict was of the internal or international nature. Thus, the ICTY decided to rely on the international rules on states’ responsibility¹⁹¹ and applied the “overall control” test to assist as the criterion when determining whether actions of the particular organized groups can be attributed to the certain State. On the other hand, in the case of *Genocide in Bosnia*, the Court clearly draw the line between the “overall” and “effective” control tests, emphasizing that only in the cases, “where an organ of the State gave the instructions or provided the direction pursuant to which the perpetrators of the wrongful

¹⁸⁶ Ibid., para. 109., para. 115., 62, 65.

¹⁸⁷ Prijedor, Prosecutor v Tadić (Duško), Appeal judgment, Case No IT-94-1-A, ICL 93 (ICTY 1999), [1999] ICTY 2, (2003) 124 ILR 63, (1999) 38 ILM 1518, 15th July 1999, United Nations Security Council [UNSC]; International Criminal Tribunal for the former Yugoslavia [ICTY]; Appeals Chamber [ICTY], para. 145., 62.

¹⁸⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para 403-6., 209-210.

¹⁸⁹ Antonio Cassese, “The *Nicaragua* and *Tadić* Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia”, 18 EJIL 649 (2007):649, <http://www.ejil.org/pdfs/18/4/233.pdf>

¹⁹⁰ *Bosnia and Herzegovina v. Serbia and Montenegro*, supra note 188: para 406, 210.

¹⁹¹ Antonio Cassese, op.cit., 649.

act acted or where it exercised effective control over the action during which the wrong was committed”¹⁹², the responsibility of the State can rise. It is, therefore, submitted that the “overall control” test “[...] stretches too far, almost to breaking point, the connection which must exist between the conduct of a State’s organs and its international responsibility”¹⁹³ .

The author asserts that when deciding on the State’s responsibility both test shall assist and must be evaluated based on the circumstances of every particular case, however, considering the ongoing trend in the world’s community, that is that terrorist groups often are supported by States, several issues must be addressed. In the opinion of the author, the problem with the “effective control” test is that it may be extremely difficult to prove that a certain terrorist organization, for instance, the Islamic State, acts under the instructions or directions or under the specific control of the particular State in such manner as to imply that the State had the power to direct individual terrorist actions. This is due to the nature of those groups, as they are often located in different countries, as well as acts as small units under the direction of their leaders and all these factors make almost impossible to prove who exactly issued instructions or directions regarding the particular terrorist operation. However, if to rely on the “overall control” test, it may be sufficient “to demonstrate that certain terrorist units or groups are not only armed or financed (or also equipped and trained) by a specific state or benefit from its strong support, but also that such state generally speaking organizes or coordinates or at any rate takes a hand in coordinating or planning its terrorist actions [...]”¹⁹⁴. Therefore, the author asserts that with the application of the “overall control” test it would be rather easier to link the terrorist activities to the certain state. In any case, the application of both tests depends not only on each case’s individual circumstances but also the emphasis must be put to the state practice and the case-law in regard to the attribution of the responsibility to the State.

Armed Attack by a Non-State actor

Recalling stated above, it must be stressed that even though the UN Charter strictly includes only inter-state context regarding the right to self-defence, what remains disputable in this case is that whether the right of self-defence may be invoked in the case of armed attack by the non-state actor (thereafter the “NSA”). In the author’s view, the point of departure of the legal debate starts within the logic that the Article 51 implies that a state can respond to an armed attack with defensive forces only if the attack is attributable to certain state. This is due to the Article 2 (4) of the Charter, which

¹⁹² *Bosnia and Herzegovina v. Serbia and Montenegro*, *supra* note, 188: para. 406., 210.

¹⁹³ *Ibid.*

¹⁹⁴ Antonio Cassese, *supra* note, 189:666.

prohibits “the threat or use of force against the territorial integrity or political independence of any state”¹⁹⁵.

As it was stated before, the ICJ links terms “aggression” and the “use of force” on the basis of the UN Definition of Aggression, however even the UN Definition of Aggression recognizes only acts of aggression which may be launched by the NSA, but still these acts must be attributable to the certain state. The main problem with the exclusivity of the definition of “armed attack” is that it is “limited to attributable force fails to respond to security concerns of states which may be the victim of un-attributable attacks”¹⁹⁶. Therefore, the author asserts that even though the UN Definition of Aggression do not recognize acts carried out exclusively by NSA without the attribution to any State, this does not preclude the possibility that armed attacks may be in general un-attributable to any State.

In the *Congo v. Uganda* case the ICJ ruled that “there is no need to respond to the contentions of the Parties as to whether and under what conditions contemporary international law provides for a right of self-defence against large-scale attacks by irregular forces”¹⁹⁷, therefore the legitimacy of defensive forces against the NSA was left explicitly open. In this respect, the author notes that non-state actors such as globally acting terrorist organizations have a network of cells working for them in various countries and those cells are directed sometimes even from unknown headquarters. As a result, this kind of organizations do not have the territory of their own, instead operate from territory of one or even several countries. Even though in the *Corfu Channel* case, the ICJ ruled that in any case “[...] every State's obligation is not to allow knowingly its territory to be used for acts contrary to the rights of other States”¹⁹⁸, however, in the authors’ view, in practice sometimes the “host” State is unwilling or unable to control or prevent cross-border attacks which are defined as the “armed attack” by the victim State. Thus, the author supports the view that an armed attack launched by the NSA preserves the right to the victim State to invoke self-defence under the Article 51 of the Charter. Christopher Goodman, an English judge at the International Court of Justice, agrees with this position and states that the world community’s reaction to the events of September 11, 2001 clearly confirmed states’ view that the concept of an armed attack cannot be limited only to State’s acts¹⁹⁹. Moreover, right

¹⁹⁵ Kimberley Natasha Trapp, “Can Non-State Actors Mount an Armed Attack?”, Oxford Handbook on the Use of Force, M Weller, ed., OUP (Forthcoming) (2014):1, <https://ssrn.com/abstract=2407477>

¹⁹⁶ Ibid., 2.

¹⁹⁷ *Democratic Republic of the Congo v. Uganda*, *supra* note, 131: para.147., 223.

¹⁹⁸ *Corfu Channel* case, Judgment of April 9th, 1949: I.C. J. Reports 1949, 22.

¹⁹⁹ Christopher Greenwood, “International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq”, *San Diego International Law Journal* (2003), 16.

after the September 11 attacks, The UN Security Council adopted resolutions 1368²⁰⁰ and 1373²⁰¹ where the SC “[...] expressly recognized the right of self-defense in terms that could only mean it considered that terrorist attacks constituted armed attacks for the purposes of Article 51 of the Charter, since it was already likely, when these resolutions were adopted, that the attacks were the work of a terrorist organization rather than a state”²⁰². C. Stahn supports this view by stating that drafters of the UN Charter deliberately left open the interpretation of the concept of an “armed attack” to the organs and Member States of the UN Charter²⁰³. Furthermore, he stressed, that an expansion of the Article 51 of the Charter simply opens a broader spectrum of justifications for what continued to be unlawful conduct under Article 2(4)²⁰⁴, thus, the author agrees with the position that broad interpretation of the Article 51 of the Charter does not erode the prohibition of the use of force, which is embodied in the Article 2(4). Additionally, in the opinion of the author, the international community must have certain *modus operandi* in order not to be left in an invidious position where States will lose an opportunity to invoke the self-defence measures under the Article 51 of the Charter only because of the fact that they were attacked by un-attributable NSA.

2.3.2.2. Unwilling or Unable Doctrine

As it was stated before, in the *Corfu Channel* case, the ICJ ruled that “[...] every State's obligation is not to allow knowingly its territory to be used for acts contrary to the rights of other States”²⁰⁵. However, the author asserts that in practice sometimes the “host” State is unwilling or unable to control or prevent cross-border attacks which are defined as the “armed attack” by the victim State. The unwilling and unable doctrine is not embodied in the UN or applied in any of the ICJ's judgments. The only international treaty which adopts the wording of “unwilling or unable” is the Rome Statute of the International Criminal Court²⁰⁶, however in the context different from the discussed here. It is, therefore, submitted that there are no universally accepted requirements defining the “unwilling or unable” doctrine. However, two main views prevail.

Firstly, it is argued that the State's territory where NSA are operating is “inviolable absent an exception that applies to the State itself, as in a Chapter VII authorization permitting military

²⁰⁰ U.N. Doc. S/RES/1368 (2001), Security Council Resolution 1368 (2001), 4370th meeting, preamble. & para. 3.

²⁰¹ U.N. Doc. S/RES/1373 (2001), Security Council Resolution 1373 (2001), 4385th meeting., preamble. & para. 4.

²⁰² Ibid.

²⁰³ Carsten Stahn, “Terrorist Acts as Armed Attack: The Right to Self-Defense, Article 51(1/2) of the UN Charter, and International Terrorism”, 27 *The Fletcher Forum of World Affairs* 35, 54 (2003): 36, 37.

²⁰⁴ Ibid., 38.

²⁰⁵ *Corfu Channel* case, *supra* note, 198:22.

²⁰⁶ “Article 17”, UNGA, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998.

operations on the territory, consent by the territorial State or the existence of an ongoing or imminent armed attack attributable to the territorial State”²⁰⁷. Therefore, when applying the right to self-defence, the sovereignty of the State, where the NSA is located shall not be infringed in any case.

The alternative view of the “unwilling or unable” doctrine manages to balance the right to sovereignty with the right to self-defence. The author supports this view and asserts that in accordance with the ICJ judgment in the *Corfu Channel* case, the State, which is considered to be the victim, has the right to demand the State, in which territory non-state actor is located and acts against the rights of other State (thereafter the territorial State), to comply with its obligation. Additionally, the ICJ argued in the *Tehran* case, that if under the international law the State is under an obligation “[...] to take appropriate acts in order to protect the interests of another State, and-while they have the means at their disposal to do so-completely fail to comply with their obligations, the inactive State bears international responsibility towards the other State”²⁰⁸. It is, therefore, submitted that if the State is unwilling or unable to prevent armed attacks of occurring in its territory, the victim State “[...] may act defensively against the non-state group, but must in light of the violation of the territorial State’s sovereignty limit the scope and nature of its operations to those strictly necessary to defend itself against the group”²⁰⁹.

The following issue to be addressed is whether the doctrine applies in the situation where the host State is unwilling *or* unable, or unwilling *and* unable to comply with its obligations. Scholars are of different opinion as, for instance, A. Deeks and G. Williams interpret the doctrine as the “unwilling or unable”, while L. Arimatsu and M. N. Schmitt put emphasis on the both “unwilling and unable”²¹⁰. In the opinion of the author, the doctrine can be applied in the situations where the State is unwilling or unable to comply with its obligations. States practice also supports this view. For instance, in the letter addressed to the UNSG, the Permanent Representative of the U.S. stated that considering that the government of Syria is *unwilling or unable* to prevent the use of its territory for terrorist attacks, the U.S. invoking the right to self-defence in accordance with the Article 51 of the Charter²¹¹. In addition to this, the former United Kingdom’s (thereafter the “UK”) Prime Minister David Cameron

²⁰⁷ Louise Arimatsu, Michael N. Schmitt, “Attacking “Islamic State” and the Khorasan Group: Surveying the International Law Landscape”, 53 *Columbia Journal of Transnational Law Bulletin* 1 (2014): 21.

²⁰⁸ Yoram Dinstein, *War, Aggression and Self-defence*, 4th ed. (Cambridge, United Kingdom: Cambridge University Press, 2015), 206. See also *United States Diplomatic and Consular Staff in Tehran*, Judgment, I. C. J. Reports 1980., 32, 33, 44.

²⁰⁹ Louise Arimatsu, Michael N. Schmitt, *supra* note, 207:21.

²¹⁰ Ashley Deeks, “Unwilling or Unable, Towards a normative framework”, *Virginia Journal of International Law*, Volume 52 (2012): 494. See also Louise Arimatsu, Michael N. Schmitt, *supra* note, 207.

²¹¹ Permanent Rep. of the U.S. to the U.N., U.N. Doc. S/2014/695 (Sept. 23, 2014).

in his statement before Parliament on November 26, 2016, stressed that “Assad regime is unwilling and/or unable to take action necessary to prevent ISIL’s continuing attack on Iraq-or indeed attacks on us”²¹², therefore the U.K. is supporting the U.S. led Coalition in Syria. Moreover, Canada in its letter addressed to the UNSG with regard to the situation in Syria stated that “States must be able to act in self-defence when the Government of the State where a threat is located is *unwilling or unable* to prevent attacks emanating from its territory”²¹³. As listed above, the “unwilling or unable” has been addressed numerous time by various countries as the legal basis for the military intervention in Syria.

It is, therefore, submitted that the doctrine of “unwilling or unable” is used for the extension of the right of self-defence under the article 51 of the UN Charter. Even though this doctrine is not embodied in the UN Charter, in the opinion of the author, there exists a particular support for the doctrine especially in the regard to the situation in Syria and this might contribute to the development of the emerging norm in the customary international law.

2.3.2.2. The Anticipatory Self-Defence

Traditional understanding of the anticipatory self-defence refers to the right to use the force before the enemy could launch its “first use” attack, however with an unconventional evidence of its imminence and only when no other means are available²¹⁴. The legal grounds necessary for invoking the anticipatory self-defence by the State against an imminent armed attack refers to the *Caroline*²¹⁵ incident in 1837. The incident involved “the pre-emptive attack by British forces based in Canada against an American ship, the *Caroline*”²¹⁶. The importance of the Caroline case regarding the anticipatory self-defence is based on its recognition and endorsement by the Nuremberg tribunal “who adopted exactly the same words used in the Caroline test in relation to its judgment on Germany’s invasion of Norway and Denmark”²¹⁷.

Events of the *Caroline* case are traced back to the Canadian insurrection against their British colonial oversees²¹⁸. During that time the United States remained neutral about the rebellion, however

²¹² David Cameron, “David Cameron's full statement calling for UK involvement in Syria air strikes.” The Telegraph. November 26, 2015, <http://www.telegraph.co.uk/news/politics/david-cameron/12018841/David-Camerons-full-statement-calling-for-UK-involvement-in-Syria-air-strikes.html>

²¹³ The Permanent Mission of Canada to the U.N., Council, U.N. Doc. S/2015/221 (Mar. 31, 2015).

²¹⁴ Thomas M. Franck, “Preemption, Prevention and Anticipatory Self-Defense: New Law regarding Recourse to Force”, 27 *Hastings International and Comparative Law Review* 425, 436 (2004): 425.

²¹⁵ “The Right of Self-Defence Against Imminent Armed Attack in International Law”, EJIL: Talk!, May 24, 2017, <https://www.ejiltalk.org/the-right-of-self-defence-against-imminent-armed-attack-in-international-law/>.

²¹⁶ Ibid.

²¹⁷ Olaoluwa Olusanya, *Identifying the aggressor under international law: a principles approach* (Oxford: Peter Lang Bern, 2006),105.

²¹⁸ Ibid.

those, sympathizing to America, “provided unauthorized assistance to the insurrectionist neighbours via an American steamboat “The Caroline””²¹⁹. Later, the boat started serving as the transfer of military supplies to rebels. When British officers learned about the situation, one night they ordered their soldiers to board and destroy “The Caroline” when it was in the New York²²⁰. As a result, the fire was set on “The Caroline” boat and it was sent tumbling down Niagara Falls resulting in death of two US nationals²²¹. In this regard, it must be stressed that at that time being, the British justified their actions as a self-defence underlining the fact that the US Government failed to protect them from raids across the border²²². During the diplomatic correspondence between the US and Great Britain, regarding the legitimacy of the use of the force by British forces, the US Secretary of the State Daniel Webster stated that Britain needed to show “a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. [...] It will be for it to show, also, that . . . [it] did nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it”²²³. Thus, the author notes, that within conformity of the *Caroline* case, the element of necessity requires the responding state to show that it exhausted all possible non-forcible measures needed to redress the situation or, in other words, the forcible measure must be the last resort for the State having no practical or reasonable alternative to restrain the extremity of the situation²²⁴.

The additional criteria when exercising the right to anticipatory self-defence is that of the proportionality. The element of proportionality in the *Caroline* case was described as: “It will be for it [Great Britain] to show, also, that the local authorities of Canada, even supposing the necessity of the moment...did nothing unreasonable or excessive; since the act justified by the necessity of self-defence, must be limited by that necessity and kept clearly with it”²²⁵. Thus, the author asserts that the criterion of proportionality requires that the responding state exercise the right of self-defence in a manner that is proportional to the necessity of defence. In addition to this, it must be stressed that the proportionality criterion does not embody certain numerical equivalence of scale or means, however, in the author’s view, if the force is employed exclusively within the goal to repeal the attack, the criterion of the proportionality is satisfied. In any case, the *Caroline* test is “*locus classicus* of the

²¹⁹ Olaoluwa Olusanya, *supra* note, 217.

²²⁰ *Ibid.*

²²¹ *Ibid.*

²²² *Ibid.*, p. 106.

²²³ Britain, Parliamentary Papers Vol LXI (1843); Britain, British and Foreign State Papers Vol 30, 196.

²²⁴ James Green., Francis Grimal, *supra* note, 180:301.

²²⁵ Donald R Rothwell, "Anticipatory Self-Defence in the Age of International Terrorism Special Edition: The United Nations and International Legal Order", *University of Queensland Law Journal* 24(2) (2005): 337.

law of self-defence”²²⁶ as observed by Sir Robert Yewdall Jennings. It is, therefore, submitted that the *Caroline* case embodies traditional criteria which is required for invoking right to individual or collective self-defence.

The Legality of the Anticipatory Self-Defence

To date, most highly qualified publicists, government lawyers or academics are left arguing on whether the anticipatory self-defence is lawful and, if so, whether particular criteria must be met for the legitimacy of anticipatory self-defence. There are different views, regarding the legality of anticipatory self-defence, however the author supports the view that the Article 51 do not impair the “inherent right” of the self-defence, meaning that the Article 51 does not create a right of anticipatory self-defence but, instead, preserves the right that pre-existed before the adoption of the Charter²²⁷. In the opinion of the author, the main idea of this view is that the customary international law prior to the adoption of the UN charter authorized the use of force in self -defence not only when armed attack was occurring, but also against an imminent threat of the armed attack. The main legal justification for this view is found in the aforementioned *Caroline* case, where the U.S. Secretary of State Daniel Webster noted that self – defense is applicable to the cases in which there are no other choice of means and the necessity of the self -defence is instant. In this respect, it shall be stressed that S. D. Murphy supports this view and observes that the language of the Article 51, where it is stated “if an armed attack occurs”, indicates the only the general type of right that is preserved in the article and no conditions are imposed on the exercise of the “inherent right” under this article²²⁸. Additionally, L. Henkin agrees with this position and also accepts that “if there were clear evidence of an attack so imminent that there was no time for political action to prevent it, the only meaningful defence for the potential victim might indeed be the anticipatory self-defence and-it may be argued-the scheme of Article 2 (4) together with Article 51 was not intended to bar such attack”²²⁹.

Furthermore, the author asserts that state practice since the adoption of the UN Charter demonstrates that the anticipatory self-defence is accepted by states, when an armed attack is imminent and defensive measures are needed to be adopted in order to repeal the attack. With regard to the State practice, references can be made to the most important incidents, such as: “the 1962

²²⁶ RY Jennings, “The Caroline and McLeod Cases”, *American Journal of International Law* 32, (1938): 92.

²²⁷ D.W. Bowett, *Self – Defence In International Law* (Manchester University Press, 1959), 187; Sean D. Murphy, “The Doctrine of Preemptive Self-Defense,” 50 *Villanova Law Review* 699, 748 (2005):711.

²²⁸ Sean D. Murphy, op.cit., 712.

²²⁹ Louis Henkin, *How Nations Behave: Law And Foreign Policy*, (Columbia University Press, 2d ed. 1979), 143, 144; Murphy, D. Sean op.cit.,712.

"quarantine" of Cuba by the United States; the 1967 Arab-Israeli war; the 1981 Israeli attack against an Iraqi nuclear facility; and the 1986 U.S. bombing raids against Libya"²³⁰. All these incidents, in the author's view, demonstrate that a state may undertake the action in self-defence before the armed attack actually occurred. Additionally, the author agrees that in any case, the force used in anticipatory self-defence must be used only in conformity with aforementioned principles of the necessity and proportionality, which are the part of the customary international law and are related with the basic right of self-defence.

In conclusion, this Chapter has addressed various provisions of the UN charter regarding the prohibition and exceptions to the use of force. In this respect, it shall be noted that several additional issues were addressed, such as the intervention upon invitation, the "unwilling or unable" doctrine, as well as the right to anticipatory self-defence, which is, in the opinion of the author, lawful under the international law. The next Chapter of the Thesis will include the analysis of the legality of the airstrikes against the IS in Iraq and Syria, based on the main exceptions to the use force, which were discussed in this Chapter.

²³⁰ Louis Henkin, *How Nations Behave: Law And Foreign Policy*, (Columbia University Press, 2d ed. 1979), 143, 144; Murphy, D. Sean op.cit.,712.

3. FIGHTING AT THE LEGAL BOUNDARIES: THE USE OF FORCE AGAINST THE ISLAMIC STATE

The final Chapter of the thesis will include the research regarding the legality of airstrikes against the Islamic State and will be divided into two main parts, which will be entitled in conformity with the locations where airstrikes against the IS were launched. The following research will examine whether and to which extent the use of the force against the Islamic State might be justified under international law.

3.1. The statehood of the so-called Islamic State

Recalling stated above, it must be stressed that the Article 51 of the UN Charter embodies the existence of the right to self-defence in the case of armed attack only by one State against another State²³¹. However, as the author asserted before, the international community must have certain *modus operandi* in order not be left in an invidious position where States lose an opportunity to invoke the self-defence measures under the Article 51 of the Charter only because they are attacked by un-attributable non-state actor. In this respect, the starting point of the following research is to determine whether the IS should be regarded as a State or as a non-state actor.

The Islamic State announced the establishment of the Caliphate in 2014 having more than 10,000 fighters in Iraq and Syria and controlling the area similar in size to the UK at that time being²³². Since then, the IS managed to expand its operations and presence in the international arena, however, in the author's view the Islamic State is far away from being a State due to the following reasons.

The Islamic State does not satisfy the criteria of statehood set out in the Montevideo Convention. The classic definition of the state in the modern international law is embodied in the Article 1 of the Montevideo Convention on Rights and Duties of States and it includes four main characteristics of the State²³³: 1) a permanent population; 2) a defined territory; 3) a government; 4) a capacity to enter into relations with other States. Additionally, "The Montevideo Convention is considered to be reflecting, in general terms, the requirements of statehood in customary international law"²³⁴. Starting with the first criteria, in the opinion of the author, the requirement of having a

²³¹ *The Construction of a Wall*, *supra* note, 184: para.139., 194.

²³² Fred Dews, "National Counterterrorism Center Director: ISIL Is Not Invincible," Brookings, July 29, 2016, <https://www.brookings.edu/blog/brookings-now/2014/09/03/national-counterterrorism-center-director-isil-is-not-invincible/>

²³³ Joshua Castellino, *Resolving claims to self-determination* (The Hague, The Netherlands: Martinus Nijhoff Publishers, 2000), 77.

²³⁴ *Ibid.*

permanent population is not fulfilled by the IS. According to Oppenheim, “a permanent population is an aggregate of individuals of both sexes who live together as a community in spite of the fact that they may belong to different races or creeds, or be of different color”²³⁵. Moreover, the criteria of the “permanency” of the population means that the population has an intent to live in the territory on the permanent basis²³⁶. The rise of the Islamic State has displaced over 3.3 million people in Iraq, more than 3.8 million Syrians have fled to the neighboring states of Turkey, Lebanon, Jordan and Egypt and another 7.6 million were displaced inside the country in 2015.²³⁷ The author asserts that provided statistics clearly indicates the emerging trend that millions of people are fleeing and are considered to continue fleeing in the future from the IS controlled territories in Iraq and Syria, thus they do not have any intent to live under the IS control permanently. As stated by James Crawford, “States are territorial entities, but above all they are territorial communities, aggregates of individuals sharing a common allegiance”²³⁸. In present case, in the author’s view, people, living in the territories which are under the control of the IS, do not tend to share nothing apart of the experienced violence and torture, which definitely do not qualify as a common allegiance. In addition to this, even though there is no minimum requirement regarding the size of a State’s population²³⁹ and one may argue that the Islamic State has its permanent population which consists of military personnel, for example, inhabiting in Syria, however the author disagree with this position. According to the IS global strategy, many fighters are deserting from one country to another, operating and carrying out attacks worldwide, therefore, the military personnel of the IS cannot be regarded as the Islamic State’s permanent population.

The second criterion to be satisfied is the requirement of the “defined territory”. “Although a State must possess some territory, there appears to be no rule prescribing the minimum area of that territory”²⁴⁰. Since the establishment of the Caliphate in 2014, the IS controlled large parts of Iraqi and Syrian territories, however in three years period the Islamic State lost 70% of its controlled territory in Iraq and accordingly 51% of its controlled territory in Syria (see the subchapter *The Interior Ring*). As a result, in the opinion of the author, the control of the IS over Syrian and Iraqi territories are extremely volatile as it constantly changes and depends mainly on the strategic victories

²³⁵ David Raič, *Statehood and the law of self-determination* (The Hague: Kluwer Law International, 2002), 58.

²³⁶ Ibid.

²³⁷ Orlando Crowcroft Executive Editor - Geo-politics, "Isis: Worst refugee crisis in a generation as millions flee Islamic State in Iraq and Syria", International Business Times UK, June 17, 2015, <http://www.ibtimes.co.uk/isis-worst-refugee-crisis-generation-millions-flee-islamic-state-iraq-syria-1506613>

²³⁸ James Crawford, “State”, Max Planck Encyclopedia of International Law (2011), <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1093?prd=EPIL>

²³⁹ Ibid.

²⁴⁰ James Crawford, “The Criteria for Statehood in International Law”, *British Yearbook of International Law* Vol. 48 Issue 1 (1977): 111.

in the region. In addition to this, according to H. Lauterpacht, if doubts as to the State's future frontiers are regarded as being of serious nature, recognition is postponed²⁴¹. In present case, in the author's view, the frontiers of the Islamic State cannot be even determined as the UN Security Council has repeatedly reaffirmed its strong commitment to the sovereignty, independence, unity and territorial integrity of both-Syria and Iraq²⁴². It is, therefore, submitted that the Islamic State does not meet the criteria of the "defined territory".

Considering the third statehood's criterion, in the opinion of the author, the Islamic State fails to meet the requirement of the effective government. As argued by H. Lauterpacht, "a government" criteria must be understood as "having sufficient degree of internal stability as expressed in the functioning of the government enjoying the habitual obedience of the bulk of the population"²⁴³. In the case of the IS, the author asserts that the Islamic State does not have any parliamentary institution nor governmental structure. On the contrary, what the IS does have is the hierarchical and centralized organizational structure, which oversees the planning of the terrorist attacks, funding the organization and supplying weaponry to its fighters. It is, therefore, submitted that this kind of organizational structure contravenes with the usual understanding of the functioning governmental structures of the other States.

The criterion of the effective government, addressed above, is closely related with another criterion which is determined as the State's capacity to enter into relations with other States. In the author's view the Islamic State do not have any governmental institutions, thus they lack a minister or a foreign affairs ministry which will be responsible for the international relations with other States. Moreover, based on the previously discussed IS's global strategy, the author asserts that the IS generally does not have any intention or willingness to enter into relations with any state. In addition to this, no State has recognized the Islamic State as the State so far and the fact that "it is universally condemned as a terrorist organization"²⁴⁴ makes it impossible for the IS to meet the requirement of the fourth statehood's criterion.

In conclusion, in the opinion of the author, the Islamic State does not fulfill requirements for the statehood according to the customary international law. The author asserts, that the IS did not create the new State by establishing the Caliphate in 2014, it is, therefore, submitted that the Islamic

²⁴¹ Hersch Lauterpacht, *Recognition in international law* (Cambridge: Cambridge University Press, 2013), 30.

²⁴² U.N. Doc. S/RES/2254, Security Council Resolution 2254 (18 December 2015); U.N. Doc. S/RES/2249, Security Council Resolution 2249 (20 November 2015).

²⁴³ Hersch Lauterpacht, *op.cit.*, 30.

²⁴⁴ Gabor Kajtar, *supra* note, 136: 547.

State must be regarded as a non-state actor and sovereignty, independence, unity and territorial integrity of the Syria and Iraq must be respected and protected.

3.2. The Global Coalition to Counter the Islamic State

On September 10, 2014, the U.S. announced the formation of the broad international coalition to defeat the Islamic State of Iraq and Syria²⁴⁵. Starting with over 40 nations having agreed to join the Coalition in 2014, as of November 21, 2017, Global Coalition (GC) includes 74 members²⁴⁶ and it is the largest international coalition in the history²⁴⁷. The GC is organized around five lines of effort^{248,249} and each of the five central lines are co-led by two or three Coalition partners²⁵⁰: 1) providing military support to state-partners → led by the United States and Iraq, 2) impeding the flow of foreign fighters → led by the Netherlands and Turkey, 3) stopping financing and funding for ISIS through the international financial system → led by Italy, the Kingdom of Saudi Arabia and the United States, 4) providing humanitarian assistance → led by Germany and the United Arab Emirates and 5) defeating ISIS as an idea → led by the United Arab Emirates, The United Kingdom and the United States.

On 25 May 2017, NATO Secretary General, Jens Stoltenberg, announced that NATO will become a full member of the Global Coalition, however he stressed that being in the coalition does not mean that NATO will engage in combat²⁵¹. In this respect, the author asserts that by becoming an official member of the GC, NATO managed to send a strong signal of the commitment to the international community regarding the fight against the global terrorism. In addition to this, in the author's view, being a member of the GC, NATO will be enabled to take part in political deliberations, as well as in the process of the coordination of training and capacity building²⁵². In any case, NATO became the fourth international organization to join the GC together with the Arab League, EU and the Interpol, which joined the GC accordingly in 2014 and 2016.

Another important issue to be stressed is that Russia, China and Iran are not members of the Coalition, but Russia is fighting the IS independently from the GC. Thus, the question of the

²⁴⁵ "The Global Coalition to defeat ISIS", U.S. Department of State, <https://www.state.gov/s/seci/>

²⁴⁶ "Partners", The Global Coalition Against Daesh, <http://theglobalcoalition.org/en/partners/>

²⁴⁷ "The Global Coalition - Working to Defeat ISIS", U.S. Department of State, March 22, 2017, <https://www.state.gov/r/pa/prs/ps/2017/03/268609.htm>

²⁴⁸ " U.S. Department of State, *supra* note, 245.

²⁴⁹ "Remarks by General John Allen, then Special Presidential Envoy for the Global Coalition to Counter-ISIL", June 3, 2015, <http://www.brookings.edu/~media/events/2015/06/01-2015-us-islamic-worldforum/060315brookingsdoha.pdf>.

²⁵⁰ McInnes, K.J. "Coalition Contributions to Countering the Islamic State". Congressional Research Service Report 7-5700, August 4, 2015, <https://www.fas.org/sgp/crs/natsec/R44135.pdf>

²⁵¹ "NATO to Join Anti-ISIS Coalition," Wilson Center, May 25, 2017, <https://www.wilsoncenter.org/article/nato-to-join-anti-isis-coalition>

²⁵² Ibid.

legitimacy regarding airstrikes against the Islamic State launched by Russia will also be a part of the research provided in this Chapter.

In terms of the legal basis for the GC, the authors notes, that UN Security Council unanimously adopted several Resolutions, under the binding Chapter VII of the UN Charter, such as the Resolution 2170 (2014)²⁵³, the Resolution 2178 (2014)²⁵⁴ and the Resolution 2199 (2015)²⁵⁵, where it called upon the UN member states, in accordance with their obligations under international law, to act to suppress the flow of foreign fighters, financing and other support to Islamist extremist groups in Iraq and Syria, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters and etc. However, in the opinion of the author, these resolutions did not establish the legal basis for the Global Coalition and did not authorize the use of force against the Islamic State. This leads to the next subchapter of the thesis, where legitimacy of airstrikes against the IS in Iraq will be examined.

3.3. The legality of the airstrikes against the Islamic State in Iraq

In this subchapter the legitimacy of the air attacks against the Islamic State in Iraq will be analyzed and conclusions will be made whether airstrikes against the Islamic State in Iraq are justified under international law. The author asserts that the Islamic State is regarded as a non-state actor and the presumption prevails that territorial integrity and political independence of Iraq must be respected.

Recalling events in Iraq, since the establishment of the Caliphate in 2014, 18 June of 2014 marks the date when Iraqi government for the first time asked the U.S. to intervene and formally requested to launch air strikes against the militants of the IS²⁵⁶. The White House made the decision to intervene and President Barrack Obama authorized two operations in Iraq on August 07, 2014²⁵⁷. As the author asserted before, the international law recognizes the right of the government to request foreign assistance, including also military intervention. For the military intervention to be justified

²⁵³ U.N. Doc. S/RES/2170, Security Council Resolution 2170 (2014), (15 August 2014).

²⁵⁴ U.N. Doc. S/RES/2178, Security Council Resolution 2178 (2014), (24 September 2014).

²⁵⁵ U.N. Doc. S/RES/2199, Security Council Resolution 2199 (2015), (12 February 2015).

²⁵⁶ "Iraq asks US for 'air power' against rebels," BBC News, June 18, 2014, <http://www.bbc.com/news/av/world-us-canada-27911924/iraq-asks-us-for-air-power-against-rebels>

²⁵⁷ "Statement by the President," National Archives and Records Administration, August 07, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/08/07/statement-president>.

under the international law and to not constitute the threat or the use of force, the invitation of the State must be invoked according to certain criteria.

To start with, in the case of Iraq, apart from the issuing the formal request for the U.S. to intervene and launch air strikes asking the militants of the IS on 18 June 2015, a week later, on 25 June, the Permanent Representative of Iraq to the United Nations addressed the letter to the UNSG, repeatedly asking for the help of the international community by stating that “We have previously requested the assistance of the international community. While we are grateful for what has been done to date, it has not been enough”²⁵⁸. As it was stated above, on August 07, 2014, the U.S. conducted two military operations in accordance with the formal request issued by the Iraqi government. Following the launched air attacks inside Iraq, on 20 September 2014, Permanent Representative of Iraq to the UN addressed one more letter to the UNSG, noting that “Iraq is grateful for the military assistance it is receiving, including the assistance provided by the United States of America in response to Iraq’s specific requests”²⁵⁹. Additionally, in the same letter Iraq stressed that they “[...] have requested the United States of America to lead international efforts to strike ISIL sites and military strongholds, with our express consent”²⁶⁰. In response, the US in its latter letter addressed to the UNSG based its use of the force in the territory of Iraq against the ISIL on Iraq’s express consent²⁶¹. In this respect, the author notes, that the UK, Australia and Canada also took part in the U.S. led military operations in Iraq as a part of the initiative taken by the Global Coalition. Consequently, the aforementioned countries in their letters to the UNSG, emphasized that they were taking measures in support of the collective self-defence of Iraq as part of the international efforts led by the United States²⁶². In addition to this, equally to the position of the U.S., they also based the legitimacy of the use of force on the Iraqi government’s formal request.

Considering stated above, in the opinion the author, two main issues regarding the legitimacy of the airstrikes against the IS in Iraq shall be analyzed. Firstly, it must be determined whether the Iraqi’s government consent was issued properly, thus enabling the U.S. to justify the airstrikes in Iraq based on the intervention upon invitation. And the second issue to be addressed is whether the

²⁵⁸ Permanent Rep. of Iraq to the U.N., U.N. Doc. S/2014/440 (June 25, 2014).

²⁵⁹ Permanent Rep. of Iraq to the U.N., U.N. Doc. S/2014/691 (Sept. 22, 2014).

²⁶⁰ Ibid.

²⁶¹ Permanent Rep. of the U.S. to the U.N., U.N. Doc. S/2014/695 (Sept. 23, 2014);

²⁶² Permanent Rep. of Gr. Brit. to the U.N., U.N. Doc. S/2014/851 (Nov. 26, 2014); the Permanent Mission of Canada to the U.N., Council, U.N. Doc. S/2015/221 (Mar. 31, 2015); Permanent Rep. of Australia. to the U.N., U.N. Doc. S/2015/693 (Sept. 9, 2015).

airstrikes launched by the Global Coalition meets the requirements of the collective self-defence and were conducted in the conformity within the international law.

3.3.1. The validity of the Iraq's consent

Starting with the validity of the Iraqi's government consent, it must be noted, that the international law establishes certain conditions for the consent to be regarded as valid. Any use of the force in the foreign country's territory would constitute a breach of the international obligation. However, as the author asserted before, the State may give the consent for the intervention, which must be valid in order for it to preclude wrongfulness. The ILC's adopted Draft articles on Responsibility of States for Internationally Wrongful Acts (thereafter the "DASR") "formulate, by way of codification and progressive development, the basic rules of international law concerning the responsibility of States for their internationally wrongful acts"²⁶³. According to the Article 20 of the DASR, which reflects the basic international law principle of the consent, "Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent"²⁶⁴. In this respect, it shall be emphasized, that in conformity with the Article 20, "Consent must be freely given and clearly established. It must be actually expressed by the State rather than merely presumed on the basis that the State would have consented if it had been asked. Consent may be vitiated by error, fraud, corruption or coercion [...]"²⁶⁵. Additionally, the author asserts that for the consent to be considered as a valid, it must be issued by the agent or person, who is authorized to do so on the behalf of the State. Moreover, the consent must be issued before the intervention or at the time it is occurring, but not after the intervention is already conducted²⁶⁶. Furthermore, the conduct of the State receiving the consent must fall within limits of the given consent. It is, therefore, submitted that for the consent to be valid four conditions must be satisfied: 1) consent for intervention must be issued by the agent or person, who is authorized to do so on behalf of the State, 2) prior or at the current time of intervention; 3) without error, fraud, corruption or coercion, and 4) the assistance must remain within the limits of that consent.

In the case of the Iraq's given consent for the military intervention, according to the U.S. military commander General Martin Dempsey, Iraqi's government issued the consent on 18 June,

²⁶³ *Supra* note, 132.

²⁶⁴ *Ibid.*, 72.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

2014²⁶⁷. At that time being Iraqi's representative of the government was the Prime Minister Nuri al-Maliki, who was replaced by the Haider al-Abadi in September, 2014²⁶⁸. Thus, it must be concluded that the initial request for the intervention was issued by the former Iraqi Prime Minister. In this respect, it must be noted, that there were doubts if new Iraqi PM will manage to assemble the government in the 30-day limit, putting in obscurity the continuing validity of Iraq's consent. However, on 9 September 2014, Iraqi Parliament approved new government headed by Haider al-Abadi²⁶⁹ and there was no evidence that the new Prime Minister of the Iraq would have withdrawn the request for the U.S. military intervention. As it was mentioned before, the Permanent Representative of Iraq to the UN several times addressed letters to the UNSG emphasizing that "Iraq is in great need of the assistance of its friends in combatting this evil terrorism"²⁷⁰, therefore, in the author's view, Iraq's request for assistance was clearly expressed. Moreover, Iraq's request for the intervention was issued before the actual operations of the U.S. led alliance against ISIS in Iraq, thus additional condition for the consent to be valid was satisfied. Furthermore, the author argues, that there were no indications that Iraqi's government issued the formal request for the military intervention because of the error, fraud, corruption or coercion. Finally, the U.S. led intervention in Iraq must have remained within the limits of the Iraq's consent, in order to be valid. On 18 June 2014, Iraq Foreign Minister Hoshyar Zebari announced that "Iraq had asked for air strikes "to break the morale" of the Islamic State of Iraq and the Levant (ISIL) which has captured cities and towns in the north"²⁷¹. Therefore, the author affirms, that Iraq requested the U.S. to deploy the air power against the IS²⁷².

In the opinion of the author, Iraqi's government issued consent is considered to be valid under the international law. It was issued by the former Iraqi Prime Minister and has not been revoked yet. However, in the author's view, since on 9 December 2017 the Iraqi Prime Minister al-Abadi declared

²⁶⁷ "Iraq asks US for 'air power' against rebels", BBC News, June 18, 2014, <http://www.bbc.com/news/av/world-us-canada-27911924/iraq-asks-us-for-air-power-against-rebels>

²⁶⁸ Mohamed Madi, "Haider al-Abadi: A new era for Iraq?", BBC News, September 09, 2014, <http://www.bbc.com/news/world-middle-east-28748366>

²⁶⁹ Ned Parker "Iraqi parliament approves new government headed by Haider al-Abadi", Reuters, September 08, 2014, <https://www.reuters.com/article/us-iraq-crisis-parliament/iraqi-parliament-approves-new-government-headed-by-haider-al-abadi-idUSKBN0H31YH20140909>

²⁷⁰ Permanent Rep. of Iraq to the U.N., U.N. Doc. S/2014/691 (Sept. 22, 2014).

²⁷¹ Chulov, Martin, Spencer Ackerman, "Iraq requests US air strikes as Isis insurgents tighten grip on oil refinery", The Guardian, June 18, 2014, <https://www.theguardian.com/world/2014/jun/18/iraq-request-us-air-strikes-isis-baiji-oil>

²⁷² Michael R. Gordon, Eric Schmitt, "U.S. Said to Rebuff Iraqi Request to Strike Militants", The New York Times, June 11, 2014, <https://www.nytimes.com/2014/06/12/world/middleeast/iraq-asked-us-for-airstrikes-on-militants-officials-say.html>

the victory over the IS²⁷³, there is no further need for the U.S. military presence in Iraq, thus the consent for the U.S. intervention in Iraq, might be declared withdrawn in the nearest future.

Another important issue to be addressed regarding the validity of Iraq's consent is whether it is allowable to issue the request for the intervention during the civil war. The author supports the same position expressed in the earlier Chapter of the thesis, that there is no general rule prohibiting the government to issue a valid invitation even during the civil war unless military assistance on request do not deprive the right of peoples to self-determination.

To start with, it must be determined whether the acts of violence in Iraq altogether can be defined as those reaching the threshold of the civil war. There is no generally accepted definition of the term "civil war", "largely because "civil war" is not a critical term of art in international instruments"²⁷⁴. Therefore, different interpretations may exist. According to the Resolution 2011 of the *Institut de Droit International (IDI)* "the situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature"²⁷⁵ do not reach the threshold of the civil war. This adopted definition follows the definitions of non-international armed conflicts embodied in the Common Article 3 and Additional Protocol II to the Geneva Conventions accordingly²⁷⁶. In the case of Iraq, on 14 January 2014, al-Qaeda in Iraq and Syria took over the Iraqi cities of Fallujah and Ramadi, west of the Baghdad²⁷⁷. The Iraqi government then failed to reconquer both cities of Fallujah and Ramadi, and later even have lost the northern part of the city Mosul²⁷⁸. The situation even worsened with the presence of the IS, when the city of Mosul was completely taken over, together with the city of Tikrit-the second major gain of the IS in Iraq. In the opinion of the author, the takeover of the cities Fallujah, Ramadi, Mosul, clearly indicates that the situation in Iraq must have gone beyond mere disturbances or sporadic acts. Therefore, the author asserts, that attacks launched within the territory of Iraq reached the necessary threshold to be classified as a civil war.

²⁷³ Coker, Margaret, and Falih Hassan. 2017. "Iraq Prime Minister Declares Victory Over ISIS." *The New York Times*. The New York Times. October 4. <https://www.nytimes.com/2017/12/09/world/middleeast/iraq-isis-haider-al-abadi.html>.

²⁷⁴ Fox, Gregory H., *Intervention by Invitation* (2014). The Oxford Handbook on the Use of Force, Marc Weller, ed., 2015, Forthcoming; Wayne State University Law School Research Paper No. 2014-04. Available at SSRN: <https://ssrn.com/abstract=2407539>.

²⁷⁵ Institut de Droit International, Rhodes Session, Present Problems of the Use of Force in International Law, Sub-Group C – Military assistance on request, art. 2 (Sept. 8, 2011).

²⁷⁶ "Russia's Intervention in Syria." 2015. *EJIL: Talk!* November 25. <https://www.ejiltalk.org/russias-intervention-in-syria/>.

²⁷⁷ Hayes, Colin Freeman and Kat. 2014. "Iraq on the brink of civil war: the conflict explained in 60 seconds." *The Telegraph*. Telegraph Media Group. June 11. <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/10892492/Iraq-on-the-brink-of-civil-war-the-conflict-explained-in-60-seconds.html>.

²⁷⁸ Ibid.

The following issue to be addressed is whether the U.S. military intervention in Iraq do not deprive the right of peoples to self-determination. In this respect, it must be noted that in the *East Timor* case, the ICJ stressed that “[...] the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character”²⁷⁹. It is, therefore, submitted that the right of peoples to self-determination is regarded as the obligation that states have towards the international community as a whole.

In the case of Iraq, the U.S. led military intervention targeted the Islamic State. In this respect, the author asserts, that with the establishment of the Caliphate, the so-called Islamic State did not aim to enable the right of peoples to self-determination in Iraq. In fact, in the author’s view, the IS cannot be even considered as “Peoples”, because they are globally operating terrorist organization that is systematically violating the human rights of the people in the territory of Iraq including not only the right to life but also the right to liberty, freedom of religion, and others. This view is supported also by the several UN SC Resolutions, as for instance: on 20 November 2015, the UN SC unanimously adopted Resolution 2249 (2015), where in the preamble it described the IS as the “global and unprecedented threat to international peace and security”²⁸⁰. Additionally, on 17 December 2015, the SC unanimously passed Resolution 2253 (2015)²⁸¹, where it decided to expand the listing criteria to include individuals and entities supporting the ISIL to the sanctions measures. Furthermore, on 20 July 2017, the SC unanimously adopted the Resolution 2368 (2017)²⁸², where it reaffirmed the assets freeze, travel ban and arms embargo affecting all individuals and entities on the ISIL (Da'esh) & Al-Qaida Sanctions List. The adopted description of the Islamic State as a threat to international peace and security, as well as security sanctions measures imposed by the Security Council, in the opinion of the author, indicate that the IS qualifies as a terrorist organisation and do not have the right to exercise the right of peoples to self-determination in Iraq. Thus, the author claims that, the U.S. intervention in Iraq based on the Iraqi’s government issued valid consent during the civil war satisfy all conditions to be considered as the legitimate under the international law.

3.3.2. The Global Coalition and the Right to Collective Self-Defence

The final issue which must be addressed is whether the airstrikes conducted by the Global Coalition can be justified based on the right to collective self-defence, embodied in the Article 51 of the UN Charter. The author asserts, that for resorting the self-defence legally, three main criteria must

²⁷⁹ *East Timor (Portugal v. Australia)*, Judgment, I. C.J. Reports 1995, para. 29., 102.

²⁸⁰ U.N. Doc. S/RES/2249, Security Council Resolution 2249 (2015), 7565th meeting (20 November 2015).

²⁸¹ U.N. Doc. S/RES/2253, Security Council Resolution 2253 (2015), 7587th meeting (17 December 2015).

²⁸² U.N. Doc. S/RES/2368, Security Council Resolution 2368 (2017), 8007th meeting (20 July 2017).

be met. Firstly, there must be an “armed attack” or, in other words, armed attack must reach certain scale to be considered as one. Secondly, actions, taken in the self-defence, must be proportionate and necessary.

Considering the IS’s actions in Iraq, it must be stressed that the group has already conducted and constantly continues to conduct violent and deadly armed attacks. For instance, on 17 May 2016, the IS conducted four bombing attacks around Baghdad where more than 140 people have been killed²⁸³. Additionally, on 14 September 2017, “At least 60 people have been killed in two attacks in southern Iraq²⁸⁴. In the opinion of the author, armed attacks of the effects of the described above, are evidently of the sufficient scale to satisfy the criteria of the armed attack in terms of the right to collective self-defence. It is, therefore, submitted that attacks launched by the IS reaches the necessary threshold to be considered as armed attacks.

Furthermore, the author adopts the view that an armed attack launched by the non-state actor, preserves the right to the victim State to invoke self-defence under the Article 51 of the Charter. This view is supported by the aforementioned UN SC Resolutions 1368²⁸⁵ and 1373²⁸⁶, adopted right after the September 11 attacks. In the author’s view, with the adoption of these resolutions, the SC recognized that, the right to self-defence can be invoked, considering terrorist attacks as the armed attacks for the purposes of the Article 51. In this respect, the author asserts, that Iraq has the right to exercise the right to collective self-defence, even though it is attacked by the globally acting terrorist organization, which attacks are in general un-attributable to any State.

The following issue to be addressed is whether actions taken in collective self-defence meets the requirements of the proportionality and necessity. The criterion of necessity embodies two main requirements. Firstly, the State shall not have an alternative to the use of force in order to rectify the situation and secondly, action, taken in self-defence are restricted to the necessary minimum in order to repulse the armed attack²⁸⁷. The author asserts, that inaction in Iraq in 2014 allowed the Islamic State to increase territorial gains and consolidate the power until the military assistance from the U.S. and Global Coalition came in. It is, therefore, submitted that considering the development of the

²⁸³ Lizzie Dearden, “Baghdad attacks: at least 69 killed in suicide attacks and car bombings in Iraq capital”, The Independent, May 17, 2016, <http://www.independent.co.uk/news/world/middle-east/baghdad-attacks-market-blast-car-suicide-bombing-in-iraq-capital-isis-victims-a7033436.html>

²⁸⁴ “Iraq: At least 60 die in twin attacks near Nasiriya”, BBC News, September 14, 2017, <http://www.bbc.com/news/world-middle-east-41270791>

²⁸⁵ U.N. Doc. S/RES/1368, Security Council Resolution 1368 (2001), 4370th meeting., preamble. & para. 3.

²⁸⁶ U.N. Doc. S/RES/1373, Security Council Resolution 1373 (2001), 4385th meeting, preamble. & para. 4.

²⁸⁷ Peter Malanczuk, *supra* note, 116:317.

situation in Iraq, nothing apart of the use of force would have helped Iraqi government to repel armed attacks of the Islamic State. Iraq was in the extreme necessity to use of force in order to rectify the worsening situation, which was posing huge threat to Iraq's sovereignty and territorial integrity. Additionally, the latest milestone announced to be reached on 9 December 2017, regarding the defeat of the in Iraq, in the opinion of the author, indicates that forcible measures taken in collective self-defence are considered as that necessary minimum in order to repulse armed attacks of the Islamic State in Iraq.

The remaining principle of the proportionality refers to the proportionality of the situation, when no more force than required to repel the attack is used. In case of Iraq, the Iraqi Security Forces backed by the Global Coalition Air Force managed to regain the control of the border areas of the Iraq. These areas were under the command of the Islamic State for more than three years. In addition to this, with the IS using local people in Iraq as human shield, the Iraqi government should have accelerated their operations in order to defeat the IS in Iraq. Considering the Iraq's announcement of the 9 December 2017, the GC together with the Iraqi Security Forces managed to use the reasonable amount of the force in order to repel the attack. Therefore, in the opinion of the author, the criterion of the proportionality is satisfied regarding the GC's actions taken in collective self-defence of Iraq.

The final issue which must be addressed is the additional requirements for invoking self-defence. According to Dinstein and Bowett, states have the legal obligation to report to the Security Council, however Judge Schwebel argues, that it is merely directory or, in other words, only procedural requirement²⁸⁸. The author supports this view and considers the report to the merely due to merely directory. In any case, there are two procedural requirements regarding the enforcement of the self-defence²⁸⁹. The first criterion of the procedural nature is that measures taken regarding self-defence must be reported to the Security Council²⁹⁰. Second criterion emphasizes that, the right of self-defence must be terminated once "the Security Council has taken measures necessary to maintain international peace and security"²⁹¹. Thus, the author asserts that actions taken in self-defence must be ended once the SC has taken measures in order to mitigate the necessity of defence.

On 25 November 2014, the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations wrote two identical letters to the UNSG and the President

²⁸⁸ Myra Williamson, *Terrorism, War and International Law: the legality of the use of force against Afghanistan in 2001* (ROUTLEDGE 2009), 113.

²⁸⁹ James Green, Francis Grima, *supra* note, 180:299.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*

of the SC where he, in accordance with Article 51 of the Charter of the United Nations, reported to the Security Council that the United Kingdom of Great Britain and Northern Ireland is taking measures in support of the collective self-defence of Iraq as part of the international efforts led by the United States²⁹². The same content letter, dated 31 March 2015, from the Chargé d'affaires a.i. of the Permanent Mission of Canada to the UN addressed to SC, reported that Canada is taking measures in support of the collective self-defence of Iraq²⁹³. Additionally, on 9 September 2015, the Permanent Representative of Australia to the UN reported to the SC that in accordance with Article 51 of the Charter, his country was taking measures against the Islamic State in support of the collective self-defence of Iraq as part of international efforts led by the United States²⁹⁴. Therefore, in the opinion of the author, the procedural requirement for invoking the collective self-defence was fulfilled, as those countries who were attacking the IS in Iraq in accordance with collective self-defence reported to the Security Council about their actions.

Regarding the second procedural requirement, it must be emphasized that from 2014 till 2017, the SC adopted 10 resolutions²⁹⁵ of different content related to the situation in Iraq. For instance, the Resolution 2178²⁹⁶, adopted by the SC acting under Chapter VII of the UN Charter, called upon member states, in accordance with their obligations under international law, to cooperate in efforts to address the threat posed by foreign terrorist fighters. The latest Resolution 2379²⁹⁷ (2017) established an investigative team tasked with collecting, storing and preserving evidence of ISIL crimes in Iraq. In this respect, the author asserts, that during last 4 years the Security Council has not adopted any Resolution authorizing the use of force in Iraq, therefore no actual measures were taken by the SC to maintain international peace and security in relation to Iraq.

In conclusion, the author affirms, that airstrikes conducted by the U.S. against the Islamic State in Iraq are justified under the international law. Legitimate Iraqi government issued a valid consent for the U.S. intervention and it is not revoked for the time being. Regarding the airstrikes launched by the partners of the Global Coalition, such as Australia, Canada and United Kingdom, in the author's view, their actions taken in collective self-defence of Iraq satisfy all the required criteria of material

²⁹² Permanent Rep. of Gr. Brit. to the U.N., U.N. Doc. S/2014/851 (November 26, 2014).

²⁹³ Permanent Rep. of Canada to the U.N., U.N. Doc. S/2015/221 (March 31, 2015).

²⁹⁴ Permanent Rep. of Australia to the U.N., U.N. Doc. S/2015/693 (September 9, 2015).

²⁹⁵ "UN Documents for Iraq: Security Council Resolutions", Security Council Report, <http://www.securitycouncilreport.org/un-documents/>

²⁹⁶ U.N. Doc. S/RES/2178, Security Council Resolution 2178 (24 September 2014).

²⁹⁷ U.N. Doc. S/RES/2379, The Security Council Resolution (21 September 2017).

and procedural nature, therefore the GC's airstrikes in Syria are concluded to be legal under the international law.

3.4. The legality of airstrikes against the Islamic State in Syria

The threat posed by the Islamic State is not limited to the territory of Iraq. As it was stated in the first Chapter of the thesis, on September 23, 2014, the United States launched its first airstrikes against the IS in Syria²⁹⁸. In addition to this, on September 30, 2015 the Russian Federation started conducting its first airstrikes in Syria²⁹⁹. Contrary to the U.S. led intervention in Iraq, the U.S. military operations in Syria were conducted without any formal request from the Syrian government. In case of Russia, the Russian Air Force was dispatched to Syria after Syrian President Bashar al-Assad formally requested the military aid from Russia, thus the Russian Federation begin to act under the authorization of Damascus³⁰⁰. In any case, there still exist legal debate regarding the legality of the American-led intervention against the IS in Syria without the consent from the Syrian Government. Additionally, the legitimacy of the President al-Assad issued consent for Russian intervention is being questioned, putting in obscurity the legality of the airstrikes conducted in Syria by the Russian Federation. Therefore, in this subchapter the role and the legality of the airstrikes launched by the Russian Federation and American-led Coalition will be examined and conclusions will be made whether airstrikes against the Islamic State in Syria are justified under international law.

3.4.1. The Security Council Authorization

To start with, there are only two UN Charter based exceptions, which justify the use of force the UN Security Council authorization under the Chapter VII and the right to self-defence, embodied in the Article 51 of the Charter. Therefore, the following examination of the situation in Syria will determine whether any of two exceptions are applicable in the case of the U.S. led airstrikes in Syria.

As it was discussed in the first Chapter of the thesis, starting with the first disturbances in Syria in 2011, on 3 August 2011, the President of the UNSC issued a statement condemning the widespread violations of human rights and the use of force against civilians by the Syrian authorities³⁰¹. Regarding the deterioration of the situation in Syria, on 16 February 2012, this time the UNGA adopted

²⁹⁸ Craig Whitlock, "U.S. begins airstrikes against Islamic State in Syria", The Washington Post, September 23, 2014, https://www.washingtonpost.com/world/national-security/us-begins-airstrikes-against-islamic-state-in-syria/2014/09/22/8b677e26-42b3-11e4-b437-1a7368204804_story.html?utm_term=.2fcef01f2754

²⁹⁹ Tim Sweijjs, et.al., "The Rise and Fall of ISIS: from Evitability to Inevitability", Report. The Hague Centre for Strategic Studies (2016-2017):8, <https://hcss.nl/report/volatility-and-friction-age-disintermediation>

³⁰⁰ "Damascus confirms Assad request for military assistance from Russia," The Arab Weekly, September 30, 2015, <http://www.thearabweekly.com/?id=2208>

³⁰¹ U.N. Doc. S/PRST/2011/16, Statement by the President of the Security Council, 6598th meeting., (3 August 2011).

Resolution 66/253, which once more condemned the “continued widespread and systematic violations of human rights and fundamental freedoms by the Syrian authorities [...]”³⁰². In addition to this, on 7 August 2012, the GA adopted the Resolution 66/253³⁰³, which deplored the Security Council’s failure to act on Syria and called for a political transition. In 2013, reacting to the two-alleged chemical weapons attack in Syria, on 22 March 2013, the UNSG addressed the letter to the President of the SC, where he announced his decision to investigate the alleged use of chemical weapons in the Syrian Arab Republic³⁰⁴. On 13 September 2013, the UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic reported to the GA and the SC that based on the evidence obtained during the investigation, the conclusion is that, “on 21 August 2013, chemical weapons have been used in the ongoing conflict between the parties in the Syrian Arab Republic, also against civilians, including children, on a relatively large scale”³⁰⁵. Moreover, on 27 September 2013, the SC adopted the Resolution 2118 (2013)³⁰⁶ urging all Syrian parties and Member States with relevant capabilities to work closely together and with the OPCW and the United Nations to arrange for the security of the monitoring and destruction of chemical weapons mission, recognizing the primary responsibility of the Syrian government in this regard. This was the first resolution of the Security Council which was passed regarding the situation in Syria since the beginning of the violence in Syria in 2011. Three western backed resolutions, calling President al-Assad to end the violence inside the country, were previously vetoed by Russia and China³⁰⁷. The next Resolution, concerning the Syria, was adopted on 22 February 2014, which demanded all parties to allow delivery of humanitarian assistance, calling all parties to respect the principle of medical neutrality and facilitate free passage to all areas for medical personnel, equipment and transport³⁰⁸. Furthermore, on 6 March 2015, following the findings of the OPCW, the Security Council adopted Resolution 2209³⁰⁹, where it condemned in the strongest terms the use of chemical weapons in Syria. In this respect, it shall be noted, that the SC decided, in the event of non-compliance with the Resolution 2118, to impose

³⁰² U.N. Doc. A/RES/66/253, UNGA, 66th session (16 February 2012).

³⁰³ Ibid.

³⁰⁴ Letter dated 22 March 2013 from the Secretary-General addressed to the President of the Security Council S/2013/184, 25 March 2013.

³⁰⁵ Report of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic on the alleged use of chemical weapons in the Ghouta area of Damascus on 21 August 2013, A/67/997–S/2013/553, 16 September 2013.

³⁰⁶ U.N. Doc. S/RES/2118, Security Council Resolution, 7038th meeting (27 September 2013).

³⁰⁷ “UN unanimously adopts Syria arms resolution”, Al Jazeera, September 28, 2013,

<http://www.aljazeera.com/news/middleeast/2013/09/un-set-vote-syria-arms-resolution-201392722505954106.html>.

³⁰⁸ U.N. Doc. S/RES/2139, Security Council Resolution (22 February 2014).

³⁰⁹ U.N. Doc. S/RES/2209, Security Council Resolution (6 March 2015).

measures on Syria under the Chapter VII of the United Nations Charter³¹⁰. Moreover, on 26 February 2016, the SC adopted the Resolution 2268³¹¹, which “endorsed the Joint Statement of the United States and the Russian Federation, as Co-Chairs of the International Syria Support Group, on the Cessation of Hostilities in Syria”³¹².

In the opinion of the author, with the adoption of the aforementioned resolutions, the SC was only endorsing the international community to seek the peaceful solution to the crisis in the Syrian Arab Republic, as well as facilitated the delivery of the humanitarian assistance to Syria. Even though there were several resolutions, which were adopted unanimously in the Security Council in the face of Syrian civil war crisis, however no real changes occurred regarding the situation in Syria. One of the latest failures of the SC happened on 27 February 2017, when the Draft Resolution S/2017/172³¹³ was presented in the Security Council. This resolution, which would have imposed sanctions for Syria for the use of chemical weapons, was vetoed by Russia and China. It was the seventh and sixth veto used accordingly by Russia and China on issues regarding the situation in Syria. In the respect to vetoed resolutions, it must be noted that, for instance, with the adoption of Draft Resolution S/2014/348³¹⁴ Syria would have been referred to the International Criminal Court (ICC) due to the widespread violations of human rights and international humanitarian law, however with all Council members voting in favor, the Draft Resolution was vetoed by China and Russia. The latest failure of the Security Council to act on Syria situation occurred on 16 November 2017, when Russia and Bolivia vetoed two Draft Resolutions related to the extension of the mandate of JIM, which main task was to determine the perpetrators of chemical weapons attacks in Syria.

It is, therefore, submitted that to date the Security Council failed to impose measures against Syria and by no means authorized use of force against Syria. Consequently, the author asserts that U.S. led alliance’s conducted airstrikes in Syria cannot be justified based on the Security Council authorization.

³¹⁰ “Adopting Resolution 2209 (2015), Security Council Condemns Use of Chlorine Gas as Weapon in Syria | Meetings Coverage and Press Releases”, United Nations, <https://www.un.org/press/en/2015/sc11810.doc.htm>

³¹¹ U.N. Doc. S/RES/2268, Security Council Resolution (26 February 2016).

³¹² “Implementation of Security Council Resolution 2268 (2016) 'Our Best Chance' to Reduce Brutal Violence in Syria, Says Secretary-General | Meetings Coverage and Press Releases”, United Nations, <https://www.un.org/press/en/2016/sgsm17564.doc.htm>.

³¹³ U.N. Doc. S/2017/172, Security Council Draft Resolution (28 February 2017).

³¹⁴ U.N. Doc. S/2014/328, Security Council Draft Resolution (22 May 2014).

3.4.2. Self-defence

The following issue to be addressed in the determination of the legality of the U.S. led intervention in Syria is the right to self-defence, which is very often used as the legal justification for the use of force in Syria by the U.S. officials.

The AUMF 2001

To start with, in order to understand the logic behind the U.S. legal justifications for using force in Syria, it is important to take the recourse to the September 11th events in 2001. In response to the September 11th terrorist attacks in the United States, the U.S. Congress passed the Authorization for the Use of Military Force (AUMF)³¹⁵, which authorized the use of United States Armed Forces against those responsible for the attacks launched against the U.S. What must be emphasized here is that the AUMF was not unlimited, meaning that it authorized the President to use necessary and appropriate force only against those States, organizations or persons, which planned, supported or participated in any way in the terrorist attacks that occurred on September 11th. Following the adopted AUMF, on October 7, 2001 the Permanent Representative of the United States of America to the UN addressed the letter to the President of the Security Council³¹⁶ notifying that in accordance with Article 51 of Charter and in response to the 9/11 terrorist attacks, the U.S. together with other States, has initiated actions in the exercise of its inherent right of individual and collective self-defence. As a result, on the same day, the U.S. Armed Forces have started military operations in Afghanistan against the Al-Qaeda and Taliban. For 16 years, the U.S. has been using the AUMF 2001 as a main legal basis for the military operations against the IS in various countries in the world, including Syria.

On 10 September 2014³¹⁷ the President Obama announced his strategy to defeat the ISIS, where the fundamental shift was military operations' expansion to Syria. Obama's administration relied its right to strike Syria on the AUMF 2001, which was passed to target the Al-Qaeda. In this respect, the author asserts, that in the time the AUMF was passed, the Al-Qaeda had no ties with the Islamic State. Only in 2004 the group merged with the Al-Qaeda and became known as the Al-Qaeda in Iraq. However, in 2006 they have split and on February 2014, the Al-Qaeda officially informed about breaking links with ISIS due to the power struggle between both organizations³¹⁸. Therefore,

³¹⁵ "Authorization for the Use of Force", S.J.Res.23., Public Law 107-40., 107th Congress., September 18, 2001.

³¹⁶ Permanent. Rep of USA to the U.N., U.N.Doc. S/2001/946 (7 October 2001).

³¹⁷ Brett Lo Giurato, "This Is Obama's Four-Part Strategy To 'Destroy' And 'Eradicate' ISIS", Business Insider. September 10, 2014, <http://www.businessinsider.com/obama-strategy-defeat-isis-2014-9>

³¹⁸ Oliver Holmes, "Al Qaeda breaks link with Syrian militant group ISIL," Reuters, February 03, 2014, <http://www.reuters.com/article/us-syria-crisis-qaeda/al-qaeda-breaks-link-with-syrian-militant-group-isil-idUSBREA120NS20140203>

the main question regarding the AUMF as a legal basis for striking in Syria is what kind of connection do the AUMF 2001 have with the started military operation in 2014 against the IS in Syria?

According to the speech given by General Counsel of the U.S. Department of Defense Stephen W. Preston in 2015, the AUMF 2001 authorized the use of force also against the ISIL and the current split between the Al-Qaeda and the ISIL did not remove the ISIL from the coverage under the AUMF 2001³¹⁹. In this sense, he noted that the ISIL had a direct relationship with the Al-Qaeda and even though currently two groups do not operate under the united leadership, however there are groups of Al-Qaeda fighters who have declared their allegiance to the ISIL³²⁰. In addition to this, he concluded that the reliance on the AUMF 2001 for fighting the ISIL does not constitute the expansion of authority of the President of the U.S.³²¹. What shall be noted here is that President G.W. Bush, as well as the current President D. Trump, use name “ISIS” while the former President B. Obama had always used the term “ISIL”, when referring to the present so called “Islamic State”. As it was mentioned in the first chapter of the thesis, the term “ISIL” stands for the Islamic state in Iraq and Levant, while the term “ISIS” stands for the Islamic State in Iraq and Syria. Both names represent times when Al-Qaeda and ISIS were operating together under the joint leadership of Al-Baghdadi. The only difference between aforementioned names is that “Levant” reflects much greater area than the actual territory of Syria. In the author’s view, in order to justify the use of AUMF 2001 as the legal cornerstone for conducting attacks in Syria, the U.S. do not use the current name of the so-called Islamic State, and, instead, puts extreme importance on attacking the ISIL or ISIS, regardless the country they are located.

Since the adoption of the AUMF, the Democratic congresswoman Barbara Lee, who the only one voted against the authorization of the use of force in 2001, has been considering the AUMF as the “blank check”³²² which created the opportunity for the U.S. administration to justify military interventions against the IS in all over the world without having them nothing to do with the September 11th attacks. During 16 years of the AUMF being valid, she has brought several initiatives for repealing the authorization of the use of force and finally, on 29 June 2017 the House Appropriations Committee³²³ approved an amendment that would repeal the AUMF within eight months after the

³¹⁹ “The Legal Framework for the United States' Use of Military Force Since 9/11”, U.S. Department of Defence, April 10, 2015, <https://www.defense.gov/News/Speeches/Speech-View/Article/606662/the-legal-framework-for-the-united-states-use-of-military-force-since-911/>

³²⁰ Ibid.

³²¹ Ibid.

³²² John Nichols, “16 Years Ago, Barbara Lee's Warning Against the AUMF Was Ignored. Nevertheless, She Persisted”, *The Nation*, June 30, 2017, <https://www.thenation.com/article/16-years-ago-barbara-lees-warning-against-the-aumf-was-ignored-nevertheless-she-persisted/>

³²³ Jeremy Herb, Deirdre Walsh, “House panel votes to repeal war authorization for ISIS and al Qaeda”, *CNN*, June 29, 2017, <http://edition.cnn.com/2017/06/29/politics/house-panel-repeal-war-authorization-isis-al-qaeda/index.html>

appropriations bill would have been signed into law. However, a month later, the Rules Committee³²⁴ removed the amendment from 2018 defense appropriations bill. In addition to this, on 13 September 2017 the U.S. Senate voted against the Sen. Rand Paul initiative³²⁵ which would have repealed the authorization of the use of force as the mean the U.S. military uses to fight the terrorism on the global. It is, therefore, submitted that the AUMF remains in effect to date and has been used to justify U.S. military action mainly in Afghanistan, Iraq, Syria, Yemen, Libya and Somalia³²⁶.

Even though the AUMF is still in force, the author asserts that the interpretation of the AUMF is extremely broad and the ISIS/ISIL in no way are covered by the AUMF's allowable targets. The Islamic State could not be associated or affiliated with the Al-Qaeda at the moment the AUMF was passed, nor can be linked with it now, as these two groups are rather operating against each other than together. With the adopted logic of the U.S. administration, the AUMF could be used as the legal basis for the use of force practically against any terrorist group that fights against the United States and might have had links with Al-Qaeda in the past or in the present. Thus, it must be stated that with the adoption of the AUMF, the way for the never-ending war was opened and the U.S. remains committed to the war without geographic limits.

Individual Self-Defence

Besides the domestic law authorities, the U.S. led intervention in Syria must be also consistent within the international law. As it was stated before, to date, the SC by no means authorized use of force against Syria. Consequently, the U.S. led alliance's conducted airstrikes in Syria cannot be justified based on the Security Council's authorization. Thus, the sole remaining legal basis for the use of force is embodied in the Article 51 of the Charter and it provides that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security [...]"³²⁷. As it was already stated before, in conformity with the "armed attack" criterion included in the Article 51 of the Charter, for the invoked self-defence to be lawful the force in self-defence must be necessary and proportional to the seriousness of the

³²⁴ "AUMF repeal stripped from defense appropriations bill." *InsideDefense.com*. July 19, 2017, <https://insidedefense.com/insider/aumf-repeal-stripped-defense-appropriations-bill>

³²⁵ Jeremy Herb, "Senate rejects bid to repeal war authorizations", CNN, September 13, 2017, <http://edition.cnn.com/2017/09/13/politics/senate-isis-war-vote/index.html>

³²⁶ United States President, *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations*, December 2016, <https://fas.org/man/eprint/frameworks.pdf>

³²⁷ "Chapter VII", United Nations, <http://www.un.org/en/sections/un-charter/chapter-vii/index.html>

armed attack³²⁸. Taking into consideration the start date of the U.S. led intervention in Syria, it must be emphasized that for the U.S. to conduct airstrikes in self-defence under the Article 51, there shall be the presence of the “armed attack”. However, before the first U.S. and Global Coalition’s first airstrikes against the Islamic State in Syria or even for airstrikes being in action, neither the United States, nor the partners of the Global Coalition were directly attacked by the IS. Thus, the author asserts that no armed attack occurred (in the U.S. or in other States which takes part in the Global Coalition), which would have enabled them to invoke individually the right to self-defence. According to discussed above, the other criteria of the self-defence are not being analyzed, as it was concluded that the self-defence is not within the conformity of the “armed criterion” embodied in the Article 51 of the UN Charter.

Collective Self-Defence

In the case of Iraq, on 25 June 2014³²⁹ Permanent Rep. of Iraq has sent the letter to the UNSG corresponding to the situation where it stated that the ISIL has repeatedly launched attacks against Iraqi territory from Syria and requested the assistance from the international community. In return, the Permanent Rep. of the U.S. on 23 September 2014³³⁰ presented the letter to the UNSG, notifying the SC about taking actions in the collective defence of Iraq. In other words, the U.S. and Global Coalition tend to justify their airstrikes in Syria as the military operation launched for Iraq’s self-defence at the Iraq’s request. In this respect, it must be stressed that for the U.S. intervention in Syria to be legally based on the collective self-defence, several conditions must be met.

Firstly, “the armed attack” criterion must be fulfilled. As it was stated in the earlier Chapter, the ICJ has never expressly suggested a general approach on evaluating whether particular attack need to reach the certain threshold in order to be defined as an armed attack. However, in the *Oil Platforms* case, the Court indicated that, for example, “the cumulative nature of a series of forcible actions could possibly turn them into an “armed attack”³³¹. In the case of Iraq, it was already concluded before (See p. 53 of the Thesis), that there is no doubt that attacks launched by the IS in the territory of Iraq reached the needed threshold to be considered as armed attacks. During the presence in Iraq, the IS managed to capture vast parts of the Iraqi territory, killing thousands of innocent civilians as well as destructing surrounding property. Therefore, the author supports the earlier asserted position, that action of the IS

³²⁸ Peter Malanczuk, *supra* note, 116: 316.

³²⁹ Permanent Rep. of Iraq to the U.N., U.N. Doc. S/2014/440 (June 25, 2014).

³³⁰ Permanent Rep. of the U.S. to the U.N., U.N. Doc. S/2014/695 (Sept. 23, 2014).

³³¹ *Oil platforms*, *supra* note 156: 244.

in Iraq taken together were of the certain gravity to constitute armed attacks in sense of the Article 51 of the Charter.

Secondly, the author supports the view it adopted before (see p. 55 of the Thesis) that an armed attack launched by the non-state actor, preserves the right to the victim State to invoke self-defence under the Article 51 of the Charter. In this respect, the author asserted before, that Iraq has the right to exercise the right to collective self-defence, even though it is attacked by the globally acting terrorist organization, which attacks are in general un-attributable to any State.

Furthermore, the following issue to be addressed is extraterritorial airstrikes in Syria under the right to collective self-defence. Regardless the fact that attacks conducted by the Islamic State in Iraq constitutes armed attacks under the Article 51 of the Charter, however, as it was noted before, these attacks are launched by the non-state actor, the Islamic State, and not Syria, therefore, actions of the IS are not attributable to Syria. The main issue regarding the application of collective self-defence in the case of cross-border operations in Syria is that if Syria's territory is violated without its consent, there is a breach of the principle of non-intervention, which is embodied in the Article 2.4 of the UN Charter.

From the start of the military intervention in Syria, on 23 September 2014, Pentagon Press Secretary Navy Adm. John Kirby announced that "While the United States did inform the Syrian regime through our U.N. ambassador of our intent to take action, there was no coordination and no military-to-military communication"³³². To date, the Assad regime has not (at least) publicly expressed its consent for the U.S. military operations in Syria. Instead, Syria has been underlining that any foreign intervention inside the country against the IS must be coordinated with the Assad regime³³³, otherwise the UN Charter would be violated. It is, therefore, submitted that there has been no consent from the Syria, explicit or implied, that would allow the U.S. led military intervention in the Syrian territory. Exclusively the Syrian government has sovereignty over the Syrian territory and is responsible for the consent needed for U.S. military operations within Syria, thus, without its consent U.S. led military intervention in Syria shall be considered to be unlawful.

³³² "DoD Official: Successful Syrian Strikes Only the Beginning", U.S. Department of Defense, September 23, 2014, <https://www.defense.gov/News/Article/Article/603308/>

³³³ "Assad Regime: U.S. Intervention Must be Coordinated with Syria, or Will Violate UN Charter." CNS News, November 2, 2015, <https://www.cnsnews.com/news/article/patrick-goodenough/assad-regime-us-intervention-must-be-coordinated-syria-or-will>

As it was stated in the earlier Chapter, in the *Corfu Channel* case, the ICJ ruled that “[...] every State's obligation is not to allow knowingly its territory to be used for acts contrary to the rights of other States”³³⁴. However, the author asserted that in practice sometimes the “host” State is unwilling or unable to control or prevent cross-border attacks which are defined as the “armed attack” by the victim State.

In the case of the U.S. led intervention in Syria, the United States³³⁵, Canada³³⁶, Australia³³⁷ and Turkey³³⁸ have expressed in their letters to the UNSG, that Syrian Government is unwilling or unable to prevent attacks emanating from its territory. Likewise, the British Prime Minister David Cameron, on 26 November 2015, gave a statement in response to the Foreign Affairs Select Committee report on military operations in Syria, arguing that “the Assad regime is unwilling and/or unable to take action necessary to prevent ISIL’s continuing attack on Iraq-or indeed attacks on us”³³⁹. In the present case, it is of extreme importance, to address whether Syria is really unwilling or unable to fight the IS in its territory. At the beginning of the now so-called IS’s shift to Syria, Syria was undergoing (still is) the devastating civil war, where it failed fighting the Islamic State, which was constantly launching violent armed attacks not only inside the Syria but also outside its territory, posing huge threat to the whole international community. At that time being, Bashar al-Assad was concentrated more on fighting the opposition in terms of Syrian civil war, rather than trying to destroy the emerging group of the ISIS. As a result, the ISIS at that time being managed to proliferate and conquer vast parts of Syria. In addition to this, it must be stressed, that on 15 February 2015, it was announced that the OPCW’s laboratory tests “had come back positive for the sulfur mustard after around 35 Kurdish troops were attacked” by the militants of the IS in Iraq in 2014. Furthermore, on 30 August 2016, the Joint Investigation team of the UN and OPCW concluded that Syrian Armed Forces were determined to be responsible for the four chemical weapons attacks in Syria, while the ISIL was found to be responsible in one attack where chemical substance was used as a weapon³⁴⁰. In the author’s view, the State, which is determined to be responsible for launching chemical weapons

³³⁴ *Corfu Channel* case, *supra* note 198:22.

³³⁵ The Permanent Rep. of the U.S. to the U.N., U.N. Doc. S/2014/695 (Sept. 23, 2014).

³³⁶ The Permanent Mission of Canada to the U.N., U.N. Doc. S/2015/221 (Mar. 31, 2015).

³³⁷ The Permanent Rep. of Australia. to the U.N., U.N. Doc. S/2015/693 (Sept. 9, 2015).

³³⁸ The Permanent Mission of Turkey to the U.N., U.N. Doc. S/2015/563 (July 24, 2015).

³³⁹ “PM statement responding to FAC report on military operations in Syria”, PM statement responding to FAC report on military operations in Syria - GOV.UK, <https://www.gov.uk/government/speeches/pm-statement-responding-to-fac-report-on-military-operations-in-syria>

³⁴⁰ “Security Council Considers Fourth Report by Joint Investigative Mechanism | Meetings Coverage and Press Releases”, United Nations. October 27, 2016, <https://www.un.org/press/en/2016/dc3668.doc.htm>

attacks against its own people is rather unwilling than unable to meet the obligations not to allow knowingly its territory to be used for acts contrary to the rights of other States. Moreover, it shall be noted that, to date, there is no precise information on whether the Syrian Government controls major regions within its territory as the process of the regaining of the territories, being under the command of the IS, remains still dynamic. Therefore, Syria might not have any possibility in certain regions of the country to comply with its obligations and not to allow to use its territory for the acts contrary to the rights of Iraq. Therefore, in the author's view, Syria is both, unwilling or unable, to comply with the obligations expressed by the ICJ in the *Corfu Channel Case*. The author asserts, that even without the consent of the Syrian Government, the U.S. led intervention is justified within the terms of the collective self-defence and with the assistance of the "unwilling or unable" doctrine.

The following issue to be addressed is whether actions taken in collective self-defence of Iraq in Syria, meets the requirements of the proportionality and necessity. The author asserts, that situation in Syria has been deteriorating every year. Apart from the conducting harsh armed attacks inside the Syria, the IS even used the chemical weapons against the Kurds in the territory of the Iraq. The inaction in Syria would cause unprecedented brutality both inside and outside the country, as Syria is battling its own battle of the civil war and on its own is not able to defeat the IS. It is, therefore, submitted that considering the development of the situation in Syria, nothing apart of the use of force would help to repel armed attacks of the Islamic State.

Last issue to be addressed in terms of collective self-defence of Iraq, is that for the Global Coalition led by the U.S. to justify its continuous airstrikes in Syria in consistency within international law, it is needed to have a continuous Iraq's request for assistance. In accordance with the right to collective self-defence, it must be emphasized that all airstrikes in Syria must be launched as the part of actions taken only in collective self-defence of Iraq. However, considering that on 9 December 2017, Iraqi Prime Minister al-Abadi declared the victory over the IS³⁴¹, the Iraqi Government might withdraw the issued request in any time.

In conclusion, the author asserts that the IS actions in Iraq taken together constitutes armed attacks and Iraq holds the right to collective self-defence against the non-state actor in terms of the Article 51 of the Charter. However, there has been no consent from the Syria, explicit or implied, that would allow U.S. led military intervention to take actions in collective defense of Iraq in the Syrian

³⁴¹ Margaret Coker, Falih Hassan, "Iraq Prime Minister Declares Victory Over ISIS", The New York Times, December 09, 2017, <https://www.nytimes.com/2017/12/09/world/middleeast/iraq-isis-haider-al-abadi.html>

territory. Considering the fact that Syrian Government is determined to be both, unwilling and unable, to comply with its obligations not to allow knowingly its territory to be used for acts contrary to the rights of Iraq, the U.S. led intervention in Syria launched in the collective self-defence of Iraq is considered lawful under the international law.

Anticipatory Self-Defence

Another legal justification, which is often expressed by the U.S. officials is the U.S. right to the anticipatory self-defence. As it was stated above, for the individual self-defence to be invoked, an “armed attack” must be occurred in order to be justified under the Article 51 of the UN Charter. However, as it discussed in earlier Chapter, there exists the right to anticipatory self-defence which might be used by a State against an imminent armed attack.

Considering the U.S. led intervention against the IS in Syria and considering circumstances in which airstrikes in Syria were launched, it must be stressed that for instance, that the U.S. led coalition every day conducts dozens of airstrikes in Syria. For instance, since September 2016 till October 2017, the United States and allies have conducted approximately 9036 airstrikes in the territory of Syria³⁴². In the process of the evaluation of the probability of the imminence of the attack against the U.S. or Global Coalition States, the information should be backed up by the precise information gathered from the intelligence institutions. However, taken into consideration, that for instance, in 2016, according to Europol, a total of 142 failed, foiled and completed terrorist attacks were reported³⁴³, the criterion of the imminence of attack would be met.

Another issue to be addressed is the criteria of necessity in terms of actions, taken in anticipatory self-defence. The element of necessity requires the responding state to show that the forcible measure to be used is the last resort for the State as it does not have any reasonable non-forcible measure to be used in order to redress the situation. As it was discussed above, on 30 August 2016, it was reported that Syrian Armed Forces were determined to be responsible for the four out of nine cases by using chemical weapon and the ISIL was found to be responsible in one attack where the chemical weapon was used³⁴⁴. Considering provided report results, it can be concluded that there exists the probability for weapons of massive destruction to be used not only by the IS but also by the

³⁴² “Monthly airstrikes in Iraq and Syria as of October 2017 | Statistic”, Statista, <https://www.statista.com/statistics/693263/monthly-airstrikes-in-iraq-and-syria/>

³⁴³ Claudia Hillebrand, "Guarding EU-wide Counter-terrorism Policing: The Struggle for Sound Parliamentary Scrutiny of Europol", *European Security, Terrorism and Intelligence* (2017):10, doi:10.1057/9781137314734_5

³⁴⁴ Claudia Hillebrand, "Guarding EU-wide Counter-terrorism Policing: The Struggle for Sound Parliamentary Scrutiny of Europol", *European Security, Terrorism and Intelligence* (2017):10, doi:10.1057/9781137314734_5

Syrian Armed Forces against the U.S. or Global Coalitions States. Therefore, even to date it does not happened yet, considering the development of the situation in Syria, it may be concluded that here exists real threat for the U.S. or other states of the Global Coalition, to be attacked by the IS militants, using the chemical substances. Additionally, the author asserts, that the Western world during last years have faces deadly terrorist attacks taking away hundreds of people lives and posing huge threat for the security of the victim States. Thus, such countries as France, United Kingdom or Turkey may validate their justification of the use of force against the IS in Syria not only under the right to collective self-defence (as concluded above) but also based on the anticipatory self-defence.

In conclusion, in the author's view, the U.S. led airstrikes in Syria satisfy the criteria needed to exercise the right to collective and anticipatory self-defence. The force used by the GC to thwart imminent attacks does not exceed the threat that would be posed if real armed attacks would occur. In addition to this, even though to date there are no exact indications or information available publicly that would allow to conclude firmly that there exists real threat for the existence of the United States or Global Coalition's States-Partners, however considering the development of the situation in Syria, it may be concluded that here exists real threat for the U.S. or other states of the Global Coalition, to be attacked by the IS militants. Therefore, in the opinion of the author, the U.S. led airstrikes in Syria are justified under the international law.

3.5. The Legality of the Russian Federation Airstrikes in Syria

Apart from the U.S. led alliance's intervention in Syria, Russia has also been conducting airstrikes in the territory of Syria. On 30 September 2015 Russian Parliament approved President's Vladimir Putin request to launch airstrikes inside Syria³⁴⁵. As a result, on the same day, Russian Military Forces conducted first ever Russian airstrikes in the territory of Syria. According to Syria's states news agency, Russian military intervention in Syria was followed by the official request from President Al-Assad, who sent the letter to Russia asking its assistance in fighting the terrorism³⁴⁶. Therefore, it is submitted that on the contrary to the GC situation in Syria, Russia started acting in Syria under the authorization of Damascus.

As it was discussed before in regard to the U.S. military intervention in Iraq, the international law recognizes the right of the government to request foreign assistance, including also military

³⁴⁵ "Russia joins war in Syria: Five key points", BBC. News, October 1, 2015, <http://www.bbc.com/news/world-middle-east-34416519>

³⁴⁶ Bill Chappell, "Russia Begins Airstrikes in Syria After Assad's Request", NPR, September 30, 2015, <https://www.npr.org/sections/thetwo-way/2015/09/30/444679327/russia-begins-conducting-airstrikes-in-syria-at-assads-request>

intervention. The general dictum of this right was formulated by the ICJ in the *Nicaragua*³⁴⁷ case and reaffirmed in the *Congo v. Uganda*³⁴⁸ case. Thus, if the invitation by the State is invoked properly, the foreign State's intervention does not breach the Article 2(4), embodied in the UN Charter. In addition to this, the international law establishes certain conditions for the consent to be regarded as valid. According to the Article 20 of the DASR, "Consent must be freely given and clearly established"³⁴⁹. Additionally, it must be issued by the agent or person, who is authorized to do so on behalf of the State. Moreover, the consent shall be issued or before the intervention, or at the time it is occurring but, in any case, not after the intervention has already being conducted³⁵⁰. Furthermore, the receiving State must act in accordance with the consent, thus its actions must fell within limits of the given consent. In conclusion, for the consent to be valid four conditions must be satisfied: 1) consent for intervention must be issued by the agent or person, who is authorized to do so on behalf of the State, 2) prior or at the current time of intervention; 3) without error, fraud, corruption or coercion, and 4) the assistance must remain within the limits of that consent.

In the case of Syria, the consent for the Russian military intervention was issued by Syrian President Bashar al-Assad. For determining the legitimacy of Al-Assad's issued consent, following issues must be addressed.

To start with, the traditional determination of the government's legality requires the *de facto* control over the State's territory³⁵¹. The "effective control" test demands the State to fulfill the functions of the State and there is no explicit requirement for how much of control do the State need to have³⁵². Thus, until the effective control is completely lost, the government is considered as the legitimate. In the case of Syria, Al-Assad's path to presidency started in 2000, when following his father's death, he was elected as President in the referendum with 97% of the vote³⁵³. At that time being his governance was supported by loyalists in the security forces, who were mainly dominant by Alawite sect³⁵⁴. What shall be noted here, is that during his presidency many security agencies started detaining people, without warrants of arrest, Islamists and Kurdish activists were being sentenced to

³⁴⁷ *Nicaragua vs USA*, *supra* note, 118: para. 246, 126.

³⁴⁸ *Democratic Republic of the Congo v. Uganda*, *supra* note, 131: para. 42-53, 196-199.

³⁴⁹ *Supra* note, 132.

³⁵⁰ *Ibid.*

³⁵¹ Christopher Le Mon, "Unilateral Intervention by Invitation in Civil Wars: The Effective Control Test Tested", *New York University Journal of International Law and Politics* Vol. 35 (2003):745.

³⁵² *Ibid.*

³⁵³ "Syrian President Bashar al-Assad: Facing down rebellion" BBC News, October 21, 2015, <http://www.bbc.com/news/10338256>

³⁵⁴ "Syrian President Bashar al-Assad: Facing down rebellion" BBC News, October 21, 2015, <http://www.bbc.com/news/10338256>

long prison terms³⁵⁵. Even government announced Syrian economic liberalization being the priority, however no actual measures were taken, and no opportunities were created for ordinary Syrian people. In any case, in 2007, Al-Assad won another presidential election and extended his authority for the next seven years³⁵⁶. During next years, Al-Assad's regime continued working for the people of the elite and its allies benefiting them, rather than creating opportunities for all Syrian people. The first protests in Syria took place in March 2011 in the area around the city of Damascus³⁵⁷. Later, protests spread to other parts of the country and the number of people participating in them was constantly growing. Despite the Syrian civil war being in progress, Bashar Al-Assad managed to win another Presidential election, which prolonged his presidency for another seven years³⁵⁸. His winning was followed not only by even harsher violence across the country, but also gained international response. On 18 December 2015 the UN Security Council unanimously adopted Resolution 2254 (2015)³⁵⁹, which set out the plan for the government and opposition peace talks, a ceasefire and "free and fair elections" within the period of 18 months. The main problem regarding the adopted Resolution is that it expressed great ambition in the willingness to help Syria to resolve and finally end the ongoing violence in the country. However, with the opposition being strongly against the Al-Assad, the main axis of the negotiations would be how to prevent Al-Assad from participating in new presidential elections rather than reaching an agreement between the opposition and government, which finally most likely would not be implemented. Additionally, it is of extreme importance to remind that on 16 February 2012 the UN General Assembly adopted Resolution 66/253, which condemned the "continued widespread and systematic violations of human rights and fundamental freedoms by the Syrian authorities [...]"³⁶⁰, as well as, on 30 August 2016, Syrian Government Forces were reported to be responsible for the chemical weapons attacks in Syria, thus it can be agreed that Al-Assad failed to protect his people from major human rights abuses, as well as did not prevent the use of chemical weapons inside the Syria by Syrian Government Forces when being the Commander-in-Chief of the Armed Forces. In the light of chemical weapons use, it is important to note that both GA and SC condemned in the strongest possible terms the use of chemical weapons and emphasized that this act is a war crime³⁶¹. However, the main problem regarding Syrian regime is that it denies the unlawful

³⁵⁵ Ibid.

³⁵⁶ Ibid.

³⁵⁷ Louise Arimatsu, Mohbuba Choudhury, *supra* note, 64:7.

³⁵⁸ "Bashar al-Assad wins re-Election in Syria as uprising against him rages on", The Guardian, June 4, 2014, <https://www.theguardian.com/world/2014/jun/04/bashar-al-assad-wins-reelection-in-landslide-victory>

³⁵⁹ U.N. Doc. S/RES/2254, Security Council Resolution 2254 (18 December 2015).

³⁶⁰ U.N. Doc. A/RES/66/253., UNGA, 66th session (16 February 2012).

³⁶¹ U.N. Doc. A/RES/66/253., UNGA, 66th session (16 February 2012).

conduct inside Syria and even with the evidence of the committed crimes under international humanitarian law, Syria could not be prosecuted as it is not party to the Rome Statute, which explicitly prohibits the use of chemical weapons during the international armed conflict³⁶². Therefore, the ICC would not have the jurisdiction over the crimes committed in Syria unless the UN SC, acting under Chapter VII of the Charter of the UN, would refer the situation to the Court³⁶³. As it was mentioned before, on 22 May 2014, the SC tried to adopt the Draft Resolution S/2014/348, that would have referred Syria to the ICC due to the widespread violations of human rights and international humanitarian law, however China and Russia vetoed the Resolution. Additionally, it must be stressed, that on 14 October 2016, the Permanent Representative of Canada, addressed the letter to the UNGA³⁶⁴, in which he requested on behalf of 70 Member States, to hold of a plenary meeting of the General Assembly in regard to the situation of Syria. This example clearly indicated that the international community's deep concerns on the situation in Syria, concerning also the legitimacy of the Syrian government, which constantly fails to satisfy the humanitarian needs of Syrian people.

Therefore, in the author's view, with the opposition being strongly against the al-Assad and within al-Assad inability to prevent the widespread violations of human rights and international humanitarian law inside the country, President al-Assad cannot be considered as the *de facto* legitimate authority in Syria

The following issues to be addressed is whether the Syrian President consent was issued prior or at the current time of intervention and whether Russian assistance remained within the limits of that consent. Even though there is no public information or official press releases from the Syrian Government, which would determine the exact date the consent was issued, however considering the press release from the Russian news agency TASS, it can be concluded that President Al-Assad issued consent for Russian military intervention in Syria right before the day Russian Parliament granted President Putin the permission to deploy air forces in Syria³⁶⁵. In this respect, it must be stressed that since the beginning of Russian airstrikes in Syria, President Al-Assad has been praising Russian

³⁶² U.N. Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90., article 8(2)(b)(xviii).

³⁶³ Ibid., article 13(b).

³⁶⁴ The Permanent Representative of Canada to the UN, letter to the General Assembly (October 13, 2016), <https://www.un.org/pga/71/wp-content/uploads/sites/40/2015/08/Informal-briefing-on-the-situation-of-Syria.pdf>

³⁶⁵ “Совет Федерации дал согласие президенту России на использование ВС РФ в Сирии”, ТАСС, <http://tass.ru/politika/2302922>

intervention³⁶⁶ in Syria and several times even expressed his gratitude³⁶⁷ for intervention as V. Putin's airstrikes in Syria may have saved Al-Assad from being overthrown from his leadership in Syria. It is, therefore, submitted that Russian intervention upon invitation has remained within the limits of the consent issued by Syrian President B. Al-Assad. In addition to this, it shall be reminded, that there is no clear ICJ ruling on whether the rule in the international law exists regarding the intervention upon invitation during the civil war. However, there is no general rule prohibiting the government to issue a valid invitation even during the civil war unless military assistance on request do not deprive the right of peoples to self-determination. Due to the fact that the Islamic State is regarded as a terrorist organization and it does not have the right to self-determination, it is submitted that Russian intervention in Syria upon Syrian government issued consent during the civil war do not constitute the breach of international law as Russian military intervention in Syria was requested in order to defeat the Islamic State.

To conclude, it must be emphasized that currently Syrian government is approached as the illegitimate by the opposition forces, as well as international community is questioning the legitimacy of the President al-Assad presidency. In the opinion of the author, even if Al-Assad remains *the de jure* legitimate authority in Syria to issue the consent for the intervention Syria, he cannot be regarded *de facto* as the legitimate authority of Syria. In addition to this, there is no evidence that the Russian intervention in Syria would have exceeded the limits of the issued consent, thus it is concluded that Russian airstrikes in Syria were launched in conformity with the issued consent and in accordance with international law.

³⁶⁶ Roland Oliphant, "Bashar al-Assad showers Putin with praise during surprise talks in Moscow", The Telegraph, October 21, 2015, <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/11944870/Assad-flies-to-Moscow-for-surprise-talks-with-Putin.html>

³⁶⁷ "Assad praises Russia for succeeding in fighting terrorists together", Russia Beyond, March 13, 2017, https://www.rbth.com/news/2017/03/13/assad-praises-russia-for-succeeding-in-fighting-terrorists-together_718898

CONCLUSIONS

1. Iraq and Syria, being the key battlegrounds of the fighting, are of extreme importance for the IS in order to defend the main lands of its established “Caliphate”. The threat of the IS, as viewed by the West, is considered to emerge explicitly from Iraq and Syria, therefore these countries are the spot of convergence where regional and international actors collide.
2. The Islamic State does not fulfill requirements for the statehood according to the customary international law. The IS did not create the new State by establishing the Caliphate in 2014 and is regarded as the non-state actor in terms of armed attacks launched in Iraq and Syria.
3. The legitimacy of the U.S. led military intervention against the Islamic State in Iraq is justified based on the intervention upon by invitation. In the absence of the general rule prohibiting the government to issue a valid invitation during the civil war, it is submitted that legitimate Iraqi government issued a valid consent for the U.S. intervention. The airstrikes launched by the partners of the Global Coalition, assessed as measures taken in support of the collective self-defence of Iraq as the part of international efforts led by the United States and are concluded to be legal under international law.
4. The U.S. led military intervention in Syria cannot be justified based on the Security Council authorization as the Security Council, acting in conformity with the Chapter VII of the UN Charter, did not sanction military measures against Syria.
5. The U.S. led military actions taken in collective self-defence of Iraq in Syrian territory are in conformity within the international law, even there has been no consent from the Syria, explicit or implied, that would allow the U.S. and Global Coalition States to conduct airstrikes in the territory of Syria. Syrian Government is determined to be unwilling and unable to meet the obligations not to allow knowingly its territory to be used for acts contrary to the rights of Iraq.
6. The U.S. led airstrikes in Syria satisfy the criteria needed to exercise the right to anticipatory self-defence. The force used by the Global Coalition to thwart imminent attacks does not exceed the threat that would be posed if real armed attacks would occur. There exists a real threat for the United States or Global Coalition’s States-Partners to be attacked by the Islamic State. Therefore, the anticipatory self-defence is applicable as the legal justification in regard to the American-led intervention in Syria.
7. Regardless the conclusion that President al-Assad do not have the *de facto* control over the State’s territory, he remains the *de jure* legitimate authority in Syria, thus Russian airstrikes in

Syria are determined to be launched in conformity with the Syrian Government issued consent and in accordance with the international law.

LIST OF THE BIBLIOGRAPHY

Treaties and Conventions

1. ILC Draft articles on Responsibility of States for internationally wrongful acts (2001)
2. The Rome Statute of the International Criminal Court (17 July 1998)
3. United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI

United Nations Resolutions and Other Documents

4. Arab League Council Resolutions 7436 and 7437 (2011)
5. OPCW Executive Council Decision EC-M-33/DEC.1 (2013)
6. U.N. Doc. A/6309/Rev.1. (1966)
7. U.N. Doc. A/67/997–S/2013/553 (2013)
8. U.N. Doc. A/CONF. 183/9 (1998)
9. U.N. Doc. A/HRC/18/53 (2011)
10. U.N. Doc. A/HRC/21/50 (2012)
11. U.N. Doc. A/RES/25/2625 (1970)
12. U.N. Doc. A/RES/29/3314 (1974)
13. U.N. Doc. A/RES/66/253 (2012)
14. U.N. Doc. S/2013/184 (2013)
15. U.N. Doc. S/2014/328 (2014)
16. U.N. Doc. S/2014/440 (2014)
17. U.N. Doc. S/2014/691 (2014)
18. U.N. Doc. S/2014/695 (2014)
19. U.N. Doc. S/2014/695 (2014)
20. U.N. Doc. S/2014/851 (2014)
21. U.N. Doc. S/2015/221 (2015)
22. U.N. Doc. S/2015/563 (2015)
23. U.N. Doc. S/2015/693 (2015)
24. U.N. Doc. S/2017/172 (2017)
25. U.N. Doc. S/902 (1948)
26. U.N. Doc. S/PRST/2011/16 (2011)
27. U.N. Doc. S/PRST/2012/6 (2012)

28. U.N. Doc. S/RES/ 1368 (2001)
29. U.N. Doc. S/RES/ 1373 (2001)
30. U.N. Doc. S/RES/2118 (2013)
31. U.N. Doc. S/RES/2139 (2014)
32. U.N. Doc. S/RES/2170 (2014)
33. U.N. Doc. S/RES/2178 (2014)
34. U.N. Doc. S/RES/2199 (2015)
35. U.N. Doc. S/RES/2209 (2015)
36. U.N. Doc. S/RES/2249 (2015)
37. U.N. Doc. S/RES/2253 (2015)
38. U.N. Doc. S/RES/2254 (2015)
39. U.N. Doc. S/RES/2268 (2016)
40. U.N. Doc. S/RES/2368 (2017)
41. U.N. Doc. S/RES/2379 (2017)
42. U.N. Doc. S/RES/54 (1948)
43. U.N.Doc. S/2001/946 (2001)

International Cases

44. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007.
45. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005.
46. *Corfu Channel* case, Judgment of April 9th, 1949: I.C. J. Reports 1949.
47. *East Timor (Portugal v. Australia)*, Judgment, I. C.J. Reports 1995.
48. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I. C. J. Reports 2004.
49. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I. C.J. Reports 1996.
50. *Military and Paramilitary Activities in und against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986.
51. *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I. C. J. Reports 2003.

Prijedor, Prosecutor v Tadić (Duško), Appeal judgment, Case No IT-94-1-A, ICL 93 (ICTY 1999), [1999] ICTY 2, (2003) 124 ILR 63, (1999) 38 ILM 1518, 15th July 1999.

Treatises and Other Books

52. “Authorization for the Use of Force”, S.J.Res.23., Public Law 107-40., 107th Congress., September 18, 2001.
53. Bowett, W. D. *Self- Defence In International Law*. Manchester University Press, 1959.
54. Britain, Parliamentary Papers Vol LXI (1843); Britain, British and Foreign State Papers Vol 30, 196.
55. Caron, David D., Schill, W. Stephan., Smutny, Cohen, Abby., Triantafilou, Epaminontas. *Practising virtue inside international arbitration*. Oxford: Oxford University Press, 2016.
56. Castellino, Joshua. *Resolving claims to self-determination*. The Netherlands: Martinus Nijhoff Publishers, 2000.
57. Conforti, Benedetto, and Focarelli, Carlo. *The law and practice of the United Nations*. Brill | Nijhoff, 2016.
58. Dinstein, Yoram. *War, Aggression and Self-defence*. Cambridge: Cambridge University Press, 2015.
59. Dinstein, Yoram. *War, Aggression and Self-defence*. Cambridge: Cambridge University Press, 2012.
60. Henkin Louis. *How Nations Behave: Law And Foreign Policy*. Columbia University Press, 1979.
61. Lauterpacht, Hersch. *Recognition in international law*. Cambridge: Cambridge University Press, 2013.
62. Malanczuk, Peter. *Akehursts modern introduction to international law*. New York: Routledge, 1997.
63. Olusanya, Olaoluwa. *Identifying the aggressor under international law: a principles approach*. Oxford: Peter Lang Bern, 2006.
64. Raič, David. *Statehood and the law of self-determination*. The Hague: Kluwer Law International, 2002.
65. Schweigman, David. *The authority of the Security Council under Chapter VII of the UN Charter: legal limits and the role of the International Court of Justice*. Brill | Nijhoff, 2001.
66. Simma Brunno. *The Charter of the United Nations: A Commentary*. New York: Oxford University press, 2002.

67. Sinclair, Ian. *The Vienna convention on the law of treaties*. Manchester: Manchester University Press, 1984.
68. Williamson, Myra. *Terrorism, War and International Law: the legality of the use of force against Afghanistan in 2001*. Routledge, 2009.

Articles and Essays

69. "Interpretation of United Nations Charter". Oxford Public International Law. <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e542#law-9780199231690-e542-p-6>.
70. "The Right of Self-Defence Against Imminent Armed Attack in International Law". EJIL: Talk!. May 24, 2017. <https://www.ejiltalk.org/the-right-of-self-defence-against-imminent-armed-attack-in-international-law/>.
71. "Russia's Intervention in Syria." 2015. EJIL: Talk! November 25. <https://www.ejiltalk.org/russias-intervention-in-syria/>.
72. Arimatsu, Louise., Choudhury, Mohbuba. "The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya". Chatham House, (2014): 1-43.
73. Arimatsu, Louise., Schmitt N. Michael. "Attacking "Islamic State" and the Khorasan Group: Surveying the International Law Landscape". *Columbia Journal of Transnational Law* 27 (2014): 1-29.
74. Cannizzaro, Enzo. "Contextualizing Proportionality: Jus ad Bellum and Jus in Bello in the Lebanese War". *International Review of the Red Cross* 88, 864 (2006): 779-792.
75. Cassese, Antonio. "The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia". 18 EJIL 649 (2007):649-668. <http://www.ejil.org/pdfs/18/4/233.pdf>.
76. Crawford, James. "State", Max Planck Encyclopedia of International Law (2011). <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1093?prd=EPIL>.
77. Crawford, James. "The Criteria for Statehood in International Law", *British Yearbook of International Law* (1977): 93-182.
78. Deeks, Ashley. "Unwilling or Unable, Towards a normative framework". *Virginia Journal of International Law*, 52 (2012): 483-552.
79. Fitzmaurice G. G. "Law and Procedure of the International Court of Justice: Treaty Interpretation and Certain Other Treaty Points". *British Year Book of International Law* (1951): 1-62.

80. Fitzmaurice, G. G. "Law and Procedure of the International Court of Justice: Treaty Interpretation and Certain Other Treaty Points". *British Year Book of International Law* (1951): 1-62.
81. Fox, Gregory H. Intervention by Invitation. The Oxford Handbook on the Use of Force, Marc Weller, ed., 2015, Forthcoming; Wayne State University Law School Research Paper No. 2014-04. <https://ssrn.com/abstract=2407539>.
82. Franck M. Thomas. "Preemption, Prevention and Anticipatory Self-Defense: New Law regarding Recourse to Force". *Hastings International and Comparative Law Review* (2004): 425-436.
83. Gambhir, Harleen. "ISIS Global Intelligence Summary". *Institute for the Study of War*. (2015), http://www.understandingwar.org/sites/default/files/ISIS%20INTSUM_Final.pdf.
84. Green, James., Grimal, Francis. "The threat of force as an action in self-defense under International law", *Vanderbilt Journal of Transnational Law* 44, 2 (2011): 285-329.
85. Greenwood, Christopher. "International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq". *San Diego International Law Journal* (2003):7-38.
86. Hillebrand, Claudia. "Guarding EU-wide Counter-terrorism Policing: The Struggle for Sound Parliamentary Scrutiny of Europol". *European Security, Terrorism and Intelligence* (2017). doi:10.1057/9781137314734.
87. Institut de Droit International, Rhodes Session, Present Problems of the Use of Force in International Law, Sub-Group C – Military assistance on request, art. 2 (Sept. 8, 2011).
88. Jennings, RY. "The Caroline and McLeod Cases". *American Journal of International Law* 32, (1938): 82-99.
89. K.J., McInnes. "Coalition Contributions to Countering the Islamic State". Congressional Research Service Report 7-5700. August 4, 2015. <https://www.fas.org/sgp/crs/natsec/R44135.pdf>.
90. Kajtar, Gabor. "The Use of Force against ISIL in Iraq and Syria - A Legal Battlefield". *Wisconsin International Law Journal* (2017): 535-584.
91. Kretzmer, David. "The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum". *The European Journal of International Law* 24, 1 (2013) :235-282. <http://www.ejil.org/pdfs/24/1/2380.pdf>.
92. Lauterpacht, Hersch. "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties". *British Year Book of International Law* (1949): 48-85.

93. Lauterpacht, Hersch. "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties". *British Year Book of International Law* (1949): 48-85.
94. Le Mon, Christopher. "Unilateral Intervention by Invitation in Civil Wars: The Effective Control Test Tested". *New York University Journal of International Law and Politics* (2003):741-793.
95. Murphy, D. Sean. "The Doctrine of Preemptive Self-Defense". *Villanova Law Review* (2005):699-748.
96. Stahn, Carsten. "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* 35, 54 (2003): 35-53.
97. Sweijts, Tim, Kayaoğlu, Barin., Oosterveld Willem Theo., Bloem, Willem., Farnham, Nicholas. "The Rise and Fall of ISIS: from Evitability to Inevitability". Report. The Hague Centre for Strategic Studies (2016-2017). <https://hcss.nl/report/volatility-and-friction-age-disintermediation>.
98. The Permanent Representative of Canada to the UN. Letter to the General Assembly (October 13, 2016). <https://www.un.org/pga/71/wp-content/uploads/sites/40/2015/08/Informal-briefing-on-the-situation-of-Syria.pdf>.
99. Trapp Natasha Kimberley. "Can Non-State Actors Mount an Armed Attack?". Oxford Handbook on the Use of Force. M Weller, ed., OUP (Forthcoming). (2014):1-20. <https://ssrn.com/abstract=2407477>.
100. Tutt, Andrew. "Treaty Textualism". *Yale Journal of International Law* 39 (2014):284-358. <http://digitalcommons.law.yale.edu/yjil/vol39/iss2/4>.
101. United States President, Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations. December 2016. <https://fas.org/man/eprint/frameworks.pdf>.
102. Vyver, van der D. Johan. "The ISIS Crisis and the Development of International Humanitarian Law". *Emory International Law Review* 30 (2016): 531-563.

Miscellaneous

103. “Adopting Resolution 2209 (2015), Security Council Condemns Use of Chlorine Gas as Weapon in Syria | Meetings Coverage and Press Releases”. United Nations. <https://www.un.org/press/en/2015/sc11810.doc.htm>.
104. “Assad praises Russia for succeeding in fighting terrorists together”. Russia Beyond. March 13, 2017. https://www.rbth.com/news/2017/03/13/assad-praises-russia-for-succeeding-in-fighting-terrorists-together_718898.
105. “Assad Regime: U.S. Intervention Must be Coordinated with Syria, or Will Violate UN Charter”. CNS News. November 2, 2015. <https://www.cnsnews.com/news/article/patrick-goodenough/assad-regime-us-intervention-must-be-coordinated-syria-or-will>.
106. “AUMF repeal stripped from defense appropriations bill”. InsideDefense.com. July 19, 2017. <https://insidedefense.com/insider/aumf-repeal-stripped-defense-appropriations-bill>.
107. “Background”. OPCW. <https://opcw.unmissions.org/background>.
108. “Bashar al-Assad wins re-Election in Syria as uprising against him rages on”. The Guardian. June 4, 2014. <https://www.theguardian.com/world/2014/jun/04/bashar-al-assad-winds-reelection-in-landslide-victory>.
109. “Daesh Areas of Influence – May 2017 Update”. The Global Coalition Against Daesh. http://theglobalcoalition.org/en/maps_and_stats/daesh-areas-of-influence-may-2017-update/.
110. “Daesh Areas of Influence-May 2017 Update”. The Global Coalition Against Daesh. http://theglobalcoalition.org/en/maps_and_stats/daesh-areas-of-influence-may-2017-update/.
111. “Damascus confirms Assad request for military assistance from Russia”, The Arab Weekly, September 30, 2015, <http://www.thearabweekly.com/?id=2208>.
112. “Damascus confirms Assad request for military assistance from Russia”. The Arab Weekly. September 30, 2015. <http://www.thearabweekly.com/?id=2208>.
113. “DoD Official: Successful Syrian Strikes Only the Beginning”. U.S. Department of Defense. September 23, 2014. <https://www.defense.gov/News/Article/Article/603308/>.
114. “Implementation of Security Council Resolution 2268 (2016) 'Our Best Chance' to Reduce Brutal Violence in Syria, Says Secretary-General | Meetings Coverage and Press Releases”. United Nations. <https://www.un.org/press/en/2016/sgsm17564.doc.htm>.

115. "Iraq asks US for 'air power' against rebels". BBC News. June 18, 2014.
<http://www.bbc.com/news/av/world-us-canada-27911924/iraq-asks-us-for-air-power-against-rebels>.
116. "Iraq asks US for 'air power' against rebels". BBC News. June 18, 2014.
<http://www.bbc.com/news/av/world-us-canada-27911924/iraq-asks-us-for-air-power-against-rebels>.
117. "Iraq asks US for 'air power' against rebels". BBC News. June 18, 2014.
<http://www.bbc.com/news/av/world-us-canada-27911924/iraq-asks-us-for-air-power-against-rebels>
118. "Iraq: At least 60 die in twin attacks near Nasiriya". BBC News. September 14, 2017.
<http://www.bbc.com/news/world-middle-east-41270791>.
119. "Middle East | Profile: Tawhid and Jihad group". BBC News. October 08, 2004.
http://news.bbc.co.uk/2/hi/middle_east/3677658.stm.
120. "Monthly airstrikes in Iraq and Syria as of October 2017 | Statistic". Statista.
<https://www.statista.com/statistics/693263/monthly-airstrikes-in-iraq-and-syria/>.
121. "NATO to Join Anti-ISIS Coalition". Wilson Center. May 25, 2017.
<https://www.wilsoncenter.org/article/nato-to-join-anti-isis-coalition>.
122. "Partners". The Global Coalition Against Daesh.
<http://theglobalcoalition.org/en/partners/>.
123. "PM statement responding to FAC report on military operations in Syria", PM statement responding to FAC report on military operations in Syria - GOV.UK.
<https://www.gov.uk/government/speeches/pm-statement-responding-to-fac-report-on-military-operations-in-syria>.
124. "Remarks by General John Allen, then Special Presidential Envoy for the Global Coalition to Counter-ISIL". June 3, 2015.
<http://www.brookings.edu/~media/events/2015/06/01-2015-us-islamic-worldforum/060315brookingsdoha.pdf>.
125. "Russia joins war in Syria: Five key points". BBC News. October 1, 2015.
<http://www.bbc.com/news/world-middle-east-34416519>.
126. "Sanctions List Materials Security Council Subsidiary Organs". United Nations.
https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list.

127. “Security Council Adopts Resolution 2170 (2014) Condemning Gross, Widespread Abuse of Human Rights by Extremist Groups in Iraq, Syria | Meetings Coverage and Press Releases”. United Nations. 2014 August 15.
<https://www.un.org/press/en/2014/sc11520.doc.htm>.
128. “Security Council Considers Fourth Report by Joint Investigative Mechanism | Meetings Coverage and Press Releases”. United Nations. October 27, 2016.
<https://www.un.org/press/en/2016/dc3668.doc.htm>.
129. “Security Council Unanimously Adopts Resolution 2042 (2012), Authorizing Advance Team to Monitor Ceasefire in Syria | Meetings Coverage and Press Releases.” United Nations. April 14, 2012. <http://www.un.org/press/en/2012/sc10609.doc.htm>.
130. “Statement by the President”. National Archives and Records Administration. August 07, 2014. <https://obamawhitehouse.archives.gov/the-press-office/2014/08/07/statement-president>.
131. “Syria chemical attack: What we know”. BBC. September 24, 2013.
<http://www.bbc.com/news/world-middle-east-23927399>.
132. “Syria Iraq: The Islamic State militant group”. BBC News. August 02, 2014.
<http://www.bbc.com/news/world-middle-east-24179084>.
133. “Syria: Ban sending official request to allow UN probe of alleged chemical weapons use”, United Nations, August 22, 2013.
<http://www.un.org/apps/news/story.asp?NewsID=45677&Cr=syria&Cr1=#.Wh7c4ZTEfX>.
134. “Syria: ISIS Tortured Kobani Child Hostages”. Human Rights Watch. 2014 November 14. <https://www.hrw.org/news/2014/11/04/syria-isis-tortured-kobani-child-hostages>.
135. “Syrian President Bashar al-Assad: Facing down rebellion”. BBC News. October 21, 2015. <http://www.bbc.com/news/10338256>.
136. “The Global Coalition - Working to Defeat ISIS”. U.S. Department of State. March 22, 2017. <https://www.state.gov/r/pa/prs/ps/2017/03/268609.htm>.
137. “The Global Coalition To Defeat ISIS”. U.S. Department of State. 2014 September. <https://www.state.gov/s/seci/>.
138. “The Global Coalition to defeat ISIS”. U.S. Department of State.
<https://www.state.gov/s/seci/>.
139. “The Islamic State: From al-Qaeda Affiliate to Caliphate”. Middle East Policy Council. <http://www.mepc.org/islamic-state-al-qaeda-affiliate-caliphate>.

140. “The Legal Framework for the United States' Use of Military Force Since 9/11”. U.S. Department of Defence. April 10, 2015. <https://www.defense.gov/News/Speeches/Speech-View/Article/606662/the-legal-framework-for-the-united-states-use-of-military-force-since-911/>.
141. “U.S., Russia Sign Memorandum on Air Safety in Syria”. U.S. DEPARTMENT OF DEFENSE. October 20, 2015. <https://www.defense.gov/News/Article/Article/624964/us-russia-sign-memorandum-on-air-safety-in-syria/>.
142. “UN Documents for Iraq: Security Council Resolutions”. Security Council Report. <http://www.securitycouncilreport.org/un-documents/>.
143. “UN unanimously adopts Syria arms resolution”. Al Jazeera. September 28, 2013. <http://www.aljazeera.com/news/middleeast/2013/09/un-set-vote-syria-arms-resolution-201392722505954106.html>.
144. “Совет Федерации дал согласие президенту России на использование ВС РФ в Сирии”. ТАСС. <http://tass.ru/politika/2302922>.
145. Al-Salhy, Suadad. “Al Qaeda says it freed 500 inmates in Iraq jail-break”. Reuters. July 23, 2013. <http://www.reuters.com/article/us-iraq-violence-alqaeda/al-qaeda-says-it-freed-500-inmates-in-iraq-jail-break-idUSBRE96M0C720130723>.
146. Boucher, Richard. “Foreign Terrorist Organization: Designation of Jama'at al-Tawhid wa'al-Jihad and Aliases”. U.S. Department of State. 2004 October 15. <https://2001-2009.state.gov/r/pa/prs/ps/2004/37130.htm>.
147. Cameron, David. “David Cameron's full statement calling for UK involvement in Syria air strikes”. The Telegraph. November 26, 2015. <http://www.telegraph.co.uk/news/politics/david-cameron/12018841/David-Camerons-full-statement-calling-for-UK-involvement-in-Syria-air-strikes.html>.
148. Cassman, Daniel. "The Islamic State." The Islamic State | Mapping Militant Organizations. <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/1>.
149. CBS/AP. “U.S. launches more airstrikes against ISIS in Syria, Pentagon says”. CBS News. September 24, 2014. <https://www.cbsnews.com/news/u-s-launches-more-airstrikes-against-isis-in-syria-pentagon-says/>.
150. Chappell, Bill. “Russia Begins Airstrikes in Syria After Assad's Request”. NPR. September 30, 2015. <https://www.npr.org/sections/thetwo-way/2015/09/30/444679327/russia-begins-conducting-airstrikes-in-syria-at-assads-request>.

151. Chulov, Martin. "Kurds flee into Turkey in their thousands to escape Isis offensive". The Guardian. September 21, 2014. <https://www.theguardian.com/world/2014/sep/21/isis-kurds-escape-into-turkey-from-syria-kobani>.
152. Chulov, Martin., Ackerman, Spencer. "Iraq requests US air strikes as Isis insurgents tighten grip on oil refinery". The Guardian. June 18, 2014. <https://www.theguardian.com/world/2014/jun/18/iraq-request-us-air-strikes-isis-baiji-oil>.
153. Chulov, Martin., Borger, Julian., Ackerman, Spencer. "Embattled Iraqi prime minister Nouri al-Maliki to step aside". The Guardian. August 14, 2014. <https://www.theguardian.com/world/2014/aug/14/iraqi-prime-minister-maliki-step-aside-abadi>.
154. Coker, Margaret, Hassan, Falih, "Iraq Prime Minister Declares Victory Over ISIS". The New York Times. December 9, 2017. <https://www.nytimes.com/2017/12/09/world/middleeast/iraq-isis-haider-al-abadi.html>.
155. Dearde, Lizzie. "Baghdad attacks: at least 69 killed in suicide attacks and car bombings in Iraq capital". The Independent. May 17, 2016. <http://www.independent.co.uk/news/world/middle-east/baghdad-attacks-market-blast-car-suicide-bombing-in-iraq-capital-isis-victims-a7033436.html>.
156. Dews, Fred. "National Counterterrorism Center Director: ISIL Is Not Invincible". Brookings. July 29, 2016. <https://www.brookings.edu/blog/brookings-now/2014/09/03/national-counterterrorism-center-director-isil-is-not-invincible/>.
157. Esri Story Maps. "Annual Terrorist Attacks". Esri. <https://storymaps.esri.com/stories/terrorist-attacks/?year=2017>.
158. Esri Story Maps. "Annual Terrorist Attacks". Esri, <https://storymaps.esri.com/stories/terrorist-attacks/?year=2016>.
159. Filipov, David., Gearan, Anne. "Russia condemns U.S. missile strike on Syria, suspends key air agreement". The Washington Post. April 07, 2017. https://www.washingtonpost.com/world/europe/russia-condemns-us-missile-strike-on-syria/2017/04/07/c81ea12a-1b4e-11e7-8003-f55b4c1cfae2_story.html?utm_term=.82111858ea7b.
160. Ghosh, Bobby. "ISIS: A Short History". The Atlantic. August 14, 2014. <https://www.theatlantic.com/international/archive/2014/08/isis-a-short-history/376030/>.

161. Hawramy, Fazel. "Isis militants seize central Iraqi city of Tikrit". The Guardian. June 11, 2014. <https://www.theguardian.com/world/2014/jun/11/isis-militants-seize-control-iraqi-city-tikrit>.
162. Hayes, Freeman, Colin., Kat. "Iraq on the brink of civil war: the conflict explained in 60 seconds". The Telegraph. June 11, 2014. <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/10892492/Iraq-on-the-brink-of-civil-war-the-conflict-explained-in-60-seconds.html>.
163. Herb, Jeremy. "Senate rejects bid to repeal war authorizations". CNN, September 13, 2017. <http://edition.cnn.com/2017/09/13/politics/senate-isis-war-vote/index.html>.
164. Herb, Jeremy., Walsh, Deirdre. "House panel votes to repeal war authorization for ISIS and al Qaeda". CNN. June 29, 2017. <http://edition.cnn.com/2017/06/29/politics/house-panel-repeal-war-authorization-isis-al-qaeda/index.html>.
165. Holmes, Oliver. "Al Qaeda breaks link with Syrian militant group ISIL". Reuters. February 03, 2014. <http://www.reuters.com/article/us-syria-crisis-qaeda/al-qaeda-breaks-link-with-syrian-militant-group-isil-idUSBREA120NS20140203>
166. Holmes, Oliver. "Al Qaeda breaks link with Syrian militant group ISIL". Reuters. February 03, 2014. <http://www.reuters.com/article/us-syria-crisis-qaeda/al-qaeda-breaks-link-with-syrian-militant-group-isil-idUSBREA120NS20140203>.
167. Kareem Shaheen, Shaun Walker, Ian Black, Spencer Ackerman. "Russia admits targeting non-Isis groups in Syria as airstrikes continue". The Guardian, October 02, 2015, <https://www.theguardian.com/world/2015/oct/01/russia-targeting-non-isis-groups-syria-airstrikes>.
168. Koplowitz, Howard. "Iran Deploys Quds Forces to Support Iraqi Troops, Helps Retake Most of Tikrit". International Business Times. June 12, 2014. <http://www.ibtimes.com/iran-deploys-quds-forces-support-iraqi-troops-helps-retake-most-tikrit-1599766>.
169. Lo Giurato, Brett. "This Is Obama's Four-Part Strategy To 'Destroy' And 'Eradicate' ISIS". Business Insider. September 10, 2014. <http://www.businessinsider.com/obama-strategy-defeat-isis-2014-9>.
170. Madi, Mohamed. "Haider al-Abadi: A new era for Iraq?". BBC News. September 09, 2014. <http://www.bbc.com/news/world-middle-east-28748366>.

171. Martin, David. "How the U.S.-led airstrikes in Syria went down". CBS News. September 23, 2014. <https://www.cbsnews.com/news/how-the-u-s-led-airstrikes-against-isis-in-syria-went-down/>.
172. Martinez, Michael. "Four western Iraqi towns fall to ISIS militants". CNN. June 22, 2014. <http://edition.cnn.com/2014/06/21/world/meast/iraq-crisis/index.html>.
173. McFate, Jessica Lewis., Gambhir, Harleen. "Islamic State's Global Ambitions". The Wall Street Journal. February 22, 2015. https://www.files.ethz.ch/isn/192300/ISIS%20INTSUM_Final.pdf.
174. Morris, Loveday. "Families flee as Islamic State extremists seize another Iraqi town, pushing back the Kurds". The Washington Post. August 03, 2014. https://www.washingtonpost.com/world/islamic-state-seize-town-of-sinjar-pushing-out-kurds-and-sending-yazidis-fleeing/2014/08/03/52ab53f1-48de-4ae1-9e1d-e241a15f580e_story.html?utm_term=.882daa18ef01.
175. Nichols, John. "16 Years Ago, Barbara Lee's Warning Against the AUMF Was Ignored. Nevertheless, She Persisted". The Nation. June 30, 2017. <https://www.thenation.com/article/16-years-ago-barbara-lees-warning-against-the-aumf-was-ignored-nevertheless-she-persisted/>.
176. OHCHR, "Statement by Mr. Paulo Sérgio Pinheiro Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic". September 16, 2014. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15039&LangID=E>.
177. Oliphant, Roland. "Bashar al-Assad showers Putin with praise during surprise talks in Moscow". The Telegraph. October 21, 2015. <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/11944870/Assad-flies-to-Moscow-for-surprise-talks-with-Putin.html>.
178. Orlando Crowcroft Executive Editor - Geo-politics. "Isis: Worst refugee crisis in a generation as millions flee Islamic State in Iraq and Syria". International Business Times UK. June 17, 2015. <http://www.ibtimes.co.uk/isis-worst-refugee-crisis-generation-millions-flee-islamic-state-iraq-syria-1506613>.
179. Parker, Ned. "Iraqi parliament approves new government headed by Haider al-Abadi". Reuters. September 08, 2014. <https://www.reuters.com/article/us-iraq-crisis-parliament/iraqi-parliament-approves-new-government-headed-by-haider-al-abadi-idUSKBN0H31YH20140909>.

180. Primoz Manfreda. "Critical Differences Between Syria's Alawites and Shiites". ThoughtCo., August 18, 2017. <https://www.thoughtco.com/the-difference-between-alawites-and-sunnis-in-syria-2353572>.
181. R. Gordon, Michael., Schmitt, Eric. "U.S. Said to Rebuff Iraqi Request to Strike Militants". The New York Times. June 11, 2014. <https://www.nytimes.com/2014/06/12/world/middleeast/iraq-asked-us-for-airstrikes-on-militants-officials-say.html>.
182. Rabil,G. Robert. "The ISIS Chronicles: A History". The National Interest. July 17, 2014. <http://nationalinterest.org/feature/the-isis-chronicles-history-10895>.
183. "Statement by the President". National Archives and Records Administration. August 07, 2014. <https://obamawhitehouse.archives.gov/the-press-office/2014/08/07/statement-president>.
184. Sweijs,Tim, Kayaoğlu, Barin., Oosterveld Willem Theo., Bloem, Willem., Farnham, Nicholas. "The Rise and Fall of ISIS: from Evitability to Inevitability". Report. The Hague Centre for Strategic Studies (2016-2017):8, <https://hcss.nl/report/volatility-and-friction-age-disintermediation>
185. Tran, Mark. "Isis insurgents attack Iraq's biggest oil refinery". The Guardian. June 18, 2014. <https://www.theguardian.com/world/2014/jun/18/isis-fighters-iraq-oil-refinery-baiji>.
186. Weaver, Matthew., Tran Mark. "Isis announces Islamic caliphate in area straddling Iraq and Syria," The Guardian. June 30, 2014. <https://www.theguardian.com/world/2014/jun/30/isis-announces-islamic-caliphate-iraq-syria>.
187. Whitlock, Craig. "U.S. begins airstrikes against Islamic State in Syria". The Washington Post. September 23, 2014. https://www.washingtonpost.com/world/national-security/us-begins-airstrikes-against-islamic-state-in-syria/2014/09/22/8b677e26-42b3-11e4-b437-1a7368204804_story.html?utm_term=.2fcef01f2754.
188. Whitlock, Craig. "U.S. begins airstrikes against Islamic State in Syria". The Washington Post. September 23, 2014. https://www.washingtonpost.com/world/national-security/us-begins-airstrikes-against-islamic-state-in-syria/2014/09/22/8b677e26-42b3-11e4-b437-1a7368204804_story.html?utm_term=.2fcef01f2754.
189. Yourish, Karen., Watkins, Derek., Giratikanon, Tom. "Where ISIS Has Directed and Inspired Attacks Around the World". The New York Times. June 17, 2015.

<https://www.nytimes.com/interactive/2015/06/17/world/middleeast/map-isis-attacks-around-the-world.html?smid=tw-nytimes&smtyp=cur>.

ABSTRACT

Bajarūnaitė R. Airstrikes Against the Islamic State: An Assessment under International Law. Supervisor: lekt. dr. L. Laurinavičiūtė, – Vilnius: Faculty of Law, Institute of International and European Union Law, Mykolas Romeris University, 2017. – 93 p.

The main aim of the thesis is to analyze provisions, regarding the prohibition and exceptions to the use of force, embodied in the Charter of the United Nations, as well as, in the customary international law and to evaluate the legitimacy of the United States led airstrikes against the Islamic State in Iraq and Syria. In the Chapter one, main factual circumstances regarding the foundation of the Islamic State are presented. The Chapter two includes the analysis of the provisions, embodied in the United Nations Charter, concerning the prohibition and the exceptions to the use of force. The Chapter three provides the assessment of the American-led airstrikes, launched against the Islamic State in Iraq and Syria, based on the possible legal justifications within the conformity of the international law.

Keywords: Islamic State, Global Coalition, United States, United Nations, Self-defence.

SUMMARY

Bajarūnaitė R. Airstrikes Against the Islamic State: An Assessment under International Law /International Law Master Thesis. Supervisor: Lekt.dr. L. Laurinavičiūtė. – Vilnius: Faculty of Law, Institute of International and European Union Law, Mykolas Romeris University, 2017.

The Islamic State has become one of the biggest threat for the international peace and security since 2014. In response to the ongoing barbaric attacks, and the violations of the human rights, the international community decided to intervene. Since then, The U.S., being backed up by the Western States, strives to defeat the IS in Iraq by collaborating with the Iraqi government, however the Global anti-IS coalition in Syria fails in getting the necessary authorization from Damascus. On the other side, the Russian Federation continues to condemn the American-led intervention, while conducting cross-border operations in Syria with the support and consent from the Syrian President's regime, whose legitimacy is being questioned by most of the international community.

Main object of the thesis are the airstrikes conducted against the Islamic State in Iraq and Syria. The main aim of the thesis is to assess the legality of the airstrikes against the Islamic State, therefore, to reach the goal of this thesis, there are few objectives: to discuss factual circumstances of the foundation of the Islamic State, to address the main approaches for the interpretation of the UN Charter and analyze provisions, regarding the prohibition and exceptions to the use of force, to determine whether the actions taken in self-defence against the non-state actor are justified under the international law, and to apply the right to self-defence, in accordance with its criteria, for the evaluation of the legitimacy of airstrikes conducted against the Islamic State.

According to the results of the research, the author concludes that legitimate Iraqi government issued a valid consent for the U.S. intervention in Iraq, therefore, U.S. led airstrikes in Iraq are justified under the international law. The airstrikes launched by the Global Coalition in collective self-defence of Iraq satisfy all the required criteria, therefore, they are concluded to be legal under the international law. In case of Syria, the author asserts, that American-led airstrikes are justified based on the right to collective and anticipatory self-defence. The force used by the Global Coalition to thwart imminent

SANTRAUKA

Bajarūnaitė R. Oro antskrydžiai prieš Islamo Valstybę: įvertinimas pagal tarptautinę teisę./ Tarptautinės teisės magistro baigiamasis darbas. Vadovė: lekt.dr. Lina Laurinavičiūtė – Vilnius: Mykolo Romerio universitetas, Tarptautinės ir Europos Sąjungos teisės institutas, 2017.

2014 m., kai Islamo Valstybė paskelbė sukurianti Kalifatą Sirijos ir Irako regione, Jungtinės Amerikos Valstijos (“JAV“) palaikomos Vakarų valstybių, nusprendė pradėti kovą prieš Islamo Valstybę. Bendradarbiaudama su Irako vyriausybe, JAV vadovaujama koalicija jau atliko dešimtis tūkstančių oro antskrydžių Irake. Tačiau Sirijoje, koalicijai jau kelis metus nepavyksta gauti Sirijos vyriausybės pritarimo vykdyti oro antskrydžius Sirijos teritorijoje. Tačiau, oro antskrydžiai prieš Islamo Valstybę ten yra atliekami net ir nesant oficialiam Sirijos sutikimui. Atkreiptinas dėmesys į tai, kad, skirtingai nei JAV atveju, Rusija vykdo oro antskrydžius Sirijoje turėdama Sirijos vyriausybės palaikymą ir sutikimą, tačiau tokį Sirijos Prezidento Bašaro Al-Asado išduotą sutikimą kvestionuoja tarptautinė bendruomenė, kuri nuolat kelia klausimą dėl Sirijos prezidento režimo teisėtumo.

Pagrindinis šio magistro baigiamojo darbo tikslas – įvertinti oro antskrydžių prieš Islamo Valstybę teisėtumą. Darbo tikslui pasiekti buvo įvykdyti tokie išsikelti uždaviniai: aptartos svarbiausios faktinės aplinkybės, susijusios su Islamo Valstybės susikūrimu, išanalizuotos pagrindinės Jungtinių Tautų Chartijoje įtvirtintos nuostatos apie jėgos ir grasinimo ja nenaudojimo principą bei išimtis iš jo, siekiant nustatyti, ar veiksmai, kurių buvo imtasi remiantis teise į savigyną prieš nevalstybinius veikėjus, yra pateisinami pagal tarptautinę teisę, ir atliktas oro antskrydžių prieš Islamo Valstybę įvertinimas remiantis tarptautinėje teisėje įtvirtinta teise į savigyną ir jos taikymo teisėtumui nustatytais kriterijais.

Įvykdžius uždavinius ir atlikus tyrimą, galima daryti išvadą, kad JAV antskrydžiai Irake yra teisėti pagal tarptautinę teisę. Teisėta Irako valdžia išdavė galiojantį pagal tarptautinę teisę sutikimą, kurio pagrindu JAV vadovaujama koalicija vykdo oro atakas. Globalios Koalicijos veiksmai, atlikti remiantis teise į kolektyvinę savigyną, taip pat atitinka visus reikalingus kriterijus, kad būtų laikytini teisėtais pagal tarptautinę teisę. Sirijos atveju, pažymėtina, kad koalicijos įvykdyti oro antskrydžiai, yra teisėti remiantis teise į kolektyvinę ir numanomą savigyną, nes jų veiksmai neviršijo numanomos grėsmės lygmens, kuri realiai galėtų iškilti tikro ginkluoto užpuolimo atveju. Atkreiptinas dėmesys ir į tai, kad Rusijos Federacijos įvykdyti antskrydžiai Sirijoje buvo atlikti esant Sirijos vyriausybės išduotam sutikimui, laikytinam galiojančiu pagal tarptautinę teisę, todėl Rusijos įvykdyti antskrydžiai Sirijoje laikytini teisėtais pagal tarptautinę teisę

Form approved on 20 November 2012 by the decision No. 1SN-10
of the Senate of Mykolas Romeris University

HONESTY DECLARATION

19/12/2017

Vilnius

I, _____, student of
(name, surname)

Mykolas Romeris University (hereinafter referred to University),

(Faculty /Institute, Programme title)

confirm that the Bachelor / Master thesis titled

_____:

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

(signature)

(name, surname)