

Humanitarian intervention in response to the attacks by ISIS

LA LOUW
22866639

Dissertation submitted in partial fulfilment of the requirements for the degree *Master of Law* in International Aspects of Law at the Potchefstroom Campus of the North-West University

Supervisor: Dr HJ Lubbe
November 2016

ACKNOWLEDGEMENTS

I have to agree with Harvey Mackay who stated that:

None of us got to where we are alone. Whether the assistance we received was obvious or subtle, acknowledging someone's help is a big part of understanding the importance of saying thank you.

With this borne to mind, I would like to give thanks to my Study Supervisor, Dr Hein Lubbe. His constant professional assistance, guidance, support and motivation enabled me to successfully complete my dissertation.

To Schalk Nel as well as Jacques and Charl Louw thank you for your encouragement, understanding and patience.

My parents, thank you for providing me with the opportunity to enrol for my Master's Degree and for constantly reminding me to stay positive and to believe in myself.

LIST OF ABBREVIATIONS

AAJ	Australian Army Journal
AGLR	Albany Government Law Review
AILJ	Australian International Law Journal
AJIL	American Journal of International Law
ALF	Amsterdam Law Forum
AQ	Al-Qaeda
AQI	Al-Qaeda in Iraq
AU	African Union
AULR	American University Law Review
CLR	Columbia Law Review
CLTLB	Columbia Journal for Transnational Law Bulletin
CTC	Counter Terrorism Committee
CTITF	Counter Terrorism Implementation Task Force
DIIA	Danish Institute of International Affairs
DJILP	Denver Journal of International Law and Policy
ECOWAS	Economic Community of West African States
EIA	Ethics and International Affairs
EJIL	European Journal of International Law
FFWA	Fletcher Forum of World Affairs
FILJ	Fordham International Law Journal
FSA	Free Syrian Army

GA	General Assembly
GLJ	Georgetown Law Journal
GWILR	George Washington International Law Review
HRLR	Human Rights Law Review
HRW	Human Rights Watch
HSR	Homeland Security Review
IAEA	International Atomic Energy Agency
IAPL	International Association of People's Lawyers
ICAO	International Civil Aviation Organisation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICRC	International Committee of the Red Cross
ICRP	International Responsibility to Protect
ICTY	International Criminal Tribunal for former Yugoslavia
IDMC	Internal Displacement Monitoring Centre
IHL	International Humanitarian Law
IICK	Independent International Commission on Kosovo
ILR	Iowa Law Review
ILS	International Law Studies
ILSA JICL	ILSA Journal of International and Comparative Law

IRRC	International Review of the Red Cross
IS	Islamic State
ISI	Islamic State of Iraq
ISIL	Islamic State of Iraq and Levant
ISIS	Islamic State of Iraq and Syria
JAN	Jabhat al-Nusra
JCSL	Journal of Conflict and Security Law
JICJ	Journal of International Criminal Justice
JNSLP	Journal of National Security Law and Policy
JPE	Journal of Political Economy
JPR	Journal of Peace Research
JRE	Journal of Religious Ethics
JTF	Joint Task Force
JTLP	Journal of Transnational Law and Policy
JUFIL	Journal of the Use of Force and International Law
MEP	Middle East Policy
MJIL	Melbourne Journal of International Law
MJILT	Maryland Journal of International Law and Trade
MLR	Marquette Law Review
MYILS	Michigan Yearbook of International Legal Studies
NATO	North Atlantic Treaty Organisation
NSLB	National Security Law Brief
NULR	Northwestern University Law Review

OAG	Organized Armed Group
OHCHR	Office of the High Commissioner for Human Rights
PILROC	Pace International Law Review Online Companion
PPR	Police Practice and research
R2P	Responsibility to Protect
RILP	Review of International Law and Politics
RIS	Review of International Studies
SC	Security Council
SCJIL	Santa Clara Journal of International Law
SDLP	Sustainable Development Law and Policy
SJILC	Syracuse Journal of International Law and Commerce
STLR	Suffolk Transnational Law Review
TWQ	Third World Quarterly
UBCLR	University of British Columbia Law Review
UK	United Kingdom
UMNSACLR	University of Miami National Security and Armed Conflict Law Review
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNSCOM	United Nations Special Commission

US	United States
VJIL	Virginia Journal of International Law
VJTL	Vanderbilt Journal of Transnational Law
WYAJ	Windsor Yearbook of Access to Justice
YJIL	Yale Journal of International Law

ABSTRACT

Title: Humanitarian intervention in response to the attacks by ISIS

Key terms: ISIS; terrorism; International Humanitarian Law; armed conflict; self-defence; authorised and non-authorised humanitarian intervention

Since ISIS started its campaign in 2014, it has contributed to the deaths of thousands and the displacement of millions of people in Iraq and Syria. Its methods, tactics and objectives, and its ability to openly confront state armed forces have complicated the classification of this group in terms of the categories existing under international law. ISIS cannot be classified as a rebel group, insurgency movement or a liberation movement. By comparing the structure, organisation and functioning of this group to those of an internationally recognised terrorist group, Boko Haram, it can be determined that ISIS can also not be classified as a terrorist organisation. For that reason, the international counterterrorism framework will not be effective in eradicating this group.

The members of this group can be prosecuted for committing international crimes if it is found that International Humanitarian Law (IHL) has been violated. IHL is applicable if a situation reaches the threshold of an armed conflict. It strictly distinguishes between international and non-international armed conflict, to which different conventions, rules and provisions apply. However, as is evident in the conflicts occurring in Iraq and Syria, a particular situation may contain mixed elements of both categories of conflict, and it will therefore not be possible to classify them as either international or non-international in character. Consequently, the stringent distinction between the two kinds of armed conflicts needs to be eradicated.

Although article 2(4) of the United Nations (UN) Charter prohibits the use of force in response to armed conflict, there are exceptions. After Iraq requested assistance from the United States (US), the US-led coalition commenced with airstrikes against ISIS in Iraq on the basis of collective self-defence. However, the

extension of this campaign to the territory of neighbouring Syria on the basis of individual self-defence is much more controversial, as the US has not been a victim of an armed attack. Consequently, the airstrikes launched in Syria can easily be seen as acts of aggression.

The legal status of humanitarian intervention in response to the attacks by ISIS is investigated. At first humanitarian intervention was a controversial issue as it disregards the concept of sovereignty, there is a lack of consent and it does not find a legal basis in international law. Nevertheless, after the Kosovo intervention the international community became more tolerant of this response, as it resulted in the conclusion of a peace agreement and terminated the continuous suffering and human rights violations which had been occurring in Kosovo. As a result, an International Commission was created in order to establish a framework and guidelines for the legitimate use of humanitarian intervention in response to armed conflict. The ICISS established the Responsibility to Protect (R2P) doctrine which entails that a state is responsible for protecting its people against human rights violations. However, where a state is unable or unwilling to do so, this responsibility shifts to the international community.

Sadly, the ICISS included the requirement of UN Security Council (SC) authorisation. As is evident in the atrocities that occurred in Rwanda, Srebrenica and Kosovo, the UN SC is reluctant to authorise the use of force. The reason for this reluctance is due to the fact that such proposals are constantly vetoed by two of the permanent members namely Russia and China. These two members have already vetoed proposed referrals of Syria to the International Criminal Court (ICC) and it is therefore most likely that a proposal for the authorised use of force in Syria will also be vetoed.

For that reason, this paper concludes that non-authorised humanitarian intervention should be used as a response to the attacks by ISIS. Although non-authorised humanitarian intervention is even more controversial than authorised humanitarian intervention, it is true that the international community has become more tolerant of this response where it results in the terminating of continuous

suffering and human rights violations. Hence the saying by Professor Dugard: "humanitarian intervention is like euthanasia: it remains unlawful but tolerated in genuine cases."¹ By comparing the situation in Syria with the circumstances which existed in Kosovo during the 1990's, and by assessing against a range of criteria established by different actors, it is clear that Syria provides "a perfect model for humanitarian intervention."

¹ Dugard *International Law* 510.

SAMEVATTING

Titel: *Humanitarian intervention in response to the attacks by ISIS*
(Humanitêre ingryping in reaksie op die aanvalle deur ISIS)

Sleutelwoorde: ISIS, terrorisme, Internasionale Humanitêre Regspraak/Wetgewing, selfverdediging, wettige en onwettige humanitêre ingryping

Sedert ISIS sy veldtog in 2014 begin het, het dit bygedra tot die dood van duisende en die ontworteling van miljoene mense in Irak en Sirië. Sy metodes, taktiek, doelwitte, en die vermoë om gewapende regeringsmagte openlik te konfronteer het die klassifikasie van hierdie groep ingevolge bestaande kategorieë onder internasionale regspraak bemoeilik. ISIS kan nie as 'n rebellegroep, insurgensiegroep of bevrydingsbeweging geklassifiseer word nie. Op grond van die vergelyking van die struktuur, organisasie en funksionering van hierdie groep met dié van 'n internasionaal erkende terreurgroep, Boko Haram, kan ISIS ook nie as 'n terroristeorganisasie geklassifiseer word nie. Daarom sal die internasionale teenterrorismeraamwerk nie doeltreffend wees in die uitdelging van hierdie groep nie.

Die lede van hierdie groep kan vervolg word vir die pleeg van internasionale misdade indien bevind word dat Internasionale Humanitêre Regspraak/Wetgewing (IHR/W) oortree is. IHR/W is toepaslik indien 'n besondere situasie die vlak van gewapende konflik bereik. Dit onderskei nougeset tussen internasionale en nie-internasionale konflik waarop verskillende ooreenkomste, reëls en voorwaardes van toepassing is. Nietemin, soos weerspieël deur die konflikte wat in Irak en Sirië voorkom, kan 'n besondere situasie gemengde elemente bevat en daarom nie as internasionaal of nie-internasionaal van aard geklassifiseer word nie. Gevolglik moet die streng onderskeid tussen die twee gewapende konflikte uitgewis word.

Hoewel artikel 2(4) van die Handves van die Verenigde Nasies (VN) die gebruik van geweld in reaksie op gewapende konflik verbied, is daar bepaalde uitsonderings. Nadat Irak die bystand van die Verenigde State (VS) versoek het,

het die VS-geleide koalisie op grond van kollektiewe selfverdediging met lugaanvalle teen ISIS in Irak begin. Die uitbreiding van hierdie veldtog na die gebied van aangrensende Sirië op grond van individuele selfverdediging is nietemin baie meer omstrede omdat die VS nie 'n slagoffer van 'n gewapende aanval was nie. Gevolglik kan die lugaanvalle op Sirië waarskynlik as daade van aggressie beskou word.

Humanitêre ingryping in reaksie op die aanvalle deur ISIS is daarom ondersoek. Humanitêre ingryping is eerstens 'n omstrede kwessie omdat dit die begrip soewereiniteit misken, instemming ontbreek en 'n regsgeldige grondslag word nie in internasionale regspraak gevind nie. In weerwil daarvan het die internasionale gemeenskap na die Kosovo-ingryping meer verdraagsaam teenoor hierdie reaksie geraak omdat dit tot 'n vredesooreenkoms gelei het en die voortdurende lyding en menseregtevergrype wat in daardie gebied voorgekom het, beëindig het. Die *International Commission* (Internasionale Kommissie) is as gevolg daarvan tot stand gebring om 'n raamwerk en riglyne vir die wettige gebruik van humanitêre ingryping in reaksie op gewapende konflik daar te stel. Die IKISS (Internasionale Kommissie oor Ingryping en Staatsoewereiniteit) het die leerstelling *Responsibility to Protect* (Verantwoordelikheid om te beskerm (*R2P*)) daargestel, wat behels dat 'n staat verantwoordelik is vir die beskerming van sy mense teen menseregtevergrype. Wanneer 'n staat egter onwillig of nie in staat is om dit te doen nie, verskuif hierdie verantwoordelikheid na die internasionale gemeenskap.

Ongelukkig het die IKISS die vereiste van magtiging deur die VN se Veiligheidsraad ingesluit. Soos weerspieël deur die gruweldade wat in Rwanda, Srebrenica en Kosovo gepleeg is, is die VN VR huiwerig om die gebruik van geweld te magtig. Die rede hiervoor is dat sodanige voorstelle voortdurend deur twee van die permanente lede naamlik Rusland en Sjina geveto word. Hierdie twee lede het reeds voorgestelde verwysings van Sirië na die Internasionale Strafhof (ISH) geveto en dit is daarom hoogs waarskynlik dat 'n voorstel vir die magtiging van die gebruik van geweld in Sirië ook geveto sal word.

Daarom behoort ongemagtigde humanitêre ingryping as reaksie op die aanvalle deur ISIS gebruik te word. Hoewel ongemagtigde ingryping selfs meer omstrede is as gemagtigde humanitêre ingryping, is dit waar dat die internasionale gemeenskap meer verdraagsaam teenoor hierdie reaksie geraak het in gevalle waar dit lei tot die beëindiging van aanhoudende lyding en menseregtevergrype. Vandaar die gesegde van professor Dugard: "humanitêre ingryping is soos genadedood: dit bly onwettig maar word in geloofwaardige gevalle verdra."² Deur die situasie in Sirië te vergelyk met die omstandighede wat gedurende die 1990's in Kosovo geheers het, en deur die te vergelyk met 'n reeks kriteria wat deur verskillende rolspelers gevestig is, is dit duidelik dat Sirië " 'n perfekte model vir humanitêre ingryping" verskaf.

² Dugard *International Law: A South African Perspective* 4th ed 510.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	i
LIST OF ABBREVIATIONS	ii
ABSTRACT	vii
SAMEVATTING	x
Chapter 1	1
Introduction	1
Chapter 2	9
Classification of ISIS in terms of international law	9
2.1 Introduction	9
2.2 Islamic State of Iraq and Syria (ISIS)	10
2.2.1 Afghanistan	20
2.2.2 Iraq 21	
2.2.3 Syria	27
2.3 Classification of ISIS in terms of the categories that exist in international law	31
2.3.1 Rebel groups	34
2.3.2 Insurgency groups	37
2.3.3 Liberation movements	40
2.3.4 Terrorism	43
2.4 Conclusion	51
Chapter 3	54
International counterterrorism framework	54

3.1	<i>Introduction</i>	54
3.2	<i>Counterterrorism policies analysed</i>	56
3.3	<i>UN conventions criminalising certain acts of terrorism</i>	60
3.3.1	<i>UN Conventions on terrorism</i>	61
3.3.2	<i>Common provisions shared by the terrorism conventions</i>	67
3.2.3	<i>Terrorism Conventions and the applicability of IHL</i>	74
3.4	<i>Conclusion</i>	83
Chapter 4		85
	International humanitarian law and the use of force in response to armed attacks by ISIS	85
4.1	<i>Introduction</i>	85
4.2	<i>International humanitarian law</i>	87
4.2.1	<i>Armed conflict defined</i>	92
4.2.1.1	International armed conflict	94
4.2.2.2	Non-international armed conflict	95
4.2.1.3	Other types of armed conflicts	98
4.3	<i>Use of force as a response to the attacks by ISIS</i>	103
4.3.1	<i>Self-defence</i>	104
4.3.1.1	Individual self-defence	105
4.3.1.2	Collective self-defence	106
4.3.2	<i>UN SC authorisation</i>	111
4.4	<i>Conclusion</i>	113
Chapter 5		115
	Non-authorized humanitarian intervention as a response to the attacks by ISIS	115

5.1	<i>Introduction</i>	115
5.2	<i>Authorised humanitarian intervention</i>	117
5.3	<i>Non-authorised humanitarian intervention defined</i>	119
5.3.1	<i>Consent</i>	121
5.3.2	<i>Sovereignty</i>	122
5.3.3	<i>Political motives</i>	123
5.3.4	<i>Legality</i>	125
5.4	<i>Background and contents of the Responsibility to Protect (R2P) doctrine</i>	129
5.4.1	<i>International responses to the R2P doctrine</i>	132
5.4.2	<i>R2P doctrine criticised</i>	137
5.5	<i>Case studies</i>	139
5.5.1	<i>Case study: Kosovo</i>	139
5.5.2	<i>Case study: Syria</i>	144
5.6	<i>Conclusion</i>	153
Chapter 6		156
Conclusion		156
Bibliography		161
<i>Literature</i>		161
<i>Case law</i>		191
<i>International instruments</i>		192
<i>Internet sources</i>		199
Letter from language editor		227
Identity document		228

Chapter 1

Introduction

Where are my rights?³

I feel like a ghost.
My soul is lost.
They took it from me.
Just like how a gun takes away light and brings darkness.
The pain grows with each passing day.
But hatred for them grows more than the pain.
But what can I do?
I am their slave.
I am a prisoner bound to their chains.
But I am only a child.
Will this be my fate forever?
Don't I have rights?
Shouldn't I have freedom?
But where are my rights?
Where is my freedom?
Is it gone like my soul, taken by them?
If this is so.
Then I am truly a ghost.
Just a memory, slowly fading away.
But even if I am just a memory, I will continue to work hard.
For I know that one day someone will come and free me.

Over the last decade the international community has been facing arduous state security challenges and human rights violations by a group referred to as the Islamic State of Iraq and Syria (ISIS). By using modern asymmetrical combat methods such as targeting innocent civilians, infiltrating urban areas and openly confronting state armed forces, they have been responsible for the deaths and displacements of numerous innocent people. This group originated in countries such as Iraq and Syria, which have been torn apart by ongoing civil wars.

³ Nandlall "Where are my rights?" 20. In 2010 this poem was written and entered into the first Refugees and Human Rights Child and Youth Poetry Contest by Kyle Nandlall. The contest was held with the purpose of "commemorating refugees" and raising awareness about "human rights and the refugee situation." COSTI Immigrant Service and UNHCR *A book of poems: Expressions from our youth* foreword.

The Arab Spring of 2011, which originated in Tunisia and soon spread to neighbouring North African countries and to the Middle East, consisted of a range of protests against oppressive governments, with the aim of ousting dictators.⁴ In Syria these protests were suppressed by the government with the implementation of violent methods⁵ such as opening fire on protesting crowds, the use of landmines and cluster bombs, and the arrest of innocent people, placing them in detention, torturing them and sexually abusing women.⁶ This violence escalated into a full blown civil war⁷ as armed opposition groups openly started confronting state forces.⁸ In turn, the state forces intensified their response by using chemical weapons against the insurgents and imprisoning them in starvation camps.⁹ The outcome has been the destabilisation of security in Syria¹⁰ and the establishment of the perfect environment for extremist groups such as ISIS, which originated in Iraq,¹¹ to infiltrate Syrian territory.¹² ISIS has gained territory in both northern Syria and Iraq, assuming an estimated 8 million people under their control.¹³

ISIS is a Sunni Muslim group with its roots in the Al-Qaeda terrorist organisation.¹⁴ This fundamentalist group believes that their interpretation of the holy book of Islam (Quran) should prevail, and they will pursue the enforcement of their version of Islam even if this means that they have to resort to drastic measures which, according to them, are warranted by the jihad or "holy war." These methods include car and suicide bombings, kidnapping, rape and beheading.¹⁵ The conflict has already resulted in the internal displacement of

⁴ Bennett 2013 *PILROC* 363.

⁵ Human Rights Watch 2011 *Report - We've never seen such horror* 8-10; Malantowicz 2013 *ALF* 55.

⁶ Human Rights Watch 2011 *Report - We've never seen such horror* 14; Human Rights Watch 2013 <http://hrw.org>.

⁷ Malantowicz 2013 *ALF* 55.

⁸ Human Rights Watch 2013 <http://hrw.org>.

⁹ Nassief 2014 *Middle East Security Report* 17 10.

¹⁰ Kerkkänen 2014 <http://.fiia.fi>.

¹¹ Hashim 2014 *MEP* 72.

¹² Cockburn *The rise of the Islamic State: ISIS and the new Sunni revolution* 81.

¹³ UN 2015 <http://un.org>.

¹⁴ Mockaitis *The 'new' terrorism* 62.

¹⁵ Spencer *The complete infidel's guide to ISIS* 17; Sekulow *Rise of ISIS* x.

over 7.6 million Syrians and more than 3.2 million Iraqis.¹⁶ As a result over 4.2 million Syrians¹⁷ and more than 180 000 Iraqis¹⁸ are currently seeking asylum abroad.¹⁹ Using methods such as beheading, crucifixion, suicide and car bombing, ISIS contributed to the deaths of more than 10 000 civilians in Iraq in 2015 alone.²⁰ The United Nations (UN) has reported that the ongoing violence between ISIS and Iraqi forces is responsible for the increase in casualties each year.²¹ In Syria the civil war, coupled with the attacks by ISIS, resulted in the deaths of more than 250 000 people in 2015.²² This having been said, the activities of the Syrian government, coupled with the attacks by ISIS, have resulted in one of the largest humanitarian crises since World War II.²³

In order to understand how this group expanded so rapidly, the methods, objectives and ideology of this group will be explained in Chapter 2. Also, a historical context of Afghanistan, Iraq and Syria has to be examined in order to explain how the events in these particular states contributed to the development of this group. The examination of the origins and modus operandi of ISIS is important to achieving the main objective of this Chapter, which is to classify this group in terms of categories existing in international law. International law makes provision for categories such as rebel groups, liberation movements and insurgency groups, each with its own criteria. The characteristics and elements of these categories will be examined with specific application to the activities of ISIS. The purpose of such classification of ISIS is to establish the international responses which can be legally used in order to eradicate this group.

ISIS is classified by some people as a terrorist organisation despite the fact that its main goal and activities differ from those of traditional terrorism. In order to

¹⁶ IDMC 2015 <http://internal-displacement.org>.

¹⁷ UNDP 2015 <http://eurasia.undp.org>.

¹⁸ UNHCR 2015 <http://unhcr.org>.

¹⁹ Miller 2015 <http://yaleglobal.yale.edu>; O'Sullivan, 'Human Security and the protection of refugees in Africa' 155.

²⁰ United Nations Assistance Mission of Iraq and OHCHR 2015 <http://ohchr.org>.

²¹ United Nations Assistance Mission of Iraq and OHCHR 2015 <http://ohchr.org>.

²² UN SC 2015 <http://un.org>.

²³ European Commission 2015 <http://ec.europa.eu>.

ascertain the difference between acts perpetrated by ISIS and terrorist acts, the actions of another popular group, Boko Haram, will be evaluated. Since the Boko Haram uprising began in 2009 this group has gained enough territory to govern approximately 1.6 million people.²⁴ In 2014, Boko Haram abducted 200 school girls and killed more than 100 children and 70 teachers.²⁵ The scope of this study, however, does not allow for an in-depth analysis of this group, and it will merely be used for comparative purposes, as this group is currently classified as a terrorist organisation under international law.

To further illustrate this particular difference, the various existing international conventions on terrorism will be discussed and analysed with specific reference to the acts perpetrated by both ISIS and Boko Haram. By applying the provisions of the conventions to the acts of both ISIS and Boko Haram, it will be possible to determine whether the international counterterrorism framework would be a suitable paradigm within which to conduct a valid, suitable and appropriate response to these groups. Such a conclusion would contribute to the proper classification of ISIS in terms of international law.

Because of the intensity of ISIS's attacks and the number of civilians affected by the attacks, it is necessary to investigate the applicability of the International Humanitarian Law (IHL) to the movement. This will be done in Chapter 4. The rules of IHL relate to the protection of civilians in these particular circumstances. They include a prohibition on the use of certain weapons and demand respect for human rights in general. In order for a particular battle to fall within the scope of the protection of IHL, the prerequisite is that it should amount to an "armed conflict",²⁶ and it has to be determined if the armed conflict falls within one of the conflict categories established by international law. The *ius in bello* distinguishes between international and non-international armed conflicts.²⁷ This distinction is important, as each category has its own level of protection provided for by the set

²⁴ Morris 2015 <http://listverse.com>.

²⁵ Morris 2015 <http://listverse.com>.

²⁶ *Prosecutor v Tadic* (1995) 105 ILR 453 para 70.

²⁷ Dugard *International Law* 529.

of rules applicable to the particular situation. However, as will be shown in Chapter 4, modern conflicts such as those occurring in both Iraq and Syria can problematise such distinctions. A single conflict can contain elements of each category of armed conflict, and in such a situation it is unclear which level of protection should be applicable.²⁸ The classification of a conflict is not relevant for determining whether humanitarian intervention can be used as a response to the situation, but it is important to refer to these categories as the remaining possible international responses to a non-international armed conflict are restricted.

The various acceptable responses to international and non-international armed conflicts are regulated by IHL. The responses which will be considered in Chapter 4 include individual and collective self-defence, and UN authorisation for the use of force. The *UN Charter* of 1945 prohibits the use of force or the threat of force against another state or even a non-state actor as a response to conflict.²⁹ It does, however, contain two exceptions to this general prohibition, which are that a state may resort to the use of force as a response to armed conflict (with the permission and under the guidance of the Security Council (SC))³⁰ or in the exercise of a right to self-defence.³¹ With regards to the former, the SC may recommend intervention by way of military means in certain circumstances or refer a particular situation to the ICC³² in order to resolve a humanitarian crisis.³³ To ensure accountability for human rights violations by various perpetrators in Syria,³⁴ the UN SC proposed the *Draft Resolution on the Referral of Syria to the ICC*.³⁵ The *Resolution*, however, was vetoed by two of the main non-concurring powers, namely Russia and China.³⁶

²⁸ Paulus and Vashakmadze 2009 *IRRC* 108.

²⁹ Article 2(4) of the *Charter of the United Nations* of 1949.

³⁰ Hereafter the SC.

³¹ Article 51 of the *Charter of the United Nations* of 1949.

³² Hereafter the ICC.

³³ Articles 39, 41 and 42 of the *Charter of the United Nations* of 1949.

³⁴ UN News Centre 2014 <http://www.un.org>.

³⁵ *Draft Resolution on the Referral of Syria to the ICC* SC Res 348 (2014).

³⁶ UN SC 2014 <http://www.un.org>.

After the 9/11 terrorist attacks, the UN SC acknowledged a state's inherent right to self-defence.³⁷ This right to individual self-defence is an intricate response to a specific threat as it needs to be established that a state has been a "victim of an armed attack" or that there has been an "imminent threat."³⁸ Article 51 of the *Charter* also explicitly refers to collective self-defence as a response to armed conflict. This particular form of self-defence involves two or more states exercising the right to self-defence communally.³⁹ In order for a state to be able to assist another state legally in its struggle against threats or attacks, it is not necessary for the assisting state itself to have been subjected to an armed attack or threat.⁴⁰ The reason for the exclusion of such a requirement, is that the international community interprets an "attack against one UN state as an attack against all."⁴¹

Recently states have invoked pre-emptive and anticipatory self-defence as a response to international conflict in order to protect their territorial interests.⁴² The international position regarding the inclusion of pre-emptive and anticipatory self-defence in article 51 of the *UN Charter* is still divided.⁴³ Consequently, the different legal arguments for and against the validity of these responses and the complications and restrictions that exist as to the execution and application of these responses to the contemporary asymmetrical warfare fought by ISIS will be evaluated.

The question remains, however, whether the current responses provided for by international law could be effective in eradicating violations and threats to international peace and security? As will become clear throughout this study, the implementation of these measures and methods is made difficult by the nature of extreme modern warfare. As a result, there is the possibility that the traditional

³⁷ *Resolution on Threats to International peace and security caused by terrorist acts* SC Res 1368 and SC Res 1373 (2001).

³⁸ Dugard *International Law* 510.

³⁹ Dugard *International Law* 335.

⁴⁰ Bennett and Strug *Introduction to International Law* 336.

⁴¹ Bennett and Strug *Introduction to International Law* 336.

⁴² Dugard *International Law* 501.

⁴³ Dugard *International Law* 501.

responses to conflict provided for by international law could be rendered ineffectual by these present attacks. For that reason, humanitarian intervention as a response to the Syrian crises will be investigated in Chapter 5. In terms of this response, states intervene in conflicts confined to national borders in order to protect innocent victims against humanitarian crises.⁴⁴ There are several altercates surrounding this response due to the fact that it is not provided for by international law, there is a lack of consent, it seems to infringe on sovereignty, and it can be used as a method to disguise political objectives. Nevertheless, despite several controversies surrounding this response, the ICISS was created in order to establish guidelines on the use of humanitarian intervention in response to armed conflict. Consequently, the Responsibility to Protect doctrine was established. This entails that each state has the primary responsibility to protect its own citizens and if it is unable to do so the responsibility shifts to the international community. As will be elaborated on in Chapter 5, one of the criteria in the guidelines is UN authorisation of the humanitarian intervention but, as was demonstrated by the absence of intervention in Rwanda and Srebrenica, the UN Security Council (SC) is reluctant to authorise such intervention, as two of its permanent members, Russia and China, veto such proposals. The possibility of unauthorised humanitarian intervention, therefore, needs to be considered. This is done in Chapter 5. Although this response has also been criticised for several reasons, the international community became more tolerant of this response after the Kosovo intervention, which resulted in a peace agreement in 1999. Analysis of the Kosovo intervention will occur throughout Chapter 5 in order to determine whether such an intervention in Syria would also be tolerated.

Therefore, the aim of this research is to examine the above-mentioned responses to the different types of existing conflict, to assist in answering the research question: "Under which circumstances can humanitarian intervention be used in response to the attacks by ISIS?"

⁴⁴ Dugard *International Law* 508.

In order to answer the research question, this research will conduct a literature study. The material which is expected to be of the greatest significance will include the primary sources of legislation and case law, including international legal instruments such as treaties and conventions. Attention will also be paid to relevant secondary sources as supportive material, including applicable text books, academic journals and electronic resources.

Chapter 2

Classification of ISIS in terms of international law

2.1 Introduction

In the last three years the world has been facing arduous challenges created by modern groups implementing asymmetrical warfare methods in order to attain extreme religious objectives. The Islamic State of Iraq and Syria (ISIS) specifically, has received global attention for its violent tactics and the orchestrating of indiscriminate attacks against the Iraqi and Syrian population. The actions by this extremist group, coupled with the Syrian Civil War, have resulted in the largest humanitarian crisis since World War II.⁴⁵ The threat that this jihadist group poses to international peace and security is no longer solely confined to the Middle Eastern region, as their actions have affected states elsewhere in at least four ways:

- i. ISIS has used them as sources of recruits.
- ii. ISIS "fighters" have returned home and pursued the ISIS goals.
- iii. Silent sympathisers have consolidated domestic terrorist acts.
- iv. Previously existing international terrorist organisations have pledged allegiance to this particular group, thus ensuring that it has an international support network.

In order to understand how this group expanded so rapidly it is necessary to explain the unique methods, ideology and objectives of this contemporary fanatical, fundamentalist group. Thereafter, the historical context of Afghanistan, Iraq and Syria will be analysed as the unfolding of events in these particular countries contributed to the development of this group into an effective fighting force. Establishing the origins of this group as well as its operating methods will assist in accomplishing the main objective of this particular Chapter, which is to

⁴⁵ European Commission 2015 <http://ec.europa.eu>.

classify ISIS in terms of the categories existing under international law. By analysing the characteristics and elements of these categories (rebel groups, insurgency movements, liberation movements and terrorist organisations) it can be established if ISIS falls within the scope of these categories or if the operating methods of ISIS require the creation of a new, modern category. Terrorism is analysed more comprehensively than the other categories, as states and authors in general prefer to refer to ISIS as a terrorist organisation. The categorisation of this group is important as it will determine which responses provided for by international law can legitimately be used to eradicate this particular threat to international peace and security.

2.2 Islamic State of Iraq and Syria (ISIS)

In August 2014 the world was shocked by the release of a gruesome video portraying the beheading of James Foley, a United States (US) citizen and journalist.⁴⁶ The video, which was recorded in a deserted area, revealed Foley and a man dressed in a gown that covered his whole body.⁴⁷ He had a hunting knife in his hand, which he pointed at the camera on various occasions. After both Foley and the jihadist directed messages toward President Obama, the angle of the camera shifted before the knife was used to decapitate Foley, and moments later his guillotined body was shown.⁴⁸ After the James Foley incident, more of these propaganda videos depicting beheadings and the executions of foreigners were released on social media,⁴⁹ inflaming responses which demanded action against these barbaric jihadists in order to eliminate them as a threat to peace. These acts were committed by ISIS, a modern movement which initially launched its terror campaign against domestic citizens, and was now attacking foreigners.⁵⁰

⁴⁶ Stern and Berger *ISIS: The state of terror* 1.

⁴⁷ Stern and Berger *ISIS: The state of terror* 1.

⁴⁸ Stern and Berger *ISIS: The state of terror* 1.

⁴⁹ After Foley was killed, Americans Steven Sotloff and Peter Kassig, British citizens Alan Henning and David Haines, and Jordanian pilot Martyr Kasasbeh were brutally murdered on camera by these extremists; Stern and Berger *ISIS: The state of terror* 2.

⁵⁰ Sekulow *The rise of ISIS* x-xi.

With the sudden release of these videos, it seemed as if this group had appeared overnight with the objective of disseminating horror across the globe. However, the origins of the group are actually to be found in the pre-existing terrorist organisation, Al-Qaeda (AQ).⁵¹ Although its predecessor was internationally known for orchestrating the 9/11 attacks, this particular group has accomplished more of its radical objectives.⁵² Better known as the Islamic State of Iraq and Levant (ISIL), the Islamic State of Iraq and Syria (ISIS) or, as it recently declared in 2014, simply the Islamic State (IS), it is a Salafist group created with the objective of establishing a caliphate or Islamic State under the guidance of the appointed leader or Ibrahim Abu Bakr Al-Baghdadi.⁵³ The reason for instituting the caliphate is to purify Islam, as ISIS believes that this religion has been sullied by Western values and ideas.⁵⁴ As a result, ISIS believes that the borders created by the colonized powers in the Sykes-Picot-agreement are a corruption of the Islamic *Ummah* or community.⁵⁵ They believe that the borders divide the Muslim community and define their religion and character through citizenship.⁵⁶ Therefore, this fundamentalist group eradicated the border between Iraq and Syria,⁵⁷ arguing that "all Muslims are bound together through a common faith that transcends all geographical, political or national boundaries."⁵⁸ For the same reason this extremist group opposes Middle Eastern governments which adhere to the Western principle of democracy,⁵⁹ as they seek the strict implementation of Sharia law.⁶⁰

ISIS, a Sunni Muslim group, engages in brutal tactics such as raping, beheading, kidnapping, car and suicide bombing, crucifixion and mass execution.⁶¹ These

⁵¹ Cockburn *The rise of Islamic State: ISIS and the new Sunni revolution* 1.

⁵² Sekulow *The rise of ISIS* 7-9.

⁵³ Al-Adnani 2014 <http://tricertops.brynmawr.edu>; Stern and Berger *ISIS: The state of terror* chapter 5 page 10-11.

⁵⁴ Al-Adnani 2014 <http://tricertops.brynmawr.edu>.

⁵⁵ Sekulow *The rise of ISIS* 16.

⁵⁶ Mura *The symbolic scenarios of Islamism* 206.

⁵⁷ Mura *The symbolic scenarios of Islamism* 206.

⁵⁸ Sekulow *Rise of ISIS* 16-17.

⁵⁹ Al-Adnani 2014 <http://tricertops.brynmawr.edu>.

⁶⁰ Sekulow *Rise of ISIS* 17.

⁶¹ Spencer *The complete infidel's guide to ISIS* 17.

tactics are used against Christians, Yazidis, Kurds, Shia Muslims, and anyone opposed to its methods, values and ideas.⁶² The struggle between Sunni and Shia Muslims originated in the difference in their belief systems, as the former believe that it was proper that Mohammed could be succeeded by an elected individual, and the latter, on the other hand, believe that only a member of Mohammed's family could succeed him.⁶³ The selection of a non-family member as the leader of the first caliphate caused a final division between these two branches.⁶⁴ ISIS perceives members of any religion besides its own branch of (Sunni) Islam as "infidels," and is determined to eliminate them. In this regard, ISIS justifies its behaviour through interpreting the holy book of Islam (the Quran) radically.⁶⁵ These fundamentalists believe that their interpretation should prevail and they will pursue the enforcement of their version even if it means that they should resort to drastic measures.⁶⁶ This extreme programme of action is warranted by their believing in the call for jihad, or the "holy war."⁶⁷ For ISIS the jihad is "an aspect of a radical, religious ideology that supports terrorism and other acts of criminal violence."⁶⁸

In order to accomplish the above-mentioned objective, ISIS uses a strategy described by Caris and Reynolds as being composed firstly of applying skilful military tactics in order to acquire territory and then secondly of consolidating their occupation of that area and installing an operative Sharia government in it.⁶⁹ With regards to the former, ISIS has gained enough territory in Iraq and neighbouring Syria since 2014 to establish a state which is currently comparable to the size of the United Kingdom (UK)⁷⁰ and places approximately 8 million

⁶² Sekulow *Rise of ISIS* x.

⁶³ Oler 2007 *Reporter* 3.

⁶⁴ Oler 2007 *Reporter* 4.

⁶⁵ Hellyer 2012 *SCJIL* 38; Stern and Berger *ISIS: The state of terror* appendix 9.

⁶⁶ Bereczki 2015 *IJIS* 5.

⁶⁷ Bereczki 2015 *IJIS* 5.

⁶⁸ Hellyer 2012 *SCJIL* 36.

⁶⁹ Caris and Reynolds 2014 *Middle East Report* 22 4.

⁷⁰ Cockburn 2014 <http://lrb.co.uk>.

people under its control.⁷¹ Consequently, the caliphate was formerly declared in June 2014, when IS made the following proclamation:⁷²

The veil has been lifted and the truth has become clear. Indeed it is the state. It is the state for Muslims – the oppressed of them, orphans, widows and impoverished. Indeed it is the state. And if you forsake the state or wage war against it, you will not harm it. You will only harm yourselves. We clarify to the Muslims that this declaration of the *Kilafah*, it is incumbent upon all Muslims to pledge allegiance to the Ibrahim and to support him.

After this declaration, Abu Bakr Al-Baghdadi took the stage in July 2014 and made the following statement:⁷³

Verily they hastened to announce the caliphate and appointed a leader, and this is an obligation on Muslims. An obligation lost for many centuries. Now they have established it, praise and favour is due to Allah. And so I was put in authority over you, and if you see me upon truth, then support me and if you see me upon falsehood, then advise me and guide me and obey me as long as I obey Allah in you.

ISIS has already accomplished the latter phase of its approach in certain areas under its control. For example, the institutions and rules implemented in the Syrian city of Raqqa illustrate what this particular group envisions with the caliphate.⁷⁴ In this area ISIS has "built a holistic system of governance that includes religious, educational, judicial, security, humanitarian and infrastructure projects."⁷⁵ The Islamic court, for example, implements harsh medieval punishments such as public executions.⁷⁶ Also, security forces patrol the streets in order to ensure that no person smokes, no alcohol is sold, and women are properly clothed, thus ensuring that "religious decrees are strictly implemented."⁷⁷ Stern and Berger refer to the "institution of harsh theocratic rule, which included

⁷¹ Al-Khatteeb and Gordts 2014 <http://brookings.edu>.

⁷² Al-Adnani 2014 <http://triceratops.brynmwar.edu>; Spencer *The complete infidel's guide to ISIS* 162.

⁷³ Sekulow *Rise of ISIS* 20.

⁷⁴ Caris and Reynolds 2014 *Middle East Report* 22 4.

⁷⁵ Caris and Reynolds 2014 *Middle East Report* 22 4.

⁷⁶ Caris and Reynolds 2014 *Middle East Report* 22 19.

⁷⁷ The Clarion Project 2015 <http://clarionproject.org>; Caris and Reynolds 2014 *Middle East Report* 22 12.

at least a skeletal governance, with a functioning economy and civil institutions."⁷⁸ ISIS has a functioning economy as it gains funds through activities such as collecting taxes, selling oil to the black market, and robbing local banks.⁷⁹ Recently they also seized control of the historical Syrian city of Palmyra and started destroying the United Nations Educational, Scientific and Cultural Organisation (UNESCO) world heritage site in order to sell artefacts taken from it.⁸⁰

The continuous fighting within these areas has already resulted in the internal displacement of over 7.6 million Syrians⁸¹ as well as more than 3.2 million Iraqis.⁸² Furthermore, over 4.2 million Syrians,⁸³ as well as over 180 000 Iraqis⁸⁴ are currently seeking asylum abroad.

Although the physical struggle of ISIS has been confined to Middle Eastern territory, the effects of the actions of this group have been felt globally. The fanatical propaganda launched by ISIS on international social media has created the impression that this group is an appealing, skilful military organisation resuming the global jihad that would bring everlasting peace and security to a religion that has faced many challenges.⁸⁵ Marwan Muasher says "some are flocking to ISIS not because of its ideology but because it represents to them a rallying force against establishments that have failed them."⁸⁶ As a result, recruitment videos have revealed thousands of foreign "fighters" who have departed from their home countries in order to join the war in Syria and Iraq. Among these fighters are nationals of America, Australia, Canada, Germany, UK,

⁷⁸ Stern and Berger *ISIS: The state of terror* 48.

⁷⁹ Stern and Berger *ISIS: The state of terror* 46.

⁸⁰ UNESCO 2015 <http://en.unesco.org>.

⁸¹ IDMC 2015 <http://internal-displacement.org>.

⁸² IDMC 2015 <http://internal-displacement.org>.

⁸³ UNDP 2015 <http://eurasie.undp.org>.

⁸⁴ UNHCR 2015 <http://unhcr.org>.

⁸⁵ Al-Baghdadi date unknown <http://gatestoneninstitute.org>; Stern and Berger *ISIS: The state of terror* 105; also refer to Spencer *The complete infidel's guide to ISIS* 82 in order to read more about the reasons foreign fighters present for joining ISIS.

⁸⁶ Stern and Berger *ISIS: The state of terror* 233.

Turkey, and Tunisia, which purportedly provides the most fighters.⁸⁷ Since November 2014, the number of foreign fighters currently involved in conflicts engendered by groups such as ISIS, has increased from 15 000 fighters originating from 80 different states⁸⁸ to 25 000 fighters originating from 100 different countries.⁸⁹ The United Nations Security Council (UN SC) warned in Resolution 2178 of September 2014 that states should be aware of these foreign fighters and take steps to prevent them from returning home, because they could perform terrorist acts after they had received the necessary training.⁹⁰ Consequently, it can also be contended that recruitment and terrorist attacks within the confined territory of states other than Iraq and Syria may be related to ISIS.⁹¹

These attacks are generated and performed by those who silently sympathize with ISIS and assists the group by spawning a range of local terrorist attacks.⁹² These fighters are referred to as the ostensible "lone wolves" and they are responsible for various global terrorist attacks.⁹³ In 2014, people were arrested in Switzerland⁹⁴ as well as in France⁹⁵ for plotting harmful attacks against public institutions. Also, in June 2015, on the same day, gunmen killed many tourists on a beach in Tunisia and explosives were used in executing attacks in France as well as Kuwait.⁹⁶ In 2015 the world was also shocked by the terrorist attacks in Paris perpetrated by gunmen storming the Charlie Hebdo offices while another person held people hostage in a grocery store.⁹⁷ ISIS affiliates were also responsible for

⁸⁷ Neumann 2015 <http://icsr.info>.

⁸⁸ *Statement by the President of the SC S/PRST/2014/23* (2014).

⁸⁹ *Letter dated 19 May 2015 from the chair of the SC committee pursuant to Res 1267 and Res 1989 concerning Al-Qaeda and associated individuals or entities addressed to the president of the SC S/2015/358* (2015).

⁹⁰ *Resolution on foreign terrorist fighters* SC Res 2178 (2014).

⁹¹ Forcese and Mamikon 2015 *UBCLR* 306.

⁹² Lewis, Gambhir and Sterling 2014 <http://understandingwar.org>.

⁹³ Lewis, Gambhir and Sterling 2014 <http://understandingwar.org>.

⁹⁴ SWI 2015 <http://swissinfo.cn>; Stern and Berger *ISIS: the state of terror* 94.

⁹⁵ Kuruvilla 2014 <http://nydailynews.com>; Stern and Berger: *ISIS: the state of terror* 49.

⁹⁶ Botelho 2015 <http://edition.cnn.com>. Please not that source is not used to prove facts, but it is merely referred to in order to depict occurred events.

⁹⁷ Spark, Ford and Mullen 2015 <http://cnn.com>; Stern and Berger *ISIS: the state of terror* 98.

the shooting and bombing of a hotel in Libya where 10 people were killed.⁹⁸ Correspondingly, ISIS links were accountable for the two suicide mosque explosions in Saudi-Arabia which occurred in May and August 2015.⁹⁹

In addition, ISIS gained momentum on the international stage as terrorist groups abroad starting declaring allegiance to the leader of this extremist group. Directly communicating with these groups abroad, they plan terrorist attacks and presumably smuggle weapons and funds to these groups.¹⁰⁰ By constructing these virtual relations ISIS ensures that it will "survive even if it loses geographical terrain in Iraq and Syria."¹⁰¹

A perfect example of this extension was reflected in 2014 when ISIS spread to Libya after loyalty was declared by the local terrorist group, the Islamic Youth Shura Council.¹⁰² Ever since, ISIS fighters¹⁰³ have been spotted in certain parts of Libya.¹⁰⁴ In 2015 the local terrorist group located in Sinai, Egypt clashed with security forces in a struggle to gain territory.¹⁰⁵ The fighting occurred approximately two months after the organisation, referred to as Ansar Beit Al-Maqdis, pledged allegiance to ISIS.¹⁰⁶ The Nigerian terrorist group, Boko Haram, which will later be used for comparative purposes,¹⁰⁷ also announced devotion to the caliphate and immediately assisted ISIS fighters in accomplishing its mission by increasing its local assassination attacks.¹⁰⁸

⁹⁸ Karadsheh and Alkhshali 2015 <http://edition.cnn.com>. Please note that source is not used to prove facts, but it is merely referred to in order to depict occurred events.

⁹⁹ Tawfeeq and Hanna 2015 <http://edition.cnn.com>. Please note that source is not used to prove facts, but it is merely referred to in order to depict occurred events.

¹⁰⁰ Gambhir 2015 <http://understandingwar.org>.

¹⁰¹ Gambhir 2015 <http://understandingwar.org>.

¹⁰² Qsiyer 2015 <http://studies.aljazeera.net>.

¹⁰³ Qsiyer 2015 <http://studies.aljazeera.net>.

¹⁰⁴ Rodriguez 2014 <http://defense.gov>.

¹⁰⁵ Lee and Tawfeeq 2015 <http://edition.cnn.com>. Please note that source is not used to prove facts, but it is merely referred to in order to depict occurred events.

¹⁰⁶ Lee and Tawfeeq 2015 <http://edition.cnn.com>. Please note that source is not used to prove facts, but it is merely referred to in order to depict occurred events.

¹⁰⁷ Refer to Chapter 2.2.4 for the discussion on the terrorist group Boko Haram.

¹⁰⁸ Gambhir 2015 <http://understandingwar.org>.

Lastly, the international community was affected by ISIS when the US decided to launch airstrikes in Iraq against this organisation in August 2014.¹⁰⁹ The action was initiated on request by Iraq and directed to the US to assist in eliminating this threat.¹¹⁰ President Obama justified his action by stating that it was necessary to protect US interests abroad.¹¹¹ In September 2014 the US president announced that this military action would now be conducted as part of an international coalition campaign in both Iraq and Syria.¹¹² This campaign was created to "degrade and destroy"¹¹³ this extremist group and the action was restricted to air strikes and humanitarian support as Obama declared that he "will not allow America to be dragged into another war in Iraq."¹¹⁴ For that reason, ground personnel were employed in Iraq and Syria by the US solely to engage in training Iraqi forces and Syrian rebels to fight ISIS militants. In the same month airstrikes were formally conducted in Syria, as the US struck the Khorasan terrorist group.¹¹⁵ Although not initially part of the original plan, these attacks were justified by stating that this particular group was planning an attack on US territory,¹¹⁶ that terrorists were freely functioning on Syrian territory, by the statement that the fight against terrorism should not be limited by borders,¹¹⁷ and that Syria was unable and unwilling to prevent terrorist attacks. It is argued that where a state cannot fulfil international law obligations such as protecting people against the violation of human rights by terrorists¹¹⁸ as well as by preventing attacks from being launched by terrorists from its territory against foreign states,¹¹⁹ the particular state should be regarded as a "failed state".¹²⁰ The

¹⁰⁹ President Obama 7 August 2014 <http://whitehouse.gov>.

¹¹⁰ Hudson 2014 <http://foreignpolicy.com>.

¹¹¹ President Obama 7 August 2014 <http://whitehouse.gov>.

¹¹² US Department of State 2014 <http://state.gov>; President Obama 10 September 2014 <http://whitehouse.gov>.

¹¹³ President Obama 10 September 2014 <http://whitehouse.gov>; Stern and Berger *ISIS: the state of terror* 49.

¹¹⁴ President Obama 7 August 2014 <http://whitehouse.gov>.

¹¹⁵ President Obama 23 September 2014 <http://whitehouse.gov>; Stern and Berger *ISIS: the state of terror* 49.

¹¹⁶ President Obama 23 September 2014 <http://whitehouse.gov>.

¹¹⁷ President Obama 10 September 2014 <http://whitehouse.gov>.

¹¹⁸ OHCHR 2011 <http://ohchr.org>; Englehart 2009 *JPR* 163.

¹¹⁹ Dugard *International Law* 505.

concept has been defined as a state of which the central government has broken down to such an extent that lawlessness reigns.¹²¹ Nevertheless, the characterisation of a state as a failed state presents different challenges to international law. Such a state will have no obligations toward the international community, as it will no longer be bound by the provisions and norms of international treaties. As John Dugard argues, "neglect is not a solution as it leaves millions of people without hope for the future and brings international law itself into contempt."¹²² Moreover, the mere declaration of a state as being a "failed state" will not automatically force it to comply with its international obligations. A different method which could be used in order to ensure that the particular state complies with international laws and fulfils its international obligations is the use of "informal state-building".¹²³

Initially the US led coalition consisted of five nations, namely the United Arab Emirates, Jordan, Saudi Arabia, Bahrain and Qatar.¹²⁴ Since then, over 60 countries have joined the coalition by conducting air strikes, providing air support or humanitarian assistance, and also by providing military equipment.¹²⁵ At the outset, one of these countries which borders with Iraq and Syria was hesitant to join this campaign against ISIS as it felt that this would make them vulnerable to terrorist attacks.¹²⁶ The participation of this country, Turkey, was necessary in order to increase the efficiency of these airstrikes¹²⁷ as the US airbase in Iraq was too remote to strike targets in Syria effectively.¹²⁸ In July 2015, however, the terrorist act that occurred in Suruc led to violent protests by angry community members who felt that the Turkish government had a responsibility to respond to

¹²⁰ Akpinarli *The fragility of the failed states paradigm* 31. Failed states will not be dealt with comprehensively in this study.

¹²¹ Dugard *International Law* 110.

¹²² Dugard *International Law* 111.

¹²³ Dugard *International Law* 111; see Chapter 2.1.2 for an example on how the US assisted in building the fragile state of Iraq in order to attempt to prevent it from developing into a failed state.

¹²⁴ President Obama 10 September 2014 <http://whitehouse.gov>.

¹²⁵ President Obama 10 September 2014 <http://whitehouse.gov>; US Department of State 2014 <http://state.gov>.

¹²⁶ Oktem 2015 <http://internationalpoliticalforum.com>.

¹²⁷ Pellerin 2015 <http://defence.gov>.

¹²⁸ Kozak 2015 <http://understandingwar.org>.

this threat.¹²⁹ For that reason Turkey joined the campaign in August 2015, launching airstrikes against the institutions of this organisation and allowing the US and other members of the coalition to use its bases.¹³⁰

Since the campaign started in 2014, the coalition has conducted more than 7000 airstrikes which reportedly destroyed equipment, cells, vehicles and buildings owned by ISIS.¹³¹ These strikes have pressurized ISIS to desert certain areas that were under their control and allowed Iraqi forces backed by Iranian forces and the Peshmerga to move in and take control.¹³² Coalition progress reports indicate that thousands of ISIS fighters have already been killed and that some of the casualties include high-ranking commanders of this revolutionary group.¹³³ Although these results are positive, as President Obama has said, the struggle to eliminate ISIS is not over, as it is a delicate and intricate process that requires careful planning and time.¹³⁴ Also, as stated before, the ISIS problem is no longer confined to Middle Eastern territory and it has already established an international support network.

The following questions still remain: "Who is ISIS, and where do they come from?" In order to answer these questions it is important to sketch a historical background describing the creation of this group, as it finds its roots in a long-lasting terrorist organisation. Furthermore, the political and social context in both Iraq and Syria that established the perfect circumstances for these groups to flourish should also be described.

¹²⁹ Kozak 2015 <http://understandingwar.org>; Oktem 2015 <http://internationalpoliticalforum.com>.

¹³⁰ Kozak 2015 <http://understandingwar.org>.

¹³¹ US Department of Defence 2015 <http://defense.gov>; President Obama 2015 <http://ippdigital.usembassy.gov>.

¹³² Spencer *The complete infidel's guide to ISIS* 15.

¹³³ President Obama 2015 <http://ippdigital.usembassy.gov>; also refer to the Leader's summit to counter ISIL and violent extremism 2015 <http://whitehouse.gov> to read about success and challenges in defeating ISIS.

¹³⁴ President Obama 2015 2015 <http://ippdigital.usembassy.gov>.

2.2.1 Afghanistan

The terrorist organisation AQ has been operating in the territory of Pakistan and Afghanistan since 1988.¹³⁵ In the Pakistani border town of Peshawar, Osama Bin Laden, the leader of AQ, and Abdullah Azzam, his advisor, established a "service bureau" which was used as a recruitment station for foreign fighters.¹³⁶ The reason for initiating this centre was in response to Azzam's call for fighters to join the fight against the Soviet Union occupation of Afghanistan.¹³⁷ The fighters arriving at the centre were enrolled in different preparation camps to receive proper training and equipment in order to join the fight in neighbouring Afghanistan.¹³⁸ Training at these camps consisted of "experimentation, military preparation and guerrilla war tactics courses."¹³⁹ One of these fighters was the terrorist Al-Zawahiri,¹⁴⁰ who became Bin Laden's successor in 2011 when Bin Laden was killed by US forces.¹⁴¹ Another group of fighters containing the soon to become famous Jordanian-born Al-Zarqawi arrived in 1989, just as the foreigners were about to withdraw.¹⁴² Zarqawi, who had not completed school and was known to regularly participate in criminal activities left Afghanistan for Jordan only in 1992, after he received terrorist training.¹⁴³ When he arrived back home he joined a local terrorist cell which planned attacks that would be directed at the state.¹⁴⁴ Surveillance resulted in his arrest after equipment and evidence of his involvement in terrorist activities were discovered at his home.¹⁴⁵ By practising strict obedience to the Islamic rule and "creating religious teachings"¹⁴⁶ his imprisonment qualified him for terrorist stardom. While in prison, Zarqawi implemented tactics that would later become known as those of the ISIS leader

-
- ¹³⁵ Bergen *The Osama Bin Laden I know* 76.
¹³⁶ Weiss and Hassan *ISIS: Inside the army of terror* 4.
¹³⁷ Weiss and Hassan *ISIS: Inside the army of terror* 3.
¹³⁸ Weiss and Hassan *ISIS: Inside the army of terror* 4.
¹³⁹ Weiss and Hassan *ISIS: Inside the army of terror* 7.
¹⁴⁰ Weiss and Hassan *ISIS: Inside the army of terror* 4.
¹⁴¹ Hummel 2011 *HSR* 1, 10.
¹⁴² Weiss and Hassan *ISIS: Inside the army of terror* 6.
¹⁴³ Weiss and Hassan *ISIS: Inside the army of terror* 7.
¹⁴⁴ Weiss and Hassan *ISIS: Inside the army of terror* 8.
¹⁴⁵ Riedel *The search for Al Qaeda* 92.
¹⁴⁶ Weiss and Hassan *ISIS: Inside the army of terror* 10.

Al-Baghdadi by convincing fellow inmates to join his terrorist campaign.¹⁴⁷ After his release in 2000 he travelled back to Afghanistan where he was supported by Bin Laden in establishing his own associated training camp.¹⁴⁸ Zarqawi's camp focussed on Middle Eastern recruitments as he planned to attack locally situated governments in order to implement the strict Islamic laws in which he believed.¹⁴⁹ Therefore, unlike Bin Laden, who focussed on attacking American interests, his trainees were responsible for various attacks that occurred in Jordan, for example.¹⁵⁰ Also, he dispatched fighters to Northern Iraq with the task of acquiring a support group for the expansion of his influence.¹⁵¹

After the 9/11 attacks the US and its allies invaded Afghanistan and started waging war against this terrorist group, which threatened its interests while located within this particular territory.¹⁵² The Taliban, which was an extremist group in control of Afghanistan governance at that particular moment, allowed AQ to hide¹⁵³ and did not attempt to stop them from organizing attacks on the West.¹⁵⁴ Allegedly, Zarqawi escaped to neighbouring Iraq as a result of an injury obtained while assisting in the fight against the western occupiers.¹⁵⁵

2.2.2 Iraq

The presence of ISIS on Iraqi territory today can be attributed to numerous political decisions made in this country, where various social, economic and political events eventually led to the US invasion, which some argue created the perfect environment for groups such as ISIS to flourish.

¹⁴⁷ Weiss and Hassan *ISIS: Inside the army of terror* 10.

¹⁴⁸ Riedel *The search for Al Qaeda* 94.

¹⁴⁹ Weiss and Hassan *ISIS: Inside the army of terror* 13.

¹⁵⁰ Brisard and Martinez *Zarqawi: The new face of AQ* 83.

¹⁵¹ Brisard and Martinez *Zarqawi: The new face of AQ* 77.

¹⁵² Brisard and Martinez *Zarqawi: The new face of AQ* 91.

¹⁵³ Aldrich 2003 *AJIL* 891.

¹⁵⁴ Aldrich 2003 *AJIL* 891.

¹⁵⁵ Brisard and Martinez *Zarqawi: The new face of AQ* 92-93.

In 1980, due to various disputes between the two states, Iraq decided to invade Iran, which invasion resulted in the Iraq-Iran war.¹⁵⁶ In 1983 the UN SC released its first Resolution with regards to the decision by the Iraqi government in which it especially focussed on the humanitarian violations committed by Iraq in that war.¹⁵⁷ In 1986, the UN SC found that both parties were using chemical weapons¹⁵⁸ and in 1988 there were already discussions on "disarmament and investigation" of the usage of these weapons.¹⁵⁹ In 1990 Iraq decided to focus its attention on a different neighbour, Kuwait, as it argued that this territory was part of Iraq.¹⁶⁰ In various Resolutions the UN SC took note of the atrocities occurring in Kuwait at the hands of the Iraqi government and requested Iraq to withdraw from this territory. Despite these requests, Iraq decided to remain there, and as a result the UN formally requested States to not participate in activities that would enrich the Iraqi economy.¹⁶¹ Unfortunately, these economic sanctions were not successful in forcing Iraq to withdraw, and the UN SC was required to authorize the use of force against Iraq in 1991,¹⁶² resulting in the Gulf War. Fortunately, a few months later, a ceasefire agreement containing numerous terms and conditions was reached between the parties.¹⁶³ This agreement warned the Iraqi government to refrain from using terrorist tactics and required that it should not support or allow acts of terrorism within its borders.¹⁶⁴ In addition it focused on the demolition of all nuclear weapons and related production programmes, and it demanded the creation of a Commission that would investigate relevant sites and report on Iraq's compliance with the above-mentioned Resolutions.¹⁶⁵ In 1991 the UN SC approved these investigations under the guidance of the established United Nations Special Commission (UNSCOM).¹⁶⁶ This Commission was mandated to

¹⁵⁶ Sterner 1984 *Foreign Affairs* 130.

¹⁵⁷ *Resolution on the Situation between Iran and Iraq* SC Res 540 (1983).

¹⁵⁸ *Resolution on the Situation between Iran and Iraq* SC Res 582 (1986).

¹⁵⁹ *Resolution on the Situation between Iran and Iraq* SC Res 620 (1988).

¹⁶⁰ *Resolution on the Situation between Iraq and Kuwait* SC Res 660 (1990).

¹⁶¹ *Resolution on the Situation between Iraq and Kuwait* SC Res 661 (1990).

¹⁶² *Resolution on the Situation between Iraq and Kuwait* SC Res 678 (1990).

¹⁶³ *Resolution on the Situation between Iraq and Kuwait* SC Res 687 (1991).

¹⁶⁴ *Resolution on the Situation between Iraq and Kuwait* SC Res 687 (1991).

¹⁶⁵ *Resolution on the Situation between Iraq and Kuwait* SC Res 687 (1991).

¹⁶⁶ *Resolution on Iraq* SC Res 688 (1991); UNSCOM date unknown <http://un.org>.

investigate sites, to ensure the destruction of weapons and related production facilities and to track Iraq's compliance with the steps and Resolutions created by the UN SC.¹⁶⁷ In 1996, however, the Commission reported that inspectors could not enter some of the remote locations and that weapons had been discovered which the Commission had not previously been aware of.¹⁶⁸ The UN SC responded with *UN SC Resolution 1060*, which demanded compliance and cooperation by the Iraqi government.¹⁶⁹ Once again, despite these attempts, there were speculations that Iraq was not adhering to the UN regulations and the US, therefore, warned Iraq in 2002 that if it did not enforce these rules and principles "action would be unavoidable".¹⁷⁰ In response to this threat, the UN SC had to release another Resolution in 2002, considered to be the last warning for full compliance.¹⁷¹ In addition to all these international law violations mentioned above, the Sunni oppressive leader Saddam Hussein was also responsible for numerous human rights violations perpetrated on his own citizens.¹⁷² Protests by Shia and Kurdish citizens were oppressed violently by using tremendous force and inhumane strategies,¹⁷³ and as a result, many people were internally displaced and became victims at refugee sites.¹⁷⁴

In response to these many violations, the US and its allies invaded Iraq in 2003, as this country was seen as part of an "axis of evil".¹⁷⁵ President Bush announced that action against Hussein was necessary if they wanted to eliminate terrorism, as Hussein allowed such activities to take place on Iraqi territory.¹⁷⁶ Also, weapons of mass destruction were still available in the country and could be accessible to terrorists, which made it essential to destroy the armaments.¹⁷⁷ The

¹⁶⁷ *Resolution on Iraq* SC Res 688 (1991); UNSCOM date unknown <http://un.org>.

¹⁶⁸ UNSCOM Note by Secretary-General S/1996/848 1 October 1996.

¹⁶⁹ *Resolution on Iraq* SC Res 1060 (1996).

¹⁷⁰ President Bush 2002 <http://georgewbush-whitehouse.archives.gov>.

¹⁷¹ *Resolution on the renewal of inspections in Iraq* SC Res 1441 (2002).

¹⁷² Bureau of democracy 2002 <http://2001-2009.state.gov>.

¹⁷³ Whitesell 1993 *DJILP* 465, 466.

¹⁷⁴ Whitesell 1993 *DJILP* 462; Lyman 1991 *Department of State Dispatch* 379.

¹⁷⁵ President Bush 2002 <http://georgewbush-whitehouse.archives.gov>.

¹⁷⁶ President Bush 2003 <http://georgewbush-whitehouse.archives.gov>.

¹⁷⁷ President Bush 2003 <http://georgewbush-whitehouse.archives.gov>.

US would assist in destroying this "apparatus of terror"¹⁷⁸ and establishing a democratic government that would no longer violate the rights of its people.¹⁷⁹

Many writers argue that the decision to invade Iraq was further exacerbated by the US Secretary of State Colin Powell in a speech delivered shortly before the operation commenced.¹⁸⁰ In this speech he talked about the fact that despite warnings, weapons of mass destruction still existed in Iraq, and he claimed that this was an indication that the Iraqi regime had no intention of destroying them.¹⁸¹ According to him, these weapons were being used by terrorist organisations such as AQ,¹⁸² which had connections with Saddam Hussein, as they were allowed to settle in Iraq after they had been successfully driven from Afghanistan.¹⁸³ However, it was later confirmed that there was no evidence available which connected AQ or Zarqawi with Hussein.¹⁸⁴ Nor were any weapons of mass destruction to be found.

The US promoted democracy by assisting in replacing the Sunni president Saddam Hussein and its regime with a predominantly Shia administration with Al-Maliki as Prime Minister.¹⁸⁵ However, this new government excluded Sunnis from the political arena, resulting in a series of unfortunate events.¹⁸⁶ The minority Sunnis were now governed by the majority Shia,¹⁸⁷ which fact resulted in conflict between the two branches of Islam.¹⁸⁸ Terrorists like Zarqawi and his followers, who openly admitted hatred of the Shia community,¹⁸⁹ used this as an opportunity to wage war in the furtherance of their objectives.¹⁹⁰ Zarqawi continued to

¹⁷⁸ President Bush 2003 <http://georgewbush-whitehouse.archives.gov>.

¹⁷⁹ President Bush 2003 <http://georgewbush-whitehouse.archives.gov>.

¹⁸⁰ Riedel *The search for Al Qaeda* 96.

¹⁸¹ Powell 2003 <http://theguardian.com>.

¹⁸² Powell 2003 <http://theguardian.com>.

¹⁸³ Powell 2003 <http://theguardian.com>.

¹⁸⁴ 9/11 Commission 2004 *Final Report of the national Commission* 334; Riedel *The search for Al Qaeda* 97.

¹⁸⁵ Trumbull and Martin 2011 *VJTL* 338.

¹⁸⁶ International crisis group 2013 <http://crisisgroup.org>.

¹⁸⁷ Trumbull and Martin 2011 *VJTL* 336.

¹⁸⁸ Cordesman 2005 <http://csis.org>; Please refer to the report composed by Cordesman in order to read more about the Shia and Sunni clashes in Iraq.

¹⁸⁹ Weiss and Hassan *ISIS: Inside the army of terror* 28-29.

¹⁹⁰ Rajan *Al Qaeda's global crisis* 122.

emphasize that the Shia were "the lurking snake, the crafty and malicious scorpion, the spying enemy, the looming danger and the true challenge."¹⁹¹ As a result, the Shia community was continually beleaguered and attacked in areas where they were the majority.¹⁹² In October 2004¹⁹³ Zarqawi decided to vow loyalty to Al-Qaeda,¹⁹⁴ by naming his affiliate organisation Al-Qaeda in Iraq (AQI).¹⁹⁵ This AQ branch became famous for beheadings and bombings of Shia Muslims and foreigners, which were recorded and distributed on social media to terrorise especially the west.¹⁹⁶ His involvement can be traced in the bombing of the Jordanian embassy, the UN headquarters in Iraq, as well as a Shia religious site.¹⁹⁷ Although this announcement was amiably welcomed by Bin Laden, as his organisation was thereby enlarged,¹⁹⁸ by 2005 relations with AQ became tenuous as AQ's second in command, Al-Zawahiri instructed Al-Zarqawi to refrain from using his harsh methods.¹⁹⁹ The Sunnis' losing the 2005 elections²⁰⁰ and the Shia government's capturing and torturing people based on their religion resulted in the intensifying of attacks against this targeted group.²⁰¹

After gaining international recognition for his attempts, Al-Zarqawi was killed in 2006 by an aerial bombardment that destroyed his hiding place.²⁰² However, the elimination of this figure did not necessarily indicate the end of terrorism in Iraq.²⁰³ Al-Masri, who was another known terrorist fighter, took over and declared the name of his branch Islamic State in Iraq (ISI) indicating and reflecting the

¹⁹¹ Rajan *Al Qaeda's global crisis* 122; Weiss and Hassan *ISIS: Inside the army of terror* 29.

¹⁹² Cordesman 2005 <http://csis.org>; Weiss and Hassan *ISIS: Inside the army of terror* 41.

¹⁹³ Riedel *The search for Al Qaeda* 94; President Bush 2007 *Public Papers of the Presidents of the US* 1006.

¹⁹⁴ Riedel *The search for Al Qaeda* 104.

¹⁹⁵ Mockaitis *The 'new' terrorism* 62.

¹⁹⁶ Riedel *The search for Al Qaeda* 99-102.

¹⁹⁷ Riedel *The search for Al Qaeda* 99-101.

¹⁹⁸ Weiss and Hassan *ISIS: Inside the army of terror* 35-36.

¹⁹⁹ Refer to Al-Zawahiri 2005 <http://ctc.usma.edu> in order to read the letter that was translated and published; LoGaglio 2014 *NSLB* 129.

²⁰⁰ International crisis group 2014 <http://csis.org>.

²⁰¹ Weiss and Hassan *ISIS: Inside the army of terror* 60; Lewis 2013 *Middle East Security Report* 14 10.

²⁰² Riedel *The search for Al Qaeda* 106; confirmed by President Bush 2006 *Public Papers of the Presidents of the US* 1099.

²⁰³ Hashim 2014 *MEP* 72.

programme of establishing a caliphate under the appointed leader, Abu-Omar Al-Baghdadi.²⁰⁴ Zarqawi fighters were reluctant to join this mission, as Al-Masri's vision was totally different from that of his pre-successor.²⁰⁵ Much like ISIS today, ISI gained territory in Iraq, creating an imitation of a recognized state with trademarks such as "institutions organising people's and state affairs, also administrative services."²⁰⁶ ISI, however, soon overstayed its welcome, as members of Sunni tribes started to join with Iraqi forces and the western occupiers in resistance to this radical violence.²⁰⁷ This movement, referred to as the "Awakening", resulted in the death and captivity of several terrorist members, and amongst the terrorists killed were the leaders of ISI, namely Al-Masri and Abu Omar Al-Baghdadi.²⁰⁸ However, the confinement of some of these terrorists within a single confined space created a centre for ensuring future enlistments, and one of these prisoners, who would become an important player in the ISIS field, was the modern ISIS leader Abu-Bakr Al-Baghdadi.²⁰⁹ In 2009, when the US withdrew from Iraq, several of these prisoners were released back into society, creating the perfect context for terrorism to flourish.²¹⁰ In 2012 AQI once again launched its terror campaign in Iraq, this time under the guidance of Abu-Bakr Al-Baghdadi and under the name Islamic State of Iraq (ISI).²¹¹

ISI, or as it would become known soon after, ISIL or ISIS, became famous between 2012 and 2014 with the launching of several propaganda videos titled "Clanging of the Swords."²¹² The first part, released in 2012, contained aggression messages intended to inflame hatred among the Sunni Muslims as they were

²⁰⁴ Hashim 2014 *MEP* 72.

²⁰⁵ Weiss and Hassan *ISIS: Inside the army of terror* 63.

²⁰⁶ Weiss and Hassan *ISIS: Inside the army of terror* 66.

²⁰⁷ Hashim 2014 *MEP* 72; Weiss and Hassan *ISIS: Inside the army of terror* 69.

²⁰⁸ Hashim 2014 *MEP* 72.

²⁰⁹ Weiss and Hassan *ISIS: Inside the army of terror* 84-85.

²¹⁰ The *Status of Force Agreement (SOFA)* providing for the withdrawal of the US in 2009, which was signed between the US and Iraq, stated that the US should hand over all prisoners in their custody to the Iraqi government. Al-Maliki decided to release many of these detainees, including several terrorists.

²¹¹ Weiss and Hassan *ISIS: Inside the army of terror* 97.

²¹² Stern and Berger *ISIS: The state of terror* 106.

being convinced that the Shia government was persecuting them.²¹³ Shortly after, part II was released, and it depicted fighting combatants who were carefully being trained for warfare.²¹⁴ Part III was released in 2013, and portrayed a promising message that the organisation had become militarily skilled and was planning on freeing fellow inmates from the oubliette, who were themselves potential fighters.²¹⁵ The last part, which was released a year later, depicted a different image of these fighters.²¹⁶ Suddenly they were seen to be controlling areas of Iraq, as the black ISI flag could be seen on almost every corner of Fallujah, and heavy battle scenes were visible in the background.²¹⁷ The instantaneous capture of territory could largely be attributed to the poor equipping and training of the Iraqi army, which deserted its posts and equipment in an attempt to escape the ISI onslaught.²¹⁸ The video showed shocking images of innocent people being shot, and it concluded with a worrying message: "And so the flame was started in Iraq, and its heat will increase by the will of Allah until it burns the crusaders in Dabiq, Syria."²¹⁹

2.2.3 Syria

The Arab spring of 2011, which originated in Tunisia and soon spread to neighbouring North African countries and the Middle East,²²⁰ created the perfect environment in Syria for groups such as ISIS to easily attain their objectives.²²¹ This movement consisted of a range of protests against oppressive governments

²¹³ Video posted by Zelin 2012 titled "*Clanging of the Swords Part I*" <http://jihadology.net>; Stern and Berger *ISIS: The state of terror* 106.

²¹⁴ Video posted by Zelin 2012 titled "*Clanging of the Swords Part II*" <http://jihadology.net>; Stern and Berger *ISIS: The state of terror* 107-108.

²¹⁵ Video posted by Zelin 2013 titled "*Clanging of the Swords Part III*" <http://jihadology.net>; Stern and Berger *ISIS: The state of terror* 108; Lewis 2013 *Middle East Security Report 4* for a discussion on the "Breaking of the walls campaign."

²¹⁶ Stern and Berger *ISIS: The state of terror* 110.

²¹⁷ Video posted by Zelin 2014 titled "*Clanging of the Swords Part IV*" <http://jihadology.net>.

²¹⁸ Hashim 2014 *MEP* 80; Schmitt and Gordon 2014 <http://nytimes.com>.

²¹⁹ Dabiq is a city in Syria where the old Muslim teachings predict the final battle between Muslims and non-Muslims will occur. Video posted by Zelin 2014 titled "*Clanging of the Swords Part IV*" <http://jihadology.net>; Stern and Berger *ISIS: The state of terror* 112.

²²⁰ Bennett 2013 *PILROC* 363.

²²¹ Cockburn *The rise of the Islamic State: ISIS and the new Sunni revolution* 81.

in anticipation of ousting tyrannical or dictatorial leaders.²²² In Syria these protests started after the government responded to anti-Assad writings on a wall by demanding that state forces arrest the culprits, after which they were supposedly tortured.²²³ The protests, which started in the Syrian city of Daraa in response to these atrocities, soon spread across the country in support of the victims.²²⁴ Al-Assad reacted with extreme violence to the protests.²²⁵ In 2011 Human Rights Watch reported that Al-Assad and his forces were guilty of committing crimes against humanity as they opened fire on protesting crowds, arrested innocent people placed them in detention, and tortured and executed those in state custody.²²⁶ Furthermore, it was reported in 2013 that Al-Assad's forces used landmines, cluster bombs and sexual abuse as methods to suppress protests in the country.²²⁷ Various international attempts to prevent such occurrences included the drafting of several UN SC Resolutions which were vetoed by permanent members Russia and China.²²⁸ Also, a group of people was sent to monitor the conflict in that area and a person was appointed to draft a plan for to resolve the conflict, but the missions were aborted due to the increasing violence.²²⁹ Instead, the initial peaceful riots turned into a complete, convoluted civil war²³⁰ as different parties with different interests were involved. Consequently, state forces indulged in illegal means of attacking the rebel groups by using chemical weapons²³¹ and starvation campaigns.²³² Sectarianism ruled once again, as the minority Shia were ruling over the majority Sunnis,²³³ and Al-Assad used this to his advantage while waging war against his own citizens.²³⁴ He

²²² Bennett 2013 *PILROC* 363.

²²³ Human Rights Watch 2011 *Report - We've never seen such horror* 8; Malantowicz 2013 *ALF* 55.

²²⁴ Human Rights Watch 2011 *Report - We've never seen such horror* 9-11; Malantowicz 2013 *ALF* 55.

²²⁵ Human Rights Watch 2011 *Report - We've never seen such horror* 10.

²²⁶ Human Rights Watch 2011 *Report - We've never seen such horror* 14.

²²⁷ Human Rights Watch 2013 <http://hrw.org>.

²²⁸ Human Rights Watch 2013 <http://hrw.org>.

²²⁹ Human Rights Watch 2013 <http://hrw.org>.

²³⁰ Malantowicz 2013 *ALF* 55.

²³¹ Human Rights Watch 2015 <http://hrw.org>.

²³² Nassief 2014 *Middle East Security Report* 17 10.

²³³ Weiss and Hassan *ISIS: Inside the army of terror* 135.

²³⁴ Malantowicz 2013 *ALF* 56.

justified his actions by depicting all Sunnis as extremists and terrorists, thus legitimizing his war against the majority.²³⁵

Some of the rebel groups fighting in the continuing civil war are the Syrian National Coalition, the Free Syrian Army and the Islamic Front.²³⁶ Among these groups is the famous Jabhat al-Nusra (JAN), which is currently internationally known as a terrorist organisation due to its relations with AQ.²³⁷ This group provided an important basis for the extension of ISI into the territory of adjacent Syria as Al-Baghdadi sent the founders of the group into Syria at the commencement of the civil war in order to gain a hold over this area.²³⁸ At first the group gained much support among fellow fighters as they directed their aggression towards the government and did not promote or focus on the furtherance of their special objectives.²³⁹ They, therefore, became attractive to AQ central as well, which started supporting their attempts, and once again started requesting foreign fighters to join the war in order to free fellow Muslim worshippers from this oppression.²⁴⁰ However, support was soon lost when JAN used guerrilla warfare tactics to conquer Ramadi from government forces in 2013, and then immediately started implementing strict religious rules.²⁴¹ The group was also responsible for terrorist attacks which occurred in the capital city of Damascus.²⁴² Shortly after these acts were perpetrated, Al-Baghdadi publically announced that JAN and ISI were going to unite in order to form the ISIL or ISIS.²⁴³ However, JAN denounced this statement due to the fact that ISIS's harsh strategy, tactics and objectives were too close to those of AQI, and they decided instead to reaffirm their loyalty to AQ.²⁴⁴ Dr Hashim notes that there are

²³⁵ International Crisis Group 2012 *Middle East Report* 128 24; Weiss and Hassan *ISIS: Inside the army of terror* 134.

²³⁶ Nassief 2014 *Middle East Security Report* 179.

²³⁷ Cafarella 2014 *Middle East Security Report* 25 11.

²³⁸ Weiss and Hassan *ISIS: Inside the army of terror* 149; Stanford University 2014 <http://web.stanford.edu>.

²³⁹ Hashim 2014 *MEP* 77.

²⁴⁰ Weiss and Hassan *ISIS: Inside the army of terror* 151.

²⁴¹ Stanford University 2014 <http://web.stanford.edu>.

²⁴² Stanford University 2014 <http://web.stanford.edu>.

²⁴³ Hashim 2014 *MEP* 77.

²⁴⁴ Hashim 2014 *MEP* 77.

substantial dissimilarities between these two groups.²⁴⁵ JAN was seen as a Syrian group, assisting other rebel groups in deposing the Al-Assad regime.²⁴⁶ ISIS, on the other hand, was seen as "foreigners" fighting fellow rebel groups instead of the Assad regime and using brutal tactics toward innocent people to gain the special objective of establishing an Islamic State.²⁴⁷ The disputes forced Al-Zawahiri to depute a person to resolve this conflict, as it was causing a rift in the terrorist network.²⁴⁸ Al-Baghdadi did not adhere to the demands and recommendations and instead criticized Al-Zawahiri's views and methods, which criticism led to a final division between the two groups.²⁴⁹ Due to Al-Baghdadi's disobedience and the differences between the groups, Al-Zawahiri publically disavowed all ties with ISIS.²⁵⁰ However, this announcement did not eliminate ISIL or ISIS as a contender in the civil war, as several fighters from JAN decided to join the ISIS mission.²⁵¹ This modern group, now composed of jihadists with different skills and training, started fighting other rebel groups.²⁵² At the onset of this confrontation, the other rebel groups established a support network to defeat ISIS and to force it to abandon certain areas.²⁵³ This confrontation occurred due to an emerging intolerance towards the group's ferocity as well as a communal understanding that this "infighting" was profiting the oppressive tyrant, Al-Assad.²⁵⁴ The FSA argued in an interview that this fierce internal strife supported the president's argument that the opposition parties were all involved in terrorist activities, and that Al-Assad was uncomplainingly watching as the rebel groups destroyed one another.²⁵⁵ However, in April 2014 ISIS suddenly transformed itself into a strong jihadist group as it implemented a number of dexterous acts ranging from carefully planned military missions to sporadic guerrilla acts which made it a

²⁴⁵ Hashim 2014 *MEP* 77.

²⁴⁶ Hashim 2014 *MEP* 77.

²⁴⁷ Hashim 2014 *MEP* 77.

²⁴⁸ Al-Zawahiri 2013 <http://s3.documentcloud.org>; Weiss and Hassan *ISIS: Inside the army of terror* 185.

²⁴⁹ Weiss and Hassan *ISIS: Inside the army of terror* 185.

²⁵⁰ LoGaglio 2014 *NSLB* 129.

²⁵¹ Weiss and Hasan *ISIS: Inside the army of terror* 186.

²⁵² Caris and Reynolds 2014 *Middle East Security Report* 22 11.

²⁵³ Caris and Reynolds 2014 *Middle East Security Report* 22 12.

²⁵⁴ Al-Ayham 2013 <http://syriadirect.org>; Weiss and Hassan *ISIS: Inside the army of terror* 190.

²⁵⁵ Al-Ayham 2013 <http://syriadirect.org>; Weiss and Hassan *ISIS: Inside the army of terror* 191.

victorious group in Syria.²⁵⁶ Due to its ferocity and careful planning ISIS managed to gain control of several cities ranging from the Northern Kobane, Aleppo and Raqqa, to Homs in the South West.²⁵⁷ As a result, ISIS is now largely contributing to the huge number of gross human rights abuses and casualties originally caused by the government.²⁵⁸

The situation in Syria is complicated, as different parties with different interests are involved in the conflict, a fact which makes intervention by the international community highly problematic.²⁵⁹ The people of Syria and global society are alike caught in a catch-22 situation, as they need to decide if cooperation with an autocrat and human rights violator is necessary in order to eliminate ISIS as a threat, or if it would be better to oust him and this create unstable political grounds which could be further exploited by ISIS.

2.3 Classification of ISIS in terms of the categories that exist in international law

In order to determine which international laws are applicable to the ISIS crisis, it is necessary to classify this group in terms of the categories currently recognized by international law. These categories include rebel groups, insurgency movements, liberation movements and terrorism. It will be difficult to fit ISIS into any particular category because the group contains a mixture of elements. Due to the severity of the attacks launched by ISIS and the number of civilians affected by the attacks, it is necessary to determine the applicability of International Humanitarian Law (IHL) in particular. The rules and regulations of this specific branch of international law regulate combat and limit the unnecessary suffering of innocent civilians.²⁶⁰ However, for these rules to be applicable, the severity of the particular situation must reach a certain threshold, namely that of an armed

²⁵⁶ Caris and Reynolds 2014 *Middle East Security Report* 22 12.

²⁵⁷ Lewis 2015 *Middle East Security Report* 27 26.

²⁵⁸ Human Rights Watch 2015 <http://hrw.org>.

²⁵⁹ Cockburn *The rise of the Islamic State: ISIS and the new Sunni revolution* 94-95.

²⁶⁰ Solis *The law of armed conflict* 7.

conflict.²⁶¹ In the *Tadic* case of 1995, the International Criminal Tribunal for the former Yugoslavia (ICTY) defined an armed conflict as:²⁶²

A resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.

Once it has been determined that the situation amounts to an armed conflict, it should be established if the conflict is international or non-international in character, as different provisions apply in each type of conflict.²⁶³ Common Article 2 defines an international armed conflict as conflict in which there is the use of force between state parties.²⁶⁴ Common article 3 and the *Additional Protocol II* extend the protection of IHL to internal conflicts²⁶⁵ by defining a non-international armed conflict as the use of force between the government and armed forces or an organized armed group (OAG), or between such groups within the territory of a state.²⁶⁶ Even though the term OAG has not been formerly defined within international law,²⁶⁷ the International Committee of the Red Cross (ICRC) stated that it is a non-state party which actively participates in conflict but is not controlled by a state.²⁶⁸ At a minimum, the ICTY requires that one of the parties to the conflict should be "armed" and "organized".²⁶⁹ The first criteria indicates that the group must be armed in such a way that it can participate in "acts of violence in defence or offense".²⁷⁰ The second criteria, the concept of organisation, is much more complicated and consequently a list of non-exhaustive criteria was developed in order to determine if the formation of a particular group reaches this threshold. Constrictively interpreted, it was concluded that the group

²⁶¹ Dugard *International Law* 529.

²⁶² *Prosecutor v Tadic* 1995 IT-94-1-T para 561.

²⁶³ Dugard *International Law* 529; the distinction between these two categories and the importance thereof will be discussed in Chapter 4.

²⁶⁴ Common article 2 of all four the *Geneva Conventions* of 1949.

²⁶⁵ ICRC 2011 <http://icrc.org>.

²⁶⁶ Common article 3 to all four the *Geneva Conventions* of 1949; *Additional Protocol II* of 1979.

²⁶⁷ Melzer 2013 <http://icrc.org>.

²⁶⁸ Melzer 2013 <http://icrc.org>; ICRC 2011 <http://icrc.org>.

²⁶⁹ Schmitt 2011 *ILS* 128, Margulies 2013 *ILS* 56.

²⁷⁰ Schmitt 2011 *ILS* 131.

must be under responsible command, should control an area of territory,²⁷¹ and should have a "headquarters, unified command and military police".²⁷² It was later emphasised by the ICTY as well as the ICRC that a broad interpretation²⁷³ of this term is of the utmost importance, otherwise terrorism and criminal activities will be excluded from its definition regardless of the threatening character they pose.²⁷⁴ As a result, an expansive list of criteria evolved, which criteria include intensity,²⁷⁵ the possession of a minimal organisation,²⁷⁶ the capacity to attack, the ability to observe and obey the laws of armed conflict, and the ability to recruit fighters.²⁷⁷

The classification of a specific group as an organized armed force is important as it will determine which local or international responses,²⁷⁸ such as self-defence, a humanitarian intervention, or prosecuting individuals for criminal responsibility²⁷⁹ can be implemented. With this borne to mind, it is necessary to determine if ISIS should be classified as a rebel group, an insurgency or a liberation movement which could be included in the ICRC commentary of organized armed groups,²⁸⁰ or a terrorist group, as the classification will automatically affect the legitimacy of the responses to this immense international threat.²⁸¹ Before the discussion on these four groups commences, it is important to note that an internal armed conflict as well as the groups participating in it can enter different stages and change categories as time passes.²⁸²

²⁷¹ Article 1 of the *Additional Protocol I* of 1979 to the *Geneva Conventions* of 1949.

²⁷² *Prosecutor v Limaj* 2005 IT-03-66-T 112-117.

²⁷³ Margulies 2013 *ILS* 62.

²⁷⁴ Margulies 2013 *ILS* 61; Schmitt 2011 *ILS* 122; *Prosecutor v Tadic* IT-94-1-T para 561, where the court stated that a real armed conflict should be distinguished from a simple unrest or terrorist act, which is not covered by IHL.

²⁷⁵ *Prosecutor v Tadic* 1995 IT-94-1-T para 561.

²⁷⁶ ICRC 2008 <http://icrc.org>.

²⁷⁷ Schmitt 2011 *ILS* 129.

²⁷⁸ Please refer to Chapter 5 for the discussion on international responses to armed conflict.

²⁷⁹ Margulies 2013 *ILS* 60.

²⁸⁰ Melzer 2009 <http://icrc.org>.

²⁸¹ Margulies 2013 *ILS* 55.

²⁸² Quaye *Liberation struggles in international law* 29.

2.3.1 Rebel groups

As suggested in the discussion above, the rules and regulations of IHL were initially created in order to regulate disputes between states.²⁸³ However, today most of the parties who actively participate in such processes and have an effect on the development of IHL are non-state local actors, as most disputes have become non-international in character.²⁸⁴ Although these internal conflicts are confined to a certain territory, civilians are still affected by numerous human rights violations requiring the application and protection of IHL.²⁸⁵ Even though it is difficult to ensure compliance with IHL in these situations,²⁸⁶ the extension of this branch of law to internal conflicts is significant because of the fact that local perpetrators can now be held responsible for grave violations.²⁸⁷

This being said, one of the protagonists during a civil war or an internal struggle is referred to as a rebel group or guerrilla fighters.²⁸⁸ A rebel group is defined as an organisation that usually employs violence as a means of changing certain prevailing standards maintained by the government.²⁸⁹ A more specific definition refers to a "political organisation outside the realm of the state which uses violence to compete for political power."²⁹⁰ As implied from both these definitions, the characteristics of a rebel group include having a certain structure, its armed members resorting to violent methods, and having a motive to fight the government. Each of the elements contained in this definition will be discussed hereafter.

²⁸³ Jo *Compliant rebels* 36.

²⁸⁴ Mack 2008 <http://icrc.org>.

²⁸⁵ Ritter "International humanitarian law in civil war" 328.

²⁸⁶ As indicated in Jo *Compliant rebels* 31, some local groups are not aware of the international rules or if they are aware of their existence they decide to obey the rules for their own personal gain, or they implement the international rules for certain activities while ignoring them for others.

²⁸⁷ Jo *Compliant rebels* 41-43.

²⁸⁸ Jo *Compliant rebels* 37.

²⁸⁹ Jo *Compliant rebels* 36-37.

²⁹⁰ Walter 2015 <http://polisci.ucla.edu>.

A rebel group consists of an organisational and command structure,²⁹¹ which means that the group contains a strong leadership that represents the cause of all its members.²⁹² The leadership of the group can be consolidated or dispersed²⁹³ but the orders of a main commander are important to establish international responsibility for any violations committed.²⁹⁴ Such rebels present a difficult challenge to governmental forces as they are often heavily armed²⁹⁵ and supported by civilians providing accommodation and food,²⁹⁶ complicating the obligation to distinguish between civilians and rebels.²⁹⁷ Tactics implemented by rebels include a combination of military techniques, guerrilla warfare, and in certain situations, terrorist activities.²⁹⁸ In certain internal conflicts a variety of rebel groups with different views, objectives, tactics, equipment and strategies can emerge to compete with the government.²⁹⁹ Barbara Walter explains that the number of opponents depends on the demand for change and the funding of the project.³⁰⁰ The motivation for the birth of the particular group can vary from ethnic, religious, or ideological to political reasons.³⁰¹ However, the creation of different groups can increase the risk of competition for popular support and resources, resulting in confrontational battles between the groups.³⁰² JAN, for example, emerged as an organisation supporting rebel groups in their fight against the government. Shortly after, ISIS was developed and this organisation started competing with fellow rebel militias and state forces in the furtherance of its own political objective of gaining control and establishing an Islamic state. As a result, other rebel groups have declared war on ISIS, which presents a threat to their interests and is disrupting the rebellion.³⁰³ The intention of a particular rebel

²⁹¹ Furtado *Inter-rebel group dynamics* 23.

²⁹² Jo *Compliant rebels* 39.

²⁹³ Furtado *Inter-rebel group dynamics* 23.

²⁹⁴ Jo *Compliant rebels* 39.

²⁹⁵ Furtado *Inter-rebel group dynamics* 23.

²⁹⁶ Furtado *Inter-rebel group dynamics* 22.

²⁹⁷ ICRC 2014 <http://icrc.org>.

²⁹⁸ De Mesquita 2013 *JPE* 324.

²⁹⁹ Furtado *Inter-rebel group dynamics* 24.

³⁰⁰ Walter 2015 <http://polisci.ucla.edu>.

³⁰¹ Furtado *Inter-rebel group dynamics* 24.

³⁰² Furtado *Inter-rebel group dynamics* 30-31; Walter 2015 <http://polisci.ucla.edu>.

³⁰³ Landis 2014 <http://clarionproject.org>.

group is important, as it is deemed to have been successful in its cause if the government is forced to accept and implement its specific demands.³⁰⁴ This incentive can also determine the goals and the methods which might be implemented by a specific group.³⁰⁵ For instance, the FSA, which is participating in the Syrian Civil War, was established in order to confront and overthrow governmental forces in the fight for democracy and, therefore, they implement carefully planned military combat methods to achieve their objectives.³⁰⁶

Because waging war is an expensive activity, rebel groups are also in need of a support system which can provide finances, fighters and weapons to assist in their mission.³⁰⁷ The possibility of international or local support depends on the motivation for the struggle.³⁰⁸ For instance, as mentioned before, certain rebel factions in Syria are supported by global states in their fight against the oppressive Al-Assad regime. Other groups such as JAN, which has been classified as a terrorist organisation internationally, do not receive support from global states.³⁰⁹ Finances can also be generated by resorting to criminal activities such as kidnapping, trafficking in weapons, and tax collection.³¹⁰ Another way to ensure growth and support is through the integration of different rebel groups with the same objective.³¹¹ The FSA, for example, is composed of different rebel groups which decided to join forces and fight the government under the guidance and command of a single entity.³¹²

As said before, the first operations launched by ISIS under the name JAN resulted in the classification of this group as a Syrian rebel group. The reason for this classification could be the fact that the group emerged as a relatively small group with a central command structure that launched irregular attacks against

³⁰⁴ Walter 2015 <http://polisci.ucla.edu>.

³⁰⁵ Furtado *Inter-rebel group dynamics* 24.

³⁰⁶ O'Bagy *Middle East Security Report* 9 23-24.

³⁰⁷ Hazen *What rebels want* 3; Jo *Compliant rebels* 17.

³⁰⁸ Furtado *Inter-rebel group dynamics* 26; O'Bagy *Middle East Security Report* 9 9 to read about the US support provided to the FSA in its fight against the Al-Assad regime.

³⁰⁹ Cafarella 2014 *Middle East Security Report* 24 11.

³¹⁰ Hazen *What rebels want* 2-3.

³¹¹ Furtado *Inter-rebel group dynamics* 30.

³¹² O'Bagy 2013 *Middle East Security Report* 9 9.

government forces in support of other rebel groups.³¹³ However, as indicated earlier, it later became clear that this group had its own objective of establishing a new state under the guidance of Sharia law. As a result, they started targeting fellow rebel groups who were fighting for the institution of democracy. The direction of the attacks against the other groups opposing the government indicated that JAN had developed into an organisation that could not be connected to the elements and characteristics of the rebel category. Also, the fact that international states like the US supported the FSA rebel group and not JAN/ISIS was a further indication that this organisation was not recognized as a rebel group fighting for a cause that the international states could support.

2.3.2 Insurgency groups

Ancillary or alternatively to a rebellion, a more violent conflict referred to as an insurgency³¹⁴ can erupt within the territory of a particular state. An insurgency has been defined in the pamphlet *Guide to Analysis of an insurgency* as:³¹⁵

Protracted political-military activity directed at completely or partially controlling the resources of a country through the use of irregular military forces and illegal political organisations.

Similarly, the *US Guide to Counterinsurgency* defines an insurgency as "the organized use of violence to seize, nullify or challenge political control of a region."³¹⁶ Other different definitions exclude the elementary objective of gaining territory,³¹⁷ even though that particular action is of importance in distinguishing an insurgency from other conflict categories. Therefore, the characteristics of an insurgency include engagement in irregular fighting and violence by illegal opponents of the government in furtherance of a political objective which includes the desire to gain territory. However, it is not a requirement for a group to

³¹³ See Chapter 2.1.3, where it is indicated that ISIS fighters were initially part of the listed Syrian rebel group Jabhat al Nusra. Due to their ideological differences, ISIS members deserted the group and developed into the group known as ISIL.

³¹⁴ O'Neill 2008 447 47.

³¹⁵ Central Intelligence Agency 2009 <http://fas.org>.

³¹⁶ Department of State 2009 <http://state.gov>.

³¹⁷ O'Neill 2008 447 43.

physically control territory to be typified as an insurgency.³¹⁸ It is sufficient if the group provides a challenge to the government in a specific area by nourishing and enflaming revolt.³¹⁹ Although each insurgency can contain unique features, the conjoint traits portrayed by most insurgencies will be discussed hereafter.³²⁰

Unlike rebel groups, insurgents lack a central, organized command structure and instead depend on a covert network of fighters each of whom pursues an objective in a different area.³²¹ The reason for this exclusion is because of the fact that the objectives of insurgents can differ, even though they participate communally in gaining control.³²² Also, the elimination of these smaller networks will not disturb the main group's continuing campaign.³²³ The lack of structure prevents open, confrontational battles, which complicates the enforcement of the obligation to distinguish between civilians and rebels.³²⁴ Insurgents engage in irregular war and terrorism in order to disrupt the governmental regulation of society.³²⁵ An important characteristic of insurgents is the ability to constantly adapt and change techniques, thus complicating successful counterattacks.³²⁶ Their purpose is often to achieve a specific political objective by bringing about a political change to the benefit of all.³²⁷ Although the motives for the initiation of the insurgency will differ, the end goal is always to effect change.³²⁸ For instance, reformists want their own ideas and norms to prevail without changing the government, while revolutionaries use force to change the government and establish transformation.³²⁹ Like rebel groups, insurgents are also in need of

³¹⁸ Moore 2007 <http://smallwarsjournal.com>.

³¹⁹ Moore 2007 <http://smallwarsjournal.com>.

³²⁰ Moore 2007 <http://smallwarsjournal.com>.

³²¹ Romaniuk and Webb "Introduction" xvi; Department of State 2009 <http://state.gov>.

³²² Department of State 2009 <http://state.gov>.

³²³ Romaniuk and Webb "Introduction" xvi.

³²⁴ US government 2012 <http://mccdc.marines.mil>.

³²⁵ Metz and Millen *Insurgency and counterinsurgency in the 21st century* 4; US government 2012 <http://mccdc.marines.mil>.

³²⁶ Metz and Millen *Insurgency and counterinsurgency in the 21st century* 4; Moore 2007 <http://smallwarsjournal.com>.

³²⁷ US government 2012 <http://mccdc.marines.mil>.

³²⁸ US government 2012 <http://mccdc.marines.mil>.

³²⁹ US government 2012 <http://mccdc.marines.mil>.

support to be able to engage in conflict successfully.³³⁰ Insurgent groups access funds and weapons through the black market, taxation and various criminal activities.³³¹ In addition to this logistical support, insurgent groups also need moral and popular support, which they gain by adopting a popular idea,³³² electing a charming character as a leader,³³³ or through intimidation.³³⁴ Further, the insurgents use the miserable political, social and economic conditions that gave rise to their formation to exploit the government's ineptitude.³³⁵

An example of an insurgent group is the former Hamas organisation operating in Palestine,³³⁶ which used tactics such as suicide bombings³³⁷ to try to attain the objectives of redeeming Palestine and establishing an Islamic State.³³⁸ Hamas built a strong support base amongst those who felt anger and resentment towards the government.³³⁹ This meant that a variety of sources was available to support them financially by way of donations.³⁴⁰

With these characteristics in mind, many authors refer to ISIS as an insurgency movement. As said before, ISIS uses irregular methods such bombing and assassination³⁴¹ directed at the state and other rebel forces in order to gain control of territory and to implement radical Islamic change. Also, funding is obtained in a criminal manner and fighters are recruited through propaganda conveying a strong message of the need for change. As a result, it is understandable that some academic writers argue that this organisation fits the insurgency profile. However, the modern abilities and achievements of ISIS as an organisation have made the organisation too potent for classification as an

³³⁰ O'Neill 2008 *AAJ* 48.

³³¹ Metz and Millen *Insurgency and counterinsurgency in the 21st century* 4.

³³² O'Neill 2008 *AAJ* 46.

³³³ Department of State 2009 <http://state.gov>; Metz and Millen *Insurgency and counterinsurgency in the 21st century* 7.

³³⁴ Moore 2007 <http://smallwarsjournal.com>.

³³⁵ Moore 2007 <http://smallwarsjournal.com>.

³³⁶ Gunning "Hamas: Socialization and the logic of compromise" 123.

³³⁷ Gunning "Hamas: Socialization and the logic of compromise" 130.

³³⁸ Gunning "Hamas: Socialization and the logic of compromise" 123.

³³⁹ Gunning "Hamas: Socialization and the logic of compromise" 129.

³⁴⁰ Gunning "Hamas: Socialization and the logic of compromise" 128.

³⁴¹ Bilger 2014 <http://understandingwar.org>.

insurgency. The unique characteristics of ISIS have resulted in its being deemed to be a "state building actor" instead.³⁴² Although the legitimacy of the state will not be recognized by the international community, the Islamic State portrays the symbolic elements of statehood, which include a flag, citizenship, a functioning economy, different branches of government, laws, and forces to implement these laws.³⁴³ In addition to these elements, ISIS has also established a military army with training and weapons, and of a size³⁴⁴ comparable to that of a recognized state.³⁴⁵ In addition, ISIS is also providing the population under its control with social support³⁴⁶ and basic municipal services. As a result, the counterinsurgency methods which were created to combat AQI³⁴⁷ will not be effective in eradicating the ISIS threat.³⁴⁸ Successful counterinsurgency campaigns require "long-term cooperation between civilians and state forces to regain stability while eliminating the underlying issues which resulted in the birth of these groups."³⁴⁹ Therefore, this method of eradication requires trust in the government and its foreign supporters.³⁵⁰ The problem with this requirement in this situation is that the Sunni populations of both Iraq and Syria have lost their trust in the government and, therefore, supporting ISIS.³⁵¹

2.3.3 *Liberation movements*

In addition to the conflicts discussed above, an internal struggle which receives international recognition for its legitimacy can occur within the borders of a particular state. This type of conflict, referred to as a liberation brawl or movement, can be defined as "a struggle of people under foreign or colonial or

³⁴² Umana 2015 e-ir.info.

³⁴³ Umana 2015 e-ir.info.

³⁴⁴ Lister 2014 <http://brookings.edu>.

³⁴⁵ Umana 2015 e-ir.info.

³⁴⁶ Hegseth *Combating violent extremism in Iraq* 41.

³⁴⁷ Please refer to Chapter 2.2 discussing the COIN strategy, which was used to effectively suppress the Sunni insurgency which was taking place in Iraq.

³⁴⁸ Hegseth *Combating violent extremism in Iraq* 52.

³⁴⁹ Hegseth *Combating violent extremism in Iraq* 52.

³⁵⁰ Hegseth *Combating violent extremism in Iraq* 52. Please refer to Chapter 2.1 for the actions of the governments of both Iraq and Syria that resulted in a division among the population.

³⁵¹ Adnan and Reese *Middle East Security Report* 24 4, 17, 24.

racist rule for liberation and self-determination."³⁵² From this definition the following definition, which will be discussed hereafter, can be distilled: a liberation movement is a group of people fighting against a colonial or foreign or racist regime for independence.

The term "people" was defined by UNESCO by referring to seven essential characteristics.³⁵³ These include that they should share a common identity and a common religion and that they should be connected through territory.³⁵⁴ One of the most important requirements is that the group should have a communal objective, idea or will to gain independence.³⁵⁵ In other words, the people participating in the struggle must represent a group whose right to self-determination has been repudiated.³⁵⁶ The 1970 Declaration recognizes the right of these people to participate in armed force against a state which denies them the right to self-determination.³⁵⁷ Therefore, the General Assembly (GA) Resolutions of 1970 and 1971 regarding independence declared that the people participating in this liberation struggle may resort to "any means at their disposal which includes armed struggle."³⁵⁸ Like insurgents, liberation fighters resort to guerrilla and irregular warfare tactics such as terrorism to fight government forces.³⁵⁹ However, unlike rebels or insurgents, if they adhere to the rules of IHL they will not be held internationally responsible for these acts.³⁶⁰ As can be seen from the definition, a liberation movement can be waged against colonial or racist rule. However, since 1960 movements are no longer concerned with colonial rule, as it has been declared unlawful by the GA.³⁶¹ A foreign occupant is a state that

³⁵² Quaye *Liberation struggles in international law* 184; Dugard *International Law* 102-103.

³⁵³ Hanna 1999 *MJILT* 231.

³⁵⁴ Hanna 1999 *MJILT* 231.

³⁵⁵ Edre 2004 *Netherlands: IAPL* 3.

³⁵⁶ Edre 2004 *Netherlands: IAPL* 3; article 96 of the *Additional Protocol I* of 1979.

³⁵⁷ *Resolution on the importance of universal realization of the right to self-determination* 2649 XXV (1970); Edre 2004 *Netherlands: IAPL* 12.

³⁵⁸ *Resolution on the importance of universal realization of the right to self-determination* 2649 XXV (1970); *Resolution on the importance of universal realization of the right to self-determination* 3070 XXVIII (1973).

³⁵⁹ Edre 2004 *Netherlands: IAPL* 26.

³⁶⁰ Edre 2004 *Netherlands: IAPL* 26.

³⁶¹ *Resolution on the Declaration on the granting of independence to colonial countries and people* 1514 XV (1960); Dugard *International Law* 515, 156.

occupies a certain area of another state's territory and a racist regime is one that governs by adhering to discriminatory rules and regulations.³⁶² The fight for independence against these parties is contained in the right to internal self-determination, which is the right "to freely determine political status and to freely pursue economic, social and cultural development."³⁶³ This right entails that "whereas it is essential, if man is not to be compelled to have recourse as a last resort, to rebellion against tyranny and oppression that human rights should be protected by the rule of law."³⁶⁴ This right has received international recognition in the UN Charter,³⁶⁵ the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁶⁶ as well as in numerous General Assembly Resolutions³⁶⁷ and by the International Court of Justice (ICJ).³⁶⁸ The inclusion of this right to fight for independence in numerous international instruments has deemed this type of conflict legitimate and legal.³⁶⁹ As a result, international actors may lawfully provide support³⁷⁰ for these fighters and the right of these fighters to "receive and seek support has implied that they have *locus standi* in the international law."³⁷¹ This support is not seen as intervention as the international actors are merely protecting the rights contained in the UN Charter.³⁷² Furthermore, this legal standing has been confirmed by the extending of protection by the *Additional*

³⁶² Edre 2004 *Netherlands: IAPL* 20.

³⁶³ Article 1(1) of the *ICCPR* and *ICESCR* (1966).

³⁶⁴ *Universal Declaration of Human Rights* (1948)

³⁶⁵ Article 1 and article 55 of the *Charter of the UN* (1949). Both article 1 article 55 acknowledge and emphasise the importance of the recognition of the right to self-determination for peaceful international relations.

³⁶⁶ Article 1(1) in both the *ICCPR* and *ICESCR* (1966).

³⁶⁷ *Resolution on the Declaration on the granting of independence to colonial countries and people* 1514 (XV) (1960).

³⁶⁸ Dugard *International Law* 100.

³⁶⁹ *Resolution on the implementation of the Declaration on the granting of independence to colonial countries and people* 2105 XX (1965); *Resolution on the Declaration on the importance of universal realization of the right to self-determination* 2649 XXV (1970); Edre 2004 *Netherlands: IAPL* 10.

³⁷⁰ *Resolution on the implementation of the Declaration on the granting of independence to colonial countries and people* 2105 XX (1965).

³⁷¹ *Resolution on the Declaration on principles of international law concerning friendly relations and co-operation among states in accordance with the UN Charter* 2625 XXV (1970); Edre 2004 *Netherlands: IAPL* 10.

³⁷² Edre 2004 *Netherlands: IAPL* 11.

Protocol I to this type of conflict, as they are seen as international in character.³⁷³ An example of an internationally recognized liberation movement was the African National Congress (ANC), with its military wing Umkhonto we Sizwe, which used terrorist tactics and other methods of fighting to end the discriminatory policies of the Apartheid regime in South Africa.³⁷⁴

This being said, ISIS is definitely not classified as a liberation movement, as it is not fighting for the legitimate purpose of gaining independence from a colonial or racist regime. For this reason, ISIS is not provided with legal standing by the international community and, therefore, the members of this group can be held individually responsible for their acts. This specific category has been referred to here only in order to draw the distinction between international and non-international recognized conflicts (which will be further analysed in Chapter 4) and to explicate the different rules and responses applicable to legitimate and illegitimate conflicts.

2.3.4 Terrorism

As seen in the discussion above, the classification of a group as a terrorist organisation can be complicated by the fact that other kinds of armed groups also employ terrorist tactics as a method of conflict. However, a terrorist organisation is a group that resorts to terrorism only, in order to accomplish a certain ideological objective or realise a particular idea.³⁷⁵ Although there have been numerous attempts to define terrorism, no universal understanding of the term has been accepted by the international community.³⁷⁶ The reasons for this particular shortcoming include uncertainty regarding the position of freedom fighters as well as the insertion or exclusion of state terrorism.³⁷⁷ The difficulty in delineating terrorism has resulted in the acceptance of numerous international

³⁷³ Article 1(4) of the *Additional Protocol I* of 1979.

³⁷⁴ Williams 2000 <http://samilitaryhistory.org>.

³⁷⁵ Oxford Dictionary date unknown <http://oxforddictionaries.com>; Mockaitis *The new terrorism* 3.

³⁷⁶ Cryer *et al* *An introduction to international criminal law and procedure* 336.

³⁷⁷ Cryer *et al* *An introduction to international criminal law and procedure* 339.

instruments that specify and penalize certain types of acts individually, which can be seen as terrorism.³⁷⁸ The UN SC describes terrorism as follows, with specific reference to the acts listed in the Conventions, in a Resolution that was released in 2004:³⁷⁹

An act which has the purpose to provoke a state of terror or intimidate a population or compel the government or an international organisation to do or to abstain from doing any act.

The AU similarly defines terrorism as:³⁸⁰

An act that intimidates the government or the general public to adopt a certain standpoint or disrupts public service or causes insurrection within a state.

The US Department of Defence defines terrorism as:³⁸¹

The unlawful use or threatened use of force or violence against individuals or property to coerce and intimidate governments or societies, often to achieve political, religious or ideological objectives.

This variety of definitions illustrates the need for a single comprehensive understanding of what exactly constitutes terrorism. This would help to shape counterterrorism policies, and terrorist acts could be added to the criminal list of the ICC.³⁸² Despite the variety of definitions provided by different states and instruments, there are certain common elements among the definitions. Therefore, as implied by the definitions provided above, the various characteristics of terrorism which will be elaborated on in this particular discussion will have to do with the use of illegitimate violence with the intent of spreading fear amongst a certain people in the furtherance of a certain objective.

³⁷⁸ Cryer *et al* *An introduction to international criminal law and procedure* 336. Please refer to Chapter 3 regarding the comprehensive discussion on the eleven terrorist Conventions which were created by the UN, which specify certain acts that are to be regarded as terrorist acts.

³⁷⁹ *Resolution on terrorism* 1566 (2004).

³⁸⁰ Article 1(3) of the *AU Convention on the prevention and combatting of terrorism*.

³⁸¹ US Department of Defence 2010 <http://dtic.mil>.

³⁸² Cryer *et al* *An introduction to international criminal law and procedure* 337.

The requirement that the acts should be violent indicates that the methods used by these perpetrators should reach a certain threshold. However, Cindy Combs in her book *Terrorism in the 21st century* states that the violence can be lethal or non-lethal as long as the group has the ability and will to commit specific acts of violence.³⁸³ She believes that the simple disturbance of lives is enough to constitute a violent act of terrorism.³⁸⁴ According to Kessler, the illegitimacy of a specific act of violence is determined by evaluating its disrespect for humanity.³⁸⁵ This being said, a terrorist act must be performed with the specific intent or purpose of provoking a feeling of fear, horror or terror amongst members of society.³⁸⁶ In order to determine if this particular requirement has been fulfilled, it is necessary to evaluate the "perception" of the civilians who are potential victims of the attack. "Terrorism is theatre before an audience, designed to call the attention of millions to an unrelated situation through shock – doing the unthinkable without apology or remorse."³⁸⁷ This feeling of fear is closely connected to the specific targets chosen by terrorist organisations.³⁸⁸ The death of targeted, innocent civilians is not an accident but a deliberately sought result or outcome.³⁸⁹ This action violates global laws protecting human rights.³⁹⁰ The *Additional Protocol I*, for example, prohibits these tactics or methods of warfare during an armed conflict in its continued emphasis of the importance of the principle of distinction.³⁹¹ Also, the IHL prohibits the use of acts that will spread fear and terror amongst a population,³⁹² as this is seen as an illegitimate use of force.³⁹³

³⁸³ Combs *Terrorism in the 21st century* 5.

³⁸⁴ Combs *Terrorism in the 21st century* 5.

³⁸⁵ Kessler "Moral justification for violent responses to terrorism" 154-155.

³⁸⁶ Cryer *et al An introduction to international criminal law and procedure* 340.

³⁸⁷ Combs *Terrorism in the 21st century* 6.

³⁸⁸ Combs *Terrorism in the 21st century* 6.

³⁸⁹ Combs *Terrorism in the 21st century* 7.

³⁹⁰ Kessler "Moral justification for violent responses to terrorism" 154.

³⁹¹ Article 4 and article 13 of the *Additional Protocol 1* of 1977. Please refer to Chapter 3.3 for a discussion on the relevance of IHL for the application of the terrorism conventions.

³⁹² Article 51 of the *Additional Protocol 1* of 1977.

³⁹³ Gasser 2002 *IRRC* 554.

This deliberate targeting of innocent civilians is just one of the methodologies that distinguishes terrorism from the other conflict categories described before.³⁹⁴ Rebel groups engage in open battles, they disrupt governmental control of the state, and they are in need of major support in order to survive.³⁹⁵ Terrorist groups, on the other hand, exist as small cells or networks that silently orchestrate major attacks and are usually capable of surviving with limited logistical and economic support.³⁹⁶ With regards to insurgency groups, their objective of challenging of the government for the control of territory or resources ensures that they receive a large amount of support from civilians.³⁹⁷ Terrorists, however, do not need to occupy territory, and because of they participate in criminal activities they also lack the support from civilians.³⁹⁸ The saying "one man's terrorist is another man's freedom fighter" indicates that the difference between terrorism and liberation movements is dependent on interpretation.³⁹⁹ The distinction may be drawn by establishing the targets of the two groups.⁴⁰⁰ Freedom fighters direct their attacks at military objects and civilians are killed as a collateral effect of the actions.⁴⁰¹ Terrorists, however, deliberately and indiscriminately target civilians in order to convey a specific message to their audience.⁴⁰² Also, unlike terrorist organisations, liberation movements are internationally recognized as legitimate combatants to whom the laws of war are applicable.⁴⁰³

As indicated by the last element of the above definition of terrorism, terrorist acts are performed in furtherance of a specific objective or motive. Although most definitions require that there be a political objective, terrorism can also be

³⁹⁴ Combs *Terrorism in the 21st century* 6.

³⁹⁵ Noe *Micro-level impacts of conflict and duration of armed groups* 74.

³⁹⁶ Noe *Micro-level impacts of conflict and duration of armed groups* 74.

³⁹⁷ Terrorism Research date unknown <http://terrorism-research.com>.

³⁹⁸ Terrorism Research date unknown <http://terrorism-research.com>.

³⁹⁹ Ganor 2002 *PPR* 292.

⁴⁰⁰ Goldie 1987 *SJILC* 127.

⁴⁰¹ Goldie 1987 *SJILC* 127.

⁴⁰² Goldie 1987 *SJILC* 127.

⁴⁰³ Please refer to Chapter 2.2.3 in order to read about the nature of liberation movements.

employed as a method of propagating ideologies such as religion.⁴⁰⁴ Regardless of the motive, it is suggested that the motive cannot justify terrorist action, and if the intent is determined it is not necessary to limit the offence further by requiring the action to have a political, religious or other motive.⁴⁰⁵

Terrorism committed with a political purpose is directed at a government⁴⁰⁶ due to feelings of violation, deprivation or exclusion.⁴⁰⁷ The requirement that it should have a political motivation is complicated, as this term is not defined in international law.⁴⁰⁸ In the 1980's it was stated that "an offense is not of a political character simply because it was politically motivated."⁴⁰⁹ Combs refers to two requirements in her book: "the act must have taken place during a political struggle or the act must be incidental to the revolt" in order for it to qualify as having political intent.⁴¹⁰ In the 21st century, however, most terrorist organisations resort to terrorism in order to achieve a religious objective. These groups believe that their actions are sanctioned by their attempting to achieve a greater good,⁴¹¹ and that their extreme violence is exonerated and rewarded in the afterlife.⁴¹²

Boko Haram will be considered in this part of the discussion in order to exemplify the difference between pure terrorism and the actions of ISIS, but the limited scope of this study does not allow for an in-depth analysis of this group, and it will merely be referred to for comparative and explanatory purposes.

The group Boko Haram, which is situated within the state of Nigeria, became famous chiefly in April 2014, when it kidnapped approximately 250 schoolgirls.⁴¹³ Thereafter the group released a video threatening to convert these girls and to

⁴⁰⁴ Paust 2010 *SCJIL* 59.

⁴⁰⁵ Cryer *et al* *An introduction to international criminal law and procedure* 341.

⁴⁰⁶ Air University 2007 <http://au.af.mil>.

⁴⁰⁷ Martin *Essentials of terrorism* 47.

⁴⁰⁸ Combs *Terrorism in the 21st century* 8.

⁴⁰⁹ Combs *Terrorism in the 21st century* 8.

⁴¹⁰ Combs *Terrorism in the 21st century* 8.

⁴¹¹ Martin *Essentials of terrorism* 137.

⁴¹² Martin *Essentials of terrorism* 137.

⁴¹³ Schmidt 2015 *SDLP* 23.

marry them off to certain members of the group.⁴¹⁴ Although this was not the first abduction at the hands of this terrorists group, the event attracted the attention of the international community.⁴¹⁵ The international campaign "bring back our girls" was launched,⁴¹⁶ and states such as France and the US sent forces to Nigeria in order to assist the domestic forces in searching for the girls.⁴¹⁷ Since 2010 the group has been responsible for the kidnapping of 2000 women and girls, and although some have been rescued, others have not been safely returned to their families.⁴¹⁸

As in the case of ISIS, this event created the illusion that this particular organisation had appeared overnight,⁴¹⁹ but this Islamic extremist group actually has its roots in Nigeria's long, historical religious division and the ongoing struggle for political control.⁴²⁰ Boko Haram has been described as "a symptom of decades of failed government and elite delinquency finally ripening into social chaos."⁴²¹ Hence, in order to understand the emergence of this group with its radical ideology, it is necessary to elaborate on the historical factors that resulted in this division and confrontation. The mixing of different cultures, religions and even resources in one area by colonial powers created the context in which this turmoil is occurring.⁴²² The 1960 withdrawal of the foreign occupiers of Nigeria resulted in the foregrounding of divisions along sectarian lines, as the majority Northern Muslims fought for the continuing implementation of Sharia law⁴²³ and the predominant Southern Christians fought for the continued fostering of Western values.⁴²⁴ In 1961 Nigeria gained independence and the constitution that was then drafted declared that Sharia law was applicable only in a number of selected

⁴¹⁴ Smith *Boko Haram: Inside Nigeria's unholy war* 186.

⁴¹⁵ Smith *Boko Haram: Inside Nigeria's unholy war* 3.

⁴¹⁶ Human Rights Watch 2015 <http://hrw.org>; Smith *Boko Haram: Inside Nigeria's unholy war* 172.

⁴¹⁷ Taylor 2014 *ILSA JICL* 17-18.

⁴¹⁸ Human Rights Watch 2015 <http://hrw.org>.

⁴¹⁹ Ford 2014 <http://nationalinterest.org>.

⁴²⁰ Smith *Boko Haram: Inside Nigeria's unholy war* 64; Ford 2014 <http://nationalinterest.org>.

⁴²¹ Sergie and Johnson 2015 <http://cfr.org>.

⁴²² Smith *Boko Haram: Inside Nigeria's unholy war* 62.

⁴²³ Ford 2014 <http://nationalinterest.org>.

⁴²⁴ Smith *Boko Haram: Inside Nigeria's unholy war* 62.

situations.⁴²⁵ The withdrawal and the nature of the new constitution inflamed the competitive struggle for political control between the Christians and the Muslims. The attendant obsession and fear resulted in a military coup launched by the South, which led to the death of several Muslims.⁴²⁶ This action sparked a retaliatory coup by the North⁴²⁷ which resulted in a religious struggle for the political control of the government which continued until 1999.⁴²⁸ In that year a new Constitution was implemented which provided for the full application of Sharia law.⁴²⁹ The Muslim North increasingly implemented this branch of law and today most Northern states are subject to Islamic law."⁴³⁰

The group Boko Haram emerged in 2002 under the guidance of its leader Yusuf. It targeted state forces with the objective of converting the entire state of Nigeria into an Islamic State.⁴³¹ The direct translation of the name Boko Haram means that "Western education is forbidden."⁴³² Their opposition to the existing system is not limited to its education only but extends to Western ideas and morals in general.⁴³³ The aggression evinced by this group towards the government in particular can be attributed to various factors such as the corruption, poverty and maladministration that characterised governance in Nigeria at that time.⁴³⁴ Although the group still conducted sporadic attacks during the following years, the government managed to control its activities.⁴³⁵ Boko Haram re-emerged in 2009 as a more violent and radical group as they tried to confound the regulation of Nigerian society by attacking state buildings and institutions,⁴³⁶ and by not obeying general laws.⁴³⁷ This resulted in violent clashes between the police and

⁴²⁵ Ford 2014 <http://nationalinterest.org>.

⁴²⁶ Smith *Boko Haram: Inside Nigeria's unholy war* 66.

⁴²⁷ Smith *Boko Haram: Inside Nigeria's unholy war* 66.

⁴²⁸ Smith *Boko Haram: Inside Nigeria's unholy war* 66-70.

⁴²⁹ Ford 2014 <http://nationalinterest.org>.

⁴³⁰ Ford 2014 <http://nationalinterest.org>.

⁴³¹ International Crisis group 2014 <http://crisisgroup.org>.

⁴³² Human Rights Watch 2012 <http://hrw.org>.

⁴³³ Smith *Boko Haram: Inside Nigeria's unholy war* 80.

⁴³⁴ Smith *Boko Haram: Inside Nigeria's unholy war* 60; Human Rights Watch 2012 <http://hrw.org>.

⁴³⁵ Human Rights Watch 2012 <http://hrw.org>.

⁴³⁶ Smith *Boko Haram: Inside Nigeria's unholy war* 95-96.

⁴³⁷ Ford 2014 <http://nationalinterest.org>.

members of the movement, and the police managed to arrest several members.⁴³⁸ Among those arrested was the leader, Yusuf, who was later killed by the police while he remained in custody.⁴³⁹ In reprisal the group once again surfaced in 2010,⁴⁴⁰ as an "Islamist insurrection under a splintered leadership."⁴⁴¹ This leader, referred to as Abubakar Shekau⁴⁴² was much more radical than his predecessor as he organized several suicide bombings and assassinations. By 2011 it had become clear that the leadership of Boko Haram had strong connections with terrorist networks such as AQ and Al-Shabaab,⁴⁴³ as they suddenly started employing terrorist tactics such as kidnappings.⁴⁴⁴ This being said, Boko Haram also uses other terrorist methods such as suicide bombings, looting, raping, kidnapping and massacring innocent people.⁴⁴⁵ In 2012 it was reported by Human Rights Watch that this group was responsible for the bombing of the UN headquarters in the capital city, the bombing of 18 churches, and the looting of 60 police stations and 12 schools.⁴⁴⁶ As may be adduced from these statistics, the activities of this group are directed at state forces, Christian citizens, and even Muslims who oppose their values and ideas.⁴⁴⁷ Boko Haram has gained funding for its operations from a variety of criminal activities, which include the taxation of products transported on routes occupied by the group, drug dealing, trading on the black market, and the collection of ransoms for people it has kidnapped.⁴⁴⁸ Also, the group has received funding and support from international AQ affiliates and other terrorist networks.⁴⁴⁹ Like ISIS, Boko Haram has influenced the international community in at least three ways. Firstly, it has extended its attacks to the neighbouring countries Cameroon, Niger and Chad,⁴⁵⁰ and these

⁴³⁸ Human Rights Watch 2012 <http://hrw.org>.

⁴³⁹ Human Rights Watch 2012 <http://hrw.org>.

⁴⁴⁰ Smith *Boko Haram: Inside Nigeria's unholy war* 107.

⁴⁴¹ Sergie and Johnson 2015 <http://cfr.org>.

⁴⁴² Human Rights Watch 2012 <http://hrw.org>.

⁴⁴³ Ford 2014 <http://nationalinterest.org>.

⁴⁴⁴ Smith *Boko Haram: Inside Nigeria's unholy war* 137.

⁴⁴⁵ OHCHR 2015 <http://ohchr.org>.

⁴⁴⁶ Human Rights Watch 2012 <http://hrw.org>.

⁴⁴⁷ Human Rights Watch 2012 <http://hrw.org>.

⁴⁴⁸ Arseneault 2015 <http://english.rfi.fr>.

⁴⁴⁹ Arseneault 2015 <http://english.rfi.fr>.

⁴⁵⁰ Human Rights Watch 2015 <http://hrw.org>.

attacks intensified after the African Union (AU) decided to compose forces from these three countries to assist Nigeria in the fight against Boko Haram.⁴⁵¹ Also, the terrorists have captured several foreigners and held them captives with the object of receiving a ransom payment.⁴⁵² Among those kidnapped were a French family⁴⁵³ and numerous US,⁴⁵⁴ United Kingdom (UK) and Italian nationals.⁴⁵⁵ Lastly, a variety of international states have been assisting the Nigerian forces to combat and attempt to defeat this threat.⁴⁵⁶ Due to the activities of Boko Haram, more than 14 000 people had already been killed by 2015,⁴⁵⁷ and 1.5 million people had been displaced.⁴⁵⁸ Despite the coincidence of their long-term objectives being relatively similar, the ways in which Boko Haram and ISIS function, and the structure of the organisations are not the same and, therefore, it is possible to argue that Boko Haram is a terrorist organization. Therefore, as will be shown in Chapter 3, implementing counterterrorism policies and the *UN Conventions on terrorism* would be effective in fighting or criminalizing the acts of Boko Haram but not ISIS.

2.4 Conclusion

ISIS is a modern non-state actor that operates within the confined territories of Iraq and Syria. In coupling asymmetrical, irregular warfare with terrorist tactics they target certain categories of people that oppose their objective of establishing a caliphate under the guidance of Sharia law. At first it seemed to the international community that this group had appeared overnight, but it was actually rooted in the long, developing history of the terrorist organisation AQ, which was responsible for the 9/11 atrocities.

⁴⁵¹ Human Rights Watch 2015 <http://hrw.org>.

⁴⁵² Foreign and Commonwealth Office 2015 <http://gov.uk>.

⁴⁵³ Smith *Boko Haram: Inside Nigeria's unholy war* 144.

⁴⁵⁴ Department of State 2015 <http://state.gov>.

⁴⁵⁵ Smith *Boko Haram: Inside Nigeria's unholy war* 138, 144.

⁴⁵⁶ Taylor 2014 *ILSA JICL* 17-18.

⁴⁵⁷ Sergie and Johnson 2015 <http://cfr.org>.

⁴⁵⁸ IDMC 2015 <http://internal-displacement.org>; Sergie and Johnson 2015 <http://cfr.org>.

The atrocities committed by ISIS captured the attention of the international community in various ways. International terrorism policies had to be adapted in order to prevent ISIS recruits from leaving moderate European countries to fight in the Middle East, or from returning and launching attacks on domestic ground. Furthermore, security had to be strengthened in order to prevent silent sympathisers from organising local attacks. Local terrorist organisations that pledged allegiance to ISIS were also to be suppressed in order to prevent the international expansion of this particular group. As a result, various states agreed to participate in the US-led international coalition to strike the strongholds of the group. Although there has been some success in preventing the group from expanding its territorial possessions, the strikes have also had their shortcomings and given rise to various complications such as the deaths of innocent civilians as well as the destruction of buildings. ISIS has revealed that it has the skills necessary to compete with trained state armed forces, and has shown the ability to adapt according to the challenges presented to it on ground.

When one attempts to slot ISIS into any one of the categories of armed insurrections existing under international law, it seems as if this group is a hybrid containing mixed elements attributable to all of the categories. ISIS started as a Sunni insurgency in Iraq and as it spread into Syria it developed into a terrorist organisation. Once it was established in that area it participated alongside rebel groups in the fight against the oppressive government. It is clear that this group is not a liberation movement as it is not fighting for freedom from a certain type of government and its methods and objectives are not recognised by the international community. However, it is important to refer to this category, as it is an exception to the application of certain international humanitarian laws, as will be elaborated on in Chapter 4, and it is used to contribute to the analysis of the category of terrorism.

As most commentators prefer to refer to ISIS as a terrorist organisation, this category has been analysed in some detail. When evaluating the characteristics of terrorism with regard to the operating methods of an organisation, Boko Haram has been formally recognised as a terrorist organisation, and it is clear why this

group is classified as such. In contrast, when one compares the activities of Boko Haram with those of ISIS, it seems to be more difficult to place ISIS solely within this category. Before it can be decided whether ISIS is a terrorist organisation or not it is necessary to investigate the international counterterrorism framework, as an analysis of its relevance and applicability to the ISIS crisis will productively contribute to drawing such a conclusion. This will be done in Chapter 3.

Chapter 3

International counterterrorism framework

3.1 Introduction

Exposure to the elements and characteristics of terrorism⁴⁵⁹ resulted in the establishment of local and regional counterterrorism policies in order to suppress, eradicate and criminalise terrorist activities. Governments have developed local policies in order to prevent and suppress terrorist activities within their territories. Because domestic terrorist activities can have cross-border effects, auxiliary regional measures were also developed in order to increase cooperation in the fight against terrorism. However, these policies and measures have not been effective in eradicating this threat to international peace and security.

Therefore, various international instruments were developed in order to establish an international counterterrorism framework which could globally prevent and penalise certain activities that the international community has communally agreed should be classified as acts of terrorism. Although it is important to take note of the national and regional responses to terrorism, the main focus of this chapter will be on the international counterterrorism framework, as local and regional policies will not have a bearing on achieving the main objective of establishing whether humanitarian intervention as an international response can legitimately be used to eradicate ISIS. These internationally established policies and measures will be analysed with specific reference to the application thereof to the acts perpetrated by this modern, irregular armed group. A brief explanatory reference will also be made to their specific application and possible success in eradicating the terrorist group Boko Haram, for the sake of clarity.

The reason for analysing these instruments, as explained in Chapter 2, is to facilitate a proper classification of ISIS in terms of the categories existing under

⁴⁵⁹ See Chapter 2.4.1 for a discussion on the characteristics and elements of terrorism.

international law. An analysis of these instruments will assist in the difficult task of classification. Consequently, the main purpose of this chapter is to arrive at a formal conclusion on whether ISIS can be classified as a terrorist organisation or not. Because different international responses to conflict are justified by the existence of different elements or characteristics in the actions and motivations of the perpetrators of such conflict, the classification of this group will determine which international responses can legitimately be used in order to eradicate this group.

In order to achieve these objectives, the concept of counterterrorism will firstly be analysed by taking the characteristics of this specific response into account. As will be explained in this chapter, counterterrorism policies can be forcible and non-forcible in nature. This section will focus only on non-forcible measures, as the use of force in reaction to terrorism will be elaborated on in Chapter 5. However, reference will have to be made to the use of force against terrorism to explain and illustrate the US's reasoning for classifying ISIS as a terrorist organisation. The analysis of counterterrorism policies will be able to contribute to the formal classification of ISIS. Thereafter, the UN Conventions that classify certain acts as terrorism will be analysed with specific reference to the common provisions and exclusion clauses contained in some of these Conventions. An exclusion clause determines that acts classified as terrorism in terms of the Conventions, which occur during an armed conflict, will be regulated by the IHL to the exclusion of a particular Convention. For that reason it is important thirdly to determine whether the acts perpetrated by ISIS amount to an armed conflict. If their actions fall within the ambit of an armed conflict, the exclusion of the Convention would also be an indication of the nature of this particular group. Finally, by taking all of these factors of applicability and the opinions of several writers and states into account, it will be possible to decide if ISIS can be classified as a terrorist organisation or not. As mentioned before, this conclusion will contribute to the elaboration on legal international responses in Chapter 5.

3.2 Counterterrorism policies analysed

Counterterrorism policies are directed at eliminating terrorist groups by averting or decreasing the number of their attacks.⁴⁶⁰ On international level, the UN SC adopted Resolution 1373 of 2001, which contains numerous measures that should be implemented by member states to increase their ability to combat terrorism.⁴⁶¹ To ensure that member states comply, the UN called for the establishment of a committee that can monitor compliance by member states.⁴⁶² In response, the Counter-Terrorism Committee (CTC) and the Counter-Terrorism Implementation Task Force (CTITF) were created in order to assist member states in implementing counterterrorism measures that would eventually effectively defeat the threat of terrorism.⁴⁶³ Resolution 1624, which was released in 2005, demands that states criminalize acts specified as terrorism in the 14 Conventions and eliminate and prevent the establishment of safe havens on their territories.⁴⁶⁴ In 2006 a global counterterrorism strategy was adopted which contains a communal plan to counter this threat to international peace and security.⁴⁶⁵ This plan was adopted in Resolution 60/288. It focusses on solving the conditions that provide a "breeding ground" for these groups to exist, preventing access to the means to mount attacks, and also on strengthening of states' ability to eliminate these threats.⁴⁶⁶ Counterterrorism policies have also been adopted regionally in accordance with UN regulations in order to establish greater international cooperation. The AU model on combatting terrorism was adopted in 2011 and contains a plan that had been in the process of negotiation since 1999.⁴⁶⁷ This model approaches the eradication of terrorism firstly by focussing on several methods that should be used to detect the sources providing finance to these

⁴⁶⁰ Martin *Essentials of terrorism* 208.

⁴⁶¹ *Resolution on the Combatting of terrorism* 1373 (2001).

⁴⁶² *Resolution on the Combatting of terrorism* 1373 (2001); *Resolution on the Combatting of terrorism* 1624 (2005).

⁴⁶³ *Resolution on the Combatting of terrorism* 1373 (2001); *Resolution on the Combatting of terrorism* 1624 (2005).

⁴⁶⁴ *Resolution on the Combatting of terrorism* 1624 (2005).

⁴⁶⁵ *Resolution on the UN global counter-terrorism strategy* 288 (2006).

⁴⁶⁶ *Resolution on the UN global counter-terrorism strategy* 288 (2006).

⁴⁶⁷ AU 2014 <http://peaceau.org>.

groups, this ensuring that the funds run dry.⁴⁶⁸ Further, it is emphasised that member states must continuously investigate suspicious happenings, penalize such acts if they are committed within their territory, and as a precautionary measure inform other member states about these activities.⁴⁶⁹

Gus Martin elaborates on different counterterrorism measures in his book *Essentials of Terrorism* with specific reference to the national policies of the US.⁴⁷⁰ He explains that the responses to terrorism can be forcible or non-forcible in nature.⁴⁷¹ The former focusses on the combatting of terrorism by using military measures to target and to eliminate these groups.⁴⁷² As the use of force with regards to terrorism (also known as the war on terrorism) will be discussed in Chapter 5, this discussion will focus only on responses that do not entail force. This being said, the latter option can include a range of repressive, conciliatory and legalistic measures.⁴⁷³ The objective of these measures is to "surprise organisations" and in this way ensure the "disruption of terrorist activity."⁴⁷⁴ Repressive measures include activities that target the effectiveness of terrorist acts, and they include sanctions⁴⁷⁵ or the suspension of funds by infiltrating terrorist accounts.⁴⁷⁶ Continuous intelligence gathering about the movements of these groups can also be effective in proscribing activities and as a result prevent acts of violence performed by members of such groups.⁴⁷⁷ Conciliatory options include engaging in negotiations for peace, the restoration of the social order, and addressing the underlying factors that present an ideal environment for the rise of terrorism.⁴⁷⁸ Legal measures include the enhancement of domestic laws such as strict airport security and of the rules necessary to detect terrorists through the

⁴⁶⁸ *The African model on anti-terrorism law* of 2011.

⁴⁶⁹ *The African model on anti-terrorism law* of 2011.

⁴⁷⁰ Martin *Essentials of terrorism* 208.

⁴⁷¹ Martin *Essentials of terrorism* 208.

⁴⁷² Martin *Essentials of terrorism* 209-210.

⁴⁷³ Martin *Essentials of terrorism* 208-209.

⁴⁷⁴ Martin *Essentials of terrorism* 218.

⁴⁷⁵ Martin *Essentials of terrorism* 221.

⁴⁷⁶ Martin *Essentials of terrorism* 218.

⁴⁷⁷ Martin *Essentials of terrorism* 219-220.

⁴⁷⁸ Martin *Essentials of terrorism* 222-224.

penalizing of acts that give rise to acts of terrorism.⁴⁷⁹ The selection of counterterrorism actions that would be successful in a particular situation depends on the specific circumstances of each case.⁴⁸⁰

In response to AQ, the US adopted several structures to investigate and regulate terrorist activity, which have assisted in deterring and preventing further terrorist attacks from occurring within its territory.⁴⁸¹ Several counterterrorism methods were implemented that rendered these terrorists ineffective as they were forced to abandon their activities. Some of these measures included the smothering of each susceptible emerging financial supply through intelligence gathering.⁴⁸² Further, AQ's own methods and target group were later used against them as a tactic in order to convince prospective members that they were not acting in the name of the Muslim religion.⁴⁸³ The world was told the AQ was killing fellow Muslims and innocent people, thus undercutting its image of courage.⁴⁸⁴ But it was eventually the military campaign conducted by the US and its allies that limited the operational effectiveness of the AQ. With the launch of Operation Enduring Freedom, the US and its allies dispatched military personnel, equipment and supplies to Afghanistan in order to detect and destroy AQ and Taliban strongholds and cells.⁴⁸⁵ During this operation, various AQ leaders who were important to the guidance and survival of this group were killed.⁴⁸⁶

In response to the terrorist threat presented by Boko Haram, the Nigerian government, as the US had in response to AQ, established a Joint Task Force (JTF), which undertook military action to counter this threat.⁴⁸⁷ In addition to

⁴⁷⁹ Martin *Essentials of terrorism* 225.

⁴⁸⁰ Hoffman 2012 *GJIA* 96-97.

⁴⁸¹ Cronin 2015 *Foreign Affairs* 90.

⁴⁸² Cronin 2015 *Foreign Affairs* 91.

⁴⁸³ Cronin 2015 *Foreign Affairs* 92.

⁴⁸⁴ Cronin 2015 *Foreign Affairs* 92.

⁴⁸⁵ Martin *Essential of terrorism* 211. Please refer to Chapter 2.1.1 in order to read about the Operation Enduring Freedom which established the US invasion of Afghanistan and later Iraq.

⁴⁸⁶ Phillips 2006 <http://heritage.org>.

⁴⁸⁷ Bello *Countering Boko Haram* 51.

direct confrontations with this group,⁴⁸⁸ the forces have also occupied roads and important routes and participated in military raids.⁴⁸⁹ This has resulted in the successful elimination of members of the group, including its first leader, Yusuf,⁴⁹⁰ the recovery of weapons and the destruction of cells (based on intelligence gathering),⁴⁹¹ but these short-term operations have resulted in the deaths of numerous innocent civilians.⁴⁹² Furthermore, Boko Haram has shown the capacity to constantly adapt and to change its methods in order to be able to challenge the military on the battlefield. The fact that the group has shown that the disruption of the organisation by killing its leader will not result in the end of its terror campaign does not necessarily indicate that counterterrorism measures will be ineffective as a means of destroying the organisation. Unlike the use of force against AQ, the counterterrorism responses which are necessary to defeat and eradicate this particular threat to national, regional and international peace and security need to be long-term solutions.⁴⁹³ One of these responses should focus on the addressing the conditions that gave rise to such a grave division in Nigerian society and resulted in the formation of Boko Haram.⁴⁹⁴ The US counterterrorism assistance provided to the Nigerian government has focused on such long-term solutions by supporting the creation of and strengthening of national laws regarding the investigation and punishment of terrorist acts.⁴⁹⁵ It is also supporting the proper training of the Nigerian military forces in order to prevent unprofessional and negligent behaviour by these personnel.⁴⁹⁶

ISIS, however, presents a different threat to counterterrorism policies and responses, as its operational methods and accomplishments has been much more developed than those of the two terrorist groups mentioned above. One of the

⁴⁸⁸ ICRP 2015 <http://responsibilitytoprotect.org>.

⁴⁸⁹ Bello *Countering Boko Haram* 51-52.

⁴⁹⁰ McQuaid and Asfura-Heim 2015 <http://realcleardefense.com>.

⁴⁹¹ Bello *Countering Boko Haram* 52.

⁴⁹² Human Rights Watch 2012 <http://hrw.org>; Bello *Countering Boko Haram* 51; McQuaid and Asfura-Heim 2015 <http://realcleardefense.com>.

⁴⁹³ McQuaid and Asfura-Heim 2015 <http://realcleardefense.com>.

⁴⁹⁴ Hoffman 2012 *GJIA* 97; *Resolution on the UN global counter-terrorism strategy* 288 (2006).

⁴⁹⁵ US Department of State 2014 <http://state.gov>.

⁴⁹⁶ US Department of State 2014 <http://state.gov>.

reasons for ISIS's rapid expansion in Syria and Iraq is that the US led coalition's response has been erroneous.⁴⁹⁷ Counterterrorism efforts will not be effective in reaction to the ISIS threat for various reasons.⁴⁹⁸ As ISIS has established a complicated administration that operates on different levels, the mere elimination of the leader, Baghdadi, will not ensure the end of its rampage.⁴⁹⁹ Similarly, ISIS does not solely rely on international support to fund its operations and, therefore, the detection and extermination of its banking networks will not vitally affect this group.⁵⁰⁰ Unlike AQ, people are also much more attracted to this organisation as it presents an opportunity for them to feel self-righteous and powerful.⁵⁰¹ In addition, military operations are also complicated by the fact that ISIS openly operates in urban areas shielded by innocent civilians.⁵⁰² Also, it has established a well-trained army which presents an immense threat to state forces due to its use of irregular methods of fighting, and its total disregard for IHL.

3.3 UN conventions criminalising certain acts of terrorism

However, before it can be formerly concluded that ISIS is not a terrorist organisation and that counterterrorism policies will not be effective in eradicating this group, it is necessary to analyse the different treaties which were created in order to define and classify certain behaviour as acts of terrorism.

As said before, the international community has been reluctant to adopt a common international instrument containing a mutual understanding regarding the nature of terrorism.⁵⁰³ Therefore, a total of 14 Conventions containing different elements and processes regarding specific criminal acts has been released.⁵⁰⁴ In 2005 and 2010, Protocols containing widely accepted amendments

⁴⁹⁷ Cronin 2015 *Foreign Affairs* 88.

⁴⁹⁸ LoGaglio 2014 *NSLB* 131; Cronin 2015 *Foreign Affairs* 88.

⁴⁹⁹ Cronin 2015 *Foreign Affairs* 91.

⁵⁰⁰ Cronin 2015 *Foreign Affairs* 91.

⁵⁰¹ Cronin 2015 *Foreign Affairs* 95.

⁵⁰² Cronin 2015 *Foreign Affairs* 90.

⁵⁰³ See Chapter 2.4.1 for the discussion on terrorism which contains the reasons for not adopting an international and comprehensive understanding of terrorism.

⁵⁰⁴ UN date unknown <http://un.org>.

were added to four of these Conventions.⁵⁰⁵ These instruments were created in response to the increasing use of terrorism that occurred during the second half of the 20th century. For that reason the role of these multilateral treaties is to provide a framework for the suppression, combatting and elimination⁵⁰⁶ of this threat to international peace and security, as it "strikes at the very heart of what the UN stands for."⁵⁰⁷ The global condemnation of such acts coupled with the ongoing international cooperation to defeat this threat indicates that terrorism is unacceptable and that it will not be tolerated.⁵⁰⁸ The UN continues to promote the implementation of the principles contained in these Conventions through regular monitoring and the provision of assistance through specialized programmes.⁵⁰⁹

3.3.1 UN Conventions on terrorism

The international community focussed its attention on the construction of regulations and rules in response to the escalating tendency since the 1960's to use terrorism as a weapon. Each of the Conventions was negotiated after a specific incident that revealed the ineffectiveness of existing international norms in dealing with the perpetrators of a particular terrorist activity. The UN emphasized the importance of these measures by declaring that the indiscriminate nature of terrorism violates important universal human rights that should be protected by the UN and its member states.⁵¹⁰

With this borne to mind, during the 1960's several attempts to hijack aircrafts with the intent of achieving a political objective indicated the need to establish measures to regulate these types of activities.⁵¹¹ Hence the adoption of the first terrorist Convention in 1963 under the guidance of the International Civil Aviation

⁵⁰⁵ UN date unknown <http://un.org>.

⁵⁰⁶ UN date unknown <http://un.org>.

⁵⁰⁷ Annan 2004 <http://un.org>.

⁵⁰⁸ UN date unknown <http://un.org>.

⁵⁰⁹ UN date unknown <http://un.org>.

⁵¹⁰ UN date unknown <http://un.org>.

⁵¹¹ Reinalda *Routledge history of international organisations* 386.

Organisation (ICAO),⁵¹² in response to the increasing threat that terrorism posed to aviation.⁵¹³ This treaty deems certain acts committed "on board an aircraft while in flight, on the surface of the high sea or other areas outside the territory of any state"⁵¹⁴ as acts of terrorism.⁵¹⁵ Accordingly, any activities that endanger the safety of an aircraft or any persons on board that aircraft fall within the scope of this particular document.⁵¹⁶ In 2014, however, this treaty was amended by the adoption of the *Protocol to Amend the Convention on Offences and Certain Acts Committed on Board an Aircraft*. When this Protocol comes into force⁵¹⁷ it will provide for the expansion of jurisdiction,⁵¹⁸ and an extension of the commander's powers to take control of an aircraft.⁵¹⁹ It will also add the assault of a crew member and a refusal to follow safety instructions to the specific conduct referred to in the treaty as criminal acts.⁵²⁰

An escalation in terrorist activities during the 1970's resulted in the adoption of five more Conventions.⁵²¹ These are the *Convention for Suppression of Unlawful Seizure of an Aircraft* (1970), *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (1971), *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (1973), *Convention against Hostage Taking* (1979), and the *Convention on the Physical Protection of Nuclear Material* (1979).

⁵¹² This organisation was established in order to create measures and norms and to assist international states in adopting these standards in order to protect aviation against terrorist attacks.

⁵¹³ ICAO date unknown <http://icao.int>.

⁵¹⁴ Article 1 of the *Convention on Offences and Certain Other Acts Committed On Board an Aircraft* (1963).

⁵¹⁵ *Convention on Offences and Certain Other Acts Committed On Board an Aircraft* (1963).

⁵¹⁶ Article 1 of the *Convention on Offences and Certain Other Acts Committed On Board an Aircraft* (1963).

⁵¹⁷ ICAO 2014 <http://icao.int>.

⁵¹⁸ Article 3 of the *Protocol to amend the Convention on Offences and Certain Other Acts Committed On Board an Aircraft* (2014); IFTTA 2014 <http://iftta.org>.

⁵¹⁹ Article 6 and 9 of the *Protocol to amend the Convention on Offences and Certain Other Acts Committed On Board an Aircraft* (2014).

⁵²⁰ Article 15 of the *Protocol to amend the Convention on Offences and Certain Other Acts Committed On Board an Aircraft* (2014).

⁵²¹ O'Donnell 2006 *IRRC* 854.

Regardless of the adoption of the 1963 Convention,⁵²² the hijackings of planes was a very popular terrorist activity between 1969 and 1970.⁵²³ As a result, the *Convention for the Suppression of Unlawful Seizure of an Aircraft* was adopted. It contains measures that should be implemented by states to prevent the high-jacking of aircraft, as highjacking "endangers the security of people and provokes a feeling of fear regarding the usage of air services."⁵²⁴ Accordingly, punishment guidelines were established as a means to dissuade people from engaging in this specific type of behaviour.⁵²⁵ This treaty was amended by the *Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of an Aircraft*, which was adopted in 2010.⁵²⁶ This Protocol expands the application of the aforementioned treaty to other contemporary forms of hijacking offences.⁵²⁷ One of the offences expressly mentioned and referred to in this Protocol is the hijacking of an aircraft by using "modern technological means."⁵²⁸ In addition, the second treaty, the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* was adopted in order to specifically penalize the use of violence against persons on board an aircraft, destruction of property, placement of a device that can damage the aircraft or interference with the navigation or communication system of that particular aircraft.⁵²⁹ The *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* was adopted after the 9/11 attacks occurred.⁵³⁰ The latter replaced the former by criminalizing the use of an aircraft to intentionally cause injury or death or to transport dangerous materials.⁵³¹ Accordingly, this instrument provides for the application

⁵²² Centre for non-proliferation studies date unknown <http://cns.miis.edu>.

⁵²³ ICAO date unknown <http://icao.int>. Please refer to Ciment *World Terrorism* 679 to read more about the hijacking attempts that occurred between 1969 and 1970, which increased the demand for more secure measures and regulations regarding this specific activity.

⁵²⁴ Preamble of the *Convention for Suppression of Unlawful Seizure of an Aircraft* (1970).

⁵²⁵ Centre for non-proliferation studies date unknown <http://cns.miis.edu>.

⁵²⁶ UN date unknown <http://un.org>.

⁵²⁷ *Protocol supplementary to the Convention for the Suppression of Unlawful Seizure of an Aircraft* (2010).

⁵²⁸ *Protocol supplementary to the Convention for the Suppression of Unlawful Seizure of an Aircraft* (2010).

⁵²⁹ Article 1 of the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (1971).

⁵³⁰ Van der Toorn 2011 <http://asil.org>.

⁵³¹ Van der Toorn 2011 <http://asil.org>.

of international norms to counter terrorist attacks committed against or by using aviation.⁵³² Similarly, an increase in the number of attacks launched against diplomatic personnel and foreigners necessitated the adoption of the third of the treaties mentioned above, the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons*.⁵³³ This treaty was created in response to the negative impact that such attacks have on friendly relations between states.⁵³⁴ Protected persons include the head of a state or any member concerned with the functioning of the head of a state or an agent of an international organisation.⁵³⁵ The criminal conduct required to trigger the specified application includes the killing, abduction or attacking of any of the aforementioned persons on any premises, regardless of success or failure.⁵³⁶ Shortly after that, the *Convention against hostage taking* was proposed by Germany as a response to the increase in the frequency of this conduct during the 1970's.⁵³⁷ Germany, which became the victim of hostage taking at its embassy located in Sweden,⁵³⁸ argued that this activity was "inhumane, intolerable and incompatible with universal standards."⁵³⁹ This document focuses on the preventative measures that should be implemented by states, as this activity violates numerous important human rights.⁵⁴⁰ An act of hostage taking is defined as the capturing of a person with or without force and threatening to kill or injure him with the objective of forcing another party to act in a certain way as a prerequisite for the release of the detained person.⁵⁴¹ The last mentioned *Convention on the Physical Protection of Nuclear Material* was established under

⁵³² *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (2010).

⁵³³ Reinalda *Routledge history of international organisations* 387.

⁵³⁴ Preamble of the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (1973).

⁵³⁵ Article 1 of the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (1973).

⁵³⁶ Article 2 of the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (1973).

⁵³⁷ Centre of non-proliferation studies 2010 <http://cns.miis.edu>; Romero 1997 *NULR* 577.

⁵³⁸ Diaz-Paniagua *Negotiating terrorism* 169.

⁵³⁹ Saul date unknown <http://legal.un.org>.

⁵⁴⁰ Preamble of the *Convention against Hostage Taking* (1979).

⁵⁴¹ Article 1 of the *Convention against Hostage Taking* (1979).

the guidance of the International Atomic Energy Agency (IAEA)⁵⁴² in order to create strict state obligations to take indispensable measures to ensure that nuclear material is safeguarded while internationally transported,⁵⁴³ as the unlawful usage thereof can have momentous consequences.⁵⁴⁴ The numerous measures that should be implemented by states for the protection of these substances are listed in the Annex attached to the Convention, which contains different levels of protection for different types of material.⁵⁴⁵ As a result, the theft, unlawful possession or threatening use of these substances constitutes criminal conduct for the purposes of specified application.⁵⁴⁶ However, the international community was of the opinion that this treaty was "incomplete and that it needed to be revised", and as a result, amendments were added which established stringent protection measures and require closer cooperation amongst states in fulfilling these obligations.⁵⁴⁷ The amendment also expands its application to the storage and transportation of this material locally as well as the protection of nuclear facilities.⁵⁴⁸

Then a hostage incident that occurred in 1985 on board an Italian ship sailing on the high seas⁵⁴⁹ resulted in the adoption of the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*.⁵⁵⁰ This treaty was the result of an international agreement on the fact that preventative measures regarding the hijacking of ships were an increasing necessity.⁵⁵¹ Although the crime of piracy existed before the adoption of this Convention, the events of 1985 did not fall within the scope of its definition and, therefore, there were no appropriate means of dealing with the situation.⁵⁵² Consequently, the conduct that results in the deeming of this act as an act of terrorism in terms of this

⁵⁴² De Lourdes Vez Carmona 2006 <http://oecd.nea.org>.

⁵⁴³ Jenkins 1998 *Non-proliferation Review* 98.

⁵⁴⁴ Preamble of the *Convention on the Physical Protection of Nuclear Material* (1979).

⁵⁴⁵ Annex I to the *Convention on the Physical Protection of Nuclear Material* (1979).

⁵⁴⁶ Article 28 of the *Convention on the Physical Protection of Nuclear Material* (1979).

⁵⁴⁷ ElBaradei "Nuclear security" 1-2.

⁵⁴⁸ Comella "Implementation of 8 July 2005 amendment to the Convention" 35.

⁵⁴⁹ Ciment *World Terrorism* 680.

⁵⁵⁰ Tuerk 2008 *UMICLR* 338.

⁵⁵¹ Tuerk 2008 *UMICLR* 339.

⁵⁵² Tuerk 2008 *UMICLR* 341-342.

Convention includes the seizure or control of a ship, the use of violence against any person on board that ship, the destruction of property, the placement of a device that could destroy the ship, or interference with the navigation or communication system of the ship.⁵⁵³ In the same year the application of this treaty was extended to offences committed on a "fixed platform" or island through the adoption of the *Protocol for Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*. Therefore, any acts of violence, destruction, the placement of a device that can cause this destruction or cause injury or death to a person on these platforms constitute criminal and terrorist action.⁵⁵⁴ In 2005 both the treaty and the protocol were amended through the adoption of the *Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*.⁵⁵⁵ This Protocol added a new article, expanding the application to other criminal activities conducted on board a ship.⁵⁵⁶ Therefore, the usage of a ship to transport any dangerous material or to discharge explosives and cause damage or injury is now also criminally punishable.⁵⁵⁷ The 1988 *Convention on the Marking of Plastic Explosives for the Purpose of Detection* was negotiated after the 1988 Pan American flight 103 exploded as a result of such objects being placed on board the flight.⁵⁵⁸ In terms of this document, states have an obligation to prevent the manufacturing of and to control unmarked explosives, and to destroy any such products that are still available on their territory, within a provided timeframe.⁵⁵⁹ Correspondingly, the 1999 *Convention for the Suppression of Terrorist Bombings* was established due to the escalation in terrorist attacks involving the use of explosives. The necessity for such an instrument was based on the fact that the existing Conventions did not properly address this modern tendency. For this

⁵⁵³ Article 3 of the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (1988).

⁵⁵⁴ Article 2 of the *Protocol for Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (1988).

⁵⁵⁵ IMO date unknown <http://imo.org>.

⁵⁵⁶ IMO date unknown <http://imo.org>.

⁵⁵⁷ Article 3bis of the *Protocol for Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (1988).

⁵⁵⁸ Centre for non-proliferation studies date unknown <http://cns.miis.edu>.

⁵⁵⁹ *Convention on the Marking of Plastic Explosives for the Purpose of Detection* (1998).

treaty to be applicable, the perpetrator must deliver, place or discharge an explosive device in a public place or facility with the intent of causing death or injury and economic loss.⁵⁶⁰ In 1996 the international community through an Ad Hoc Committee established by the GA⁵⁶¹ also decided to attack the roots of the production of the resources terrorists require in order to orchestrate attacks covered by the afore-mentioned Conventions. Thus, the *Convention for the Suppression of Terrorist Funding* (1999) penalizes the direct or indirect provision or acceptance of funds used to launch a terrorist attack or to cause death or injury.⁵⁶² In order to destroy production entities, emphasis is placed on the obligation of member states to constantly adopt means and measures which can detect and eliminate suspicious sources of funding.⁵⁶³ The 1996 Committee was also tasked with establishing an elaborated *Convention for the suppression of acts of nuclear terrorism*.⁵⁶⁴ This Convention was released in 2005 in response to the international concern regarding the trafficking of nuclear or radioactive material as well as the grave consequences that would occur if such weapons were unlawfully used by the wrong parties.⁵⁶⁵ Applicability, however, is limited to the possession of nuclear material or the destruction of a nuclear facility with the intent of causing damage or injury.⁵⁶⁶

3.3.2 Common provisions shared by the terrorism conventions

Although each of these instruments contains elements of different criminal activities, they all share common provisions that are applicable in dealing with any of these acts.⁵⁶⁷ These provisions provide for the internationality of application, the establishment of jurisdiction and the installation of applicable procedures to capture and to ensure prosecution of the perpetrator(s).

⁵⁶⁰ *Convention for the Suppression of Terrorist Bombings* (1999).

⁵⁶¹ *Resolution on measures to eliminate international terrorism* GA Res 51/210 (1996).

⁵⁶² *Convention for the Suppression of Terrorist Funding* (1999).

⁵⁶³ *Convention for the Suppression of Terrorist Funding* (1999).

⁵⁶⁴ *Resolution on measures to eliminate international terrorism* GA Res 51/210 (1996).

⁵⁶⁵ Perera date unknown <http://cns.miiis.edu>; *Convention for the Suppression of Acts of Nuclear Terrorism* (2005).

⁵⁶⁶ *Convention for the Suppression of Acts of Nuclear Terrorism* (2005).

⁵⁶⁷ Svarc "Law as a homeland security tool in the defence against terrorism" 102.

With this borne in mind, the first shared trait relates to the requirement that the crimes should be committed internationally or present an international effect or consequence in order for the conventions to be applicable.⁵⁶⁸ This requirement is presented in different ways through varying provisions, depending on the type of terrorist attack involved. This being said, the aviation Conventions determine that these instruments will be applicable only if the attacks occurring on board an aircraft were committed outside the territory of the state of the aircraft's registration.⁵⁶⁹ Furthermore, the territory where the aircraft takes off or lands should be located outside the territory of the state of registration.⁵⁷⁰ Similarly, it provides that applicability is determined by the location of the perpetrator.⁵⁷¹ Also, the maritime Convention provides that the provisions contained in the particular document will be applicable only if the ship on board of which such a specialized attack occurs is scheduled to travel internationally and thus is located outside the territory of a single state.⁵⁷² Likewise, the Protocol on fixed platforms requires that the offender should be located on the territory of a state other than the one in which the platform attacked is located.⁵⁷³ The *1980 Nuclear Convention* determines that the provisions of this instrument are applicable only with regard to the international transport of these material.⁵⁷⁴ Although the Convention refers to the consideration of several safety measures when storing nuclear material on national grounds, the application of important provisions of the Convention is excluded in these circumstances.⁵⁷⁵ Other conventions share the exact same provision, which requires the same elements for application. Therefore, the

⁵⁶⁸ O'Donnell 2006 *IRRC* 860.

⁵⁶⁹ Article 5 of the *Convention on Offences and Certain Other Acts Committed On Board an Aircraft* (1963).

⁵⁷⁰ Article 3(3) of the *Convention for the Suppression of Unlawful Seizure of an Aircraft* (1970).

⁵⁷¹ Article 4(3) of the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (1971).

⁵⁷² Article 4 of the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (1988).

⁵⁷³ Article 1(2) of the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (1988).

⁵⁷⁴ Article 2(1) of the *Convention on the Physical Protection of Nuclear Material* (1979).

⁵⁷⁵ Article 2(2) of the *Convention on the Physical Protection of Nuclear Material* (1979).

1979,⁵⁷⁶ 1997,⁵⁷⁷ 1999⁵⁷⁸ and 2005⁵⁷⁹ conventions will be applicable only if the act is committed outside the territory of a single state, the perpetrator and victims are not nationals of that state, and the perpetrator is located outside the territory of that specific state. In addition, the international requirement can also be inferred from the text of the instrument. The *1973 Convention* is an example of the embedding of this requirement within the text.⁵⁸⁰ The definition of internationally protected persons provided for in Article 1, for example, includes the head of state and others "whenever they are located in a foreign state."⁵⁸¹ Furthermore, the preamble of this Convention emphasizes the importance of protecting these persons, as harm committed against them seriously jeopardizes international friendly relations.⁵⁸² The *1991 Convention on unmarked explosives* does not contain such a provision as it does not define or establish a specific terrorist crime punishable by states. Instead, a strict obligation to ensure that unmarked explosives which can be used to launch other conventional terrorist attacks is conferred on individual states.⁵⁸³

The second mutual element, referred to as the principle of jurisdiction, establishes the authority of a state to exercise its "governmental functions by legislation, executive and enforcement action and judicial decrees over persons and property."⁵⁸⁴ Therefore, jurisdiction directly relates to the principle of sovereignty, which is the right of a state to deal with matters in a certain manner, without the interference of other states.⁵⁸⁵ In terms of the terrorism conventions, primary jurisdiction is established through the obligation of preventing the creation of safe

⁵⁷⁶ Article 13 of the *Convention on Hostage Taking* (1979).

⁵⁷⁷ Article 3 of the *Convention for the Suppression of Terrorist Bombings* (1997).

⁵⁷⁸ Article 3 of the *Convention for the Suppression of the Financing of Terrorism* (1999).

⁵⁷⁹ Article 3 of the *Convention for the Suppression of Acts of Nuclear Terrorism* (2005).

⁵⁸⁰ Preamble and article 1 of the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (1973).

⁵⁸¹ Article 1(1)(a) of the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (1973).

⁵⁸² Preamble of the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (1973).

⁵⁸³ Article 3 of the *Convention on the Marking of Plastic Explosives for the Purpose of Detection* (1991).

⁵⁸⁴ Dugard *International Law* 146.

⁵⁸⁵ Dugard *International Law* 146.

havens within a specific territory.⁵⁸⁶ This indicates that a state has jurisdiction over a conventional matter if the decision is made not to extradite a specific offender.⁵⁸⁷ Accordingly, if such a perpetrator is present within that state, the state has the obligation to take the necessary measures to ensure prosecution.⁵⁸⁸ The domestic prosecution of such an offender is thus an expressed acceptance and confirmation of jurisdictional competency. However, the fact that the criminal activities provided for in these conventions have international consequences and effects makes it necessary to extend jurisdictional competencies to incorporate other states by providing for additional, legitimate jurisdictional grounds.⁵⁸⁹ With this borne to mind, jurisdiction can also be established over a matter arising from any of the terrorism conventions by referring the situation to the state of registration of a particular object.⁵⁹⁰ The *1963 Aviation Convention* was the first terrorist convention to infer this specific ground by stating in Article 3 that the state of registration of an aircraft on board which such a criminal act occurred must take necessary measures to establish jurisdiction over the matter.⁵⁹¹ Whereas this is the only ground for jurisdiction in terms of this specific convention, this ground has also formed part of an extended list of jurisdictional grounds contained in other conventions. The *1980* and *2005 Conventions* on nuclear material are examples hereof, as jurisdiction can be competently exercised, amongst others, by the state to which an aircraft on board of which such an offence occurs is registered.⁵⁹² The *1970* and *1971 Aviation Conventions* expanded the principle of jurisdiction to incorporate territorial jurisdiction.⁵⁹³ Accordingly, these two conventions provide that the state in whose territory such

⁵⁸⁶ UNODC 2003 <http://unodc.org>.

⁵⁸⁷ UNODC 2003 <http://unodc.org>.

⁵⁸⁸ UNODC 2003 <http://unodc.org>.

⁵⁸⁹ Dugard *International Law* 146.

⁵⁹⁰ UNODC 2003 <http://unodc.org>.

⁵⁹¹ Article 3 of the *Convention on Offences and Certain Other Acts Committed On Board an Aircraft* (1963).

⁵⁹² Article 8(1)(a) of the *Convention on the Physical Protection of Nuclear Material* (1980) and Article 9(1)(b) of the *Convention for the Suppression of Acts of Nuclear Terrorism* (2005).

⁵⁹³ UNODC 2003 <http://unodc.org>.

an offence occurs can exercise jurisdiction over the matter.⁵⁹⁴ Therefore, this principle of territoriality means that a state can exercise authority over all criminal matters occurring within its territory as well as over the perpetrators responsible for such an act.⁵⁹⁵ This ground includes the location of the objects on which such attacks occurred.⁵⁹⁶ In other words, the state in which such a victimized aircraft lands,⁵⁹⁷ where a ship is stranded,⁵⁹⁸ or to whose continental shelf a fixed platform is attached has jurisdiction.⁵⁹⁹ An additional jurisdictional ground is provided for by the *1988 Maritime Convention*. Accordingly, if an attack occurs on board a ship, the state which owns the ship will have the competency to deal with the situation.⁶⁰⁰ This authority is established by the requirement of ships to fly the flag of the state, as this symbol awards the particular flag state the right to exercise jurisdiction over all acts committed on board that ship.⁶⁰¹ This ground of jurisdiction directly relates to the extension of competency to states of nationality. The *1973 Convention on Internationally Protected Persons* was the first terrorist convention to refer to this specific jurisdictional ground.⁶⁰² In terms hereof, a state whose national committed an act prohibited by the convention can prosecute such a perpetrator.⁶⁰³ Also, the *1973 Convention* added that if the victims of such an attack are nationals of such a state, it is also permitted to apply its competencies to the specific situation.⁶⁰⁴ This jurisdictional ground was incorporated in the *1979 Hostage Taking Convention*⁶⁰⁵ as well as the *2010*

⁵⁹⁴ Article 4(1)(b) of the *Convention for the Suppression of Unlawful Seizure of Aircrafts* (1970) and Article 5(1)(a) of the *Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation* (1971).

⁵⁹⁵ Dugard *International Law* 149.

⁵⁹⁶ UNODC 2003 <http://unodc.org>.

⁵⁹⁷ Article 5(1)(b) of the *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* (1971).

⁵⁹⁸ Article 6(1)(b) of the *Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation* (1988).

⁵⁹⁹ Article 3(1)(a) of the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (1988).

⁶⁰⁰ Article 6(1)(a) of the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (1988).

⁶⁰¹ Dugard *International Law* 378.

⁶⁰² Svarc "Law as a homeland security tool in the defence against terrorism" 107.

⁶⁰³ Dugard *International Law* 152.

⁶⁰⁴ *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* (2010).

⁶⁰⁵ Article 5(1)(b) of the *Convention against the Taking of Hostages* (1979).

Convention on Aviation that replaced the *1963 Convention*. Furthermore, in extension, the *1979 Hostage Taking Convention* provides that if the perpetrator is a stateless person, the state on whose territory such persons have their habitual residence can exercise jurisdiction in terms of the nationality ground.⁶⁰⁶

Although the *1997* and *1999 Conventions on Bombings and Financing of Terrorism* contain a combined list of all the above-mentioned jurisdictional grounds,⁶⁰⁷ they also provide for additional grounds based on the principle of the protection of interest⁶⁰⁸ that can be taken into account when establishing such competency.⁶⁰⁹ These conventions refer directly to the right of a state to exercise jurisdiction where an act prohibited by the convention is committed against a state or government facility abroad or if such an offence is committed to compel a state to act or to abstain from acting.⁶¹⁰ It also provides that if an offence is committed on board an aircraft operated by the government of state, that specific state will have jurisdiction.⁶¹¹

The third common element provided for by all these conventions entails the obligation to capture and to prosecute or extradite a person who has committed an act classified as a terrorist act in terms of the conventions.⁶¹² Accordingly, a state on whose territory such a perpetrator is present or located must take all necessary measures to ensure that the person is captured⁶¹³. The captivity should occur according to domestic rules, regulations and procedures, and can proceed

⁶⁰⁶ Article 5(1)(b) of the *Convention against the Taking of Hostages* (1979).

⁶⁰⁷ Article 6 of the *Convention for Suppression of Terrorist Bombings* (1997) and Article 7 of the *Convention for the Suppression of Terrorist Funding* (1999).

⁶⁰⁸ UNODC 2003 <http://unodc.org>; Svarc "Law as a homeland security tool in the defence against terrorism" 108.

⁶⁰⁹ Article 6(2) of the *Convention for Suppression of Terrorist Bombings* (1997) and Article 7(2) of the *Convention for the Suppression of Terrorist Funding* (1999).

⁶¹⁰ Article 6(2)(b) and (d) of the *Convention for the Suppression of Terrorist Bombings* (1997) and Article 7(2)(b) and (d) of the *Convention for the Suppression of Terrorist Funding* (1999).

⁶¹¹ Article 6(2)(e) of the *Convention for the Suppression of Terrorist Bombings* (1997) and Article 7(2)(e) of the *Convention for the Suppression of Terrorist Funding* (1999).

⁶¹² Svarc "Law as a homeland security tool in the defence against terrorism" 108.

⁶¹³ Article 6 of the *Convention for the Suppression of Unlawful Seizure of an Aircraft* (1970), Article 6 of the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons* (1973) and Article 9 of the *Convention on the Physical Protection of Nuclear Material* (1980).

only for the time period that is required to establish prosecution or extradition.⁶¹⁴ Once the offender is captured, that particular state must investigate the case, inform all involved state parties of the facts or results, and decide whether or not it is going to exercise jurisdiction over the matter.⁶¹⁵ However, if a state decides to establish jurisdiction, that state has the obligation to take all necessary measures to ensure that the case is submitted to the appropriate authorities.⁶¹⁶ These authorities must proceed with the matter in a manner similar to other domestic criminal procedures.⁶¹⁷ Similarly, if such an offender is extradited, the receiving state must ensure prosecution. For the purposes of extradition, the offence will be deemed to have been committed on the territory of all the state parties that can exercise jurisdiction over the particular matter.⁶¹⁸ In terms of the conventions, extradition can take place if such an agreement exists between the states involved.⁶¹⁹ Furthermore, if such an agreement is absent, states can also rely on the conventions as a "legal basis" for the procedure.⁶²⁰ This common element is also referred to by Nigel White as a "weakness" due to the fact that the insertion of a discretion instead of an obligation can result in the non-conviction of certain perpetrators.⁶²¹ This is because of the fact that states who are responsible for or can be connected to the terrorist attack can decide to prosecute instead of extraditing, in order to ensure that the particular perpetrators are not held responsible for the terrorist attacks.⁶²²

Other common provisions are intended to enhance international cooperation in combatting terrorism.⁶²³ One of these provisions emphasizes that states must provide each other with assistance in the criminal prosecution of such a terrorist

⁶¹⁴ Article 6(1) of the *Convention for the Suppression of Unlawful Seizure of an Aircraft* (1970).

⁶¹⁵ UNODC 2003 <http://unodc.org>.

⁶¹⁶ Article 7 of the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (1971).

⁶¹⁷ Article 8 of the *Convention against the Taking of Hostages* (1979).

⁶¹⁸ Article 14(4) of the *Convention for the Suppression of Acts of Nuclear terrorism* (2005).

⁶¹⁹ Article 9(1) of the *Convention for the Suppression of Terrorist Bombings* (1997).

⁶²⁰ Article 11(1) of the *Convention for the Suppression of the Financing of Terrorism* (1999).

⁶²¹ White "The UN and counter-terrorism" 67.

⁶²² White "The UN and counter-terrorism" 67.

⁶²³ Svarc "Law as a homeland security tool in the defence against terrorism" 109.

or criminal offender.⁶²⁴ Moreover, states have the obligation to prevent such an attack from "occurring against other states by exchanging important information and coordinating administrative and other preventative measures."⁶²⁵ This cooperation is also fostered by stating that interpretation and application disputes must be submitted for arbitration.⁶²⁶

3.2.3 *Terrorism Conventions and the applicability of IHL*

As mentioned before, the IHL also contains numerous provisions prohibiting the use of terrorism.⁶²⁷ Article 33 of the fourth Geneva Convention determines that the use of terrorism or intimidating methods is prohibited.⁶²⁸ Also, article 51(2) of the Additional Protocol I and article 13(2) of the Additional Protocol II indicates that civilians may not be the object of any attacks.⁶²⁹ Article 4(2) of the Additional Protocol II also states that acts of terrorism against civilians no longer taking part in hostilities are prohibited.⁶³⁰ Thus, as derived from this discussion on terrorism, these acts are prohibited in both peace and war time.⁶³¹ This indicates that a specific act of terrorism can fall within the scope of both the terrorism Conventions and the IHL,⁶³² or as explained by Antonio Cassese, in this situation "there would be a combined simultaneous application of two different bodies to the same conduct."⁶³³ As a result, four of the terrorism conventions contain exclusion clauses which indicate that one or the other body must be applied.⁶³⁴ Jelena Pejic, a senior legal adviser for the ICRC, stated that the inclusion of such a principle illustrates that the criminal terrorist activities provided for by the UN

⁶²⁴ Article 12(1) of the *Convention for the Suppression of the Financing of Terrorism* (1999).

⁶²⁵ UNODC 2003 <http://unodc.org>.

⁶²⁶ Article 20(1) of the *Convention for the Suppression of Terrorist Bombings* (1997).

⁶²⁷ See Chapter 2.4.1 for the discussion on terrorism referring to certain articles in the *Geneva Conventions* as well as their *Additional Protocols* that prohibit acts of terrorism.

⁶²⁸ Article 33 of the *Geneva Convention IV* of 1949.

⁶²⁹ Article 51(1) of the *Additional Protocol I* of 1977 and Article 13(2) of the *Additional Protocol II* of 1979.

⁶³⁰ Article 4(2) of the *Additional Protocol II* of 1977.

⁶³¹ Cassese 2006 *JICJ* 948.

⁶³² O'Donnell 2006 *IRRC* 863.

⁶³³ Cassese 2006 *JICJ* 948.

⁶³⁴ O'Donnell 2006 *IRRC* 863.

Conventions should be used if such acts are committed in peacetime.⁶³⁵ This being said, the 1979 *Hostage Taking Convention* states that IHL instead of the specific terrorism Convention will apply if two requirements are met: if the specified act occurs within an armed conflict and the obligation of the state to prosecute or extradite is created by the provisions of IHL.⁶³⁶

Consequently, if such an obligation does not exist, the provisions of the relevant terrorism Convention will apply.⁶³⁷ In contrast, two of the other instruments, which include the 1997 *Terrorist Bombings* and the 2005 *Nuclear Material Conventions*, exclude such a criminalizing requirement. Instead, they determine that:⁶³⁸

The activities of armed forces during an armed conflict, as those terms are understood under IHL, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a state in the exercise of their official duties, inasmuch as they are governed by this Convention.

Accordingly, if such a specified conventional act is committed by state or armed forces during an armed conflict, IHL will be applicable irrespective of the lawfulness of the act.⁶³⁹ The exclusion of certain acts committed by state forces during an armed conflict, however, has been criticized and described as problematic by Jordan Paust.⁶⁴⁰ This exclusion principle conveys the message that the acts committed by state forces during an armed conflict can never amount to terrorism, regardless of whether or not they can be classified as such.⁶⁴¹ As inferred from the article, the application of this exclusion clause is dependent on the existence of an "armed group" engaging in these conventional activities within an "armed conflict."⁶⁴² The Red Cross has defined an armed force as any

⁶³⁵ Pejic "Armed conflict and terrorism" 185.

⁶³⁶ Article 12 of the *Convention against the Taking of Hostages* (1979).

⁶³⁷ O'Donnell 2006 *IRRC* 864.

⁶³⁸ Article 19(1) and (2) of the *Convention for the Suppression of Terrorist Bombings* (1997) and Article 4(1) and (2) of the *Convention for the Suppression of Acts of Nuclear Terrorism* (2005).

⁶³⁹ O'Donnell 2006 *IRRC* 866.

⁶⁴⁰ Paust "Terrorism as an international crime" 25.

⁶⁴¹ Paust "Terrorism as an international crime" 25.

⁶⁴² Trapp "The interaction of the international terrorism suppression regime" 172-173.

organized armed force, group or unit under a responsible command.⁶⁴³ Similarly, as stated before, an armed conflict has been identified as an international or non-international armed battle between certain specified parties.⁶⁴⁴ Excluded from the definition of armed conflict are internal disturbances such as riots, and isolated or sporadic acts of violence such as terrorism.⁶⁴⁵ In order to distinguish between an armed conflict and these sporadic acts of violence, the conflict must comply with the following criteria: a certain level of intensity must be reached, and the armed forces or parties involved must possess a certain structure of organisation.⁶⁴⁶

As discussed in Chapter 2, the requirement of intensity can be determined by analysing the existence of a list of factors in each individual case.⁶⁴⁷ Additional factors which can indicate that this specific requirement has been met include the involvement of military forces in responding to this violence, the usage of certain military weapons, as well as over-excessive damage and loss caused by the conflict.⁶⁴⁸ The second requirement which determines that the parties involved should possess a certain organisation structure has also been discussed in Chapter 2.⁶⁴⁹ In addition to the listed factors that can be considered when determining if the required organisational structure exists, assessment factors such as the existence of a command that provides others with orders or the ability to gain new fighters can also be taken into account.⁶⁵⁰ Also, the ability to launch attacks and to gain or remain in control of territory are indicative factors that a group possesses the required organisational structure.⁶⁵¹ Furthermore, the following distinguishing factors have also been established by the Red Cross and cited in important court cases.⁶⁵²

⁶⁴³ Article 43 of the *Additional Protocol I* (1977).

⁶⁴⁴ ICRC 2008 <http://icrc.org>.

⁶⁴⁵ Article 1(2) of the *Additional Protocol II* (1977).

⁶⁴⁶ ICRC 2008 <http://icrc.org>.

⁶⁴⁷ See paragraph 2.1 for the list of factors that can be taken into account in order to determine if the requirement of intensity has been met.

⁶⁴⁸ ICRC 2012 <http://icrc.org>.

⁶⁴⁹ See Chapter 2.1 for an elaboration of the requirement that the parties to the conflict should possess a certain organisation structure.

⁶⁵⁰ ICRC 2011 <http://icrc.org>.

⁶⁵¹ *Prosecutor v Akayesu* ICTR-96-4-T para 626.

⁶⁵² *Prosecutor v Akayesu* ICTR-96-4-T para 619.

- i) the government views the fighters as belligerents or recognizes them as such for IHL application;
- ii) these fighters views themselves as legitimate fighters;
- iii) the situation is an international threat and thus it should be reviewed by the UN.

Therefore, unlike the *Hostage Taking Convention*, which specifies that IHL would instead be applicable in the fight for self-determination, the exclusion of such specifications in the *Bombings* and *Nuclear Conventions* indicates that it will be applicable instead of IHL.⁶⁵³ However, it is important to note that the second part of the article cited indicates that bombings or nuclear attacks at the hands of state forces that can occur outside the scope of an armed conflict will also be regulated by IHL.⁶⁵⁴ The reason for including such a provision in the *Bombings* and *Nuclear Conventions* is to ensure that an otherwise lawful act is not identified and criminalized as an act of terrorism.⁶⁵⁵ With specific reference to the *Bombings Convention*, the use of explosives is an inherent part of an armed conflict.⁶⁵⁶ Therefore, IHL provides for the permissible use of such devices by armed forces in certain circumstances. However, IHL prohibits the use of lethal devices such as biological and chemical weapons.⁶⁵⁷ Like all other acts conducted by armed forces, the use of explosives is controlled by certain general conditions, observations and rules. The armed forces have an obligation to distinguish between "civilians and combatants and civilian objects and military objectives and they should direct their attacks only at military objectives."⁶⁵⁸ Furthermore, these attacks should be proportional, a statement which indicates that it should entail the possibility of obtaining an important military advantage.⁶⁵⁹ Because of the fact that the usage of these explosive devices can result in immense human suffering, the *1980 Convention on Certain Conventional Weapons* and its *Protocols* were

⁶⁵³ O'Donnell 2006 *IRRC* 868.

⁶⁵⁴ O'Donnell 2006 *IRRC* 870-871.

⁶⁵⁵ Trapp "The interaction of the international terrorism suppression regime" 173.

⁶⁵⁶ O'Donnell 2006 *IRRC* 864.

⁶⁵⁷ O'Donnell 2006 *IRRC* 865.

⁶⁵⁸ Dugard *International Law* 528.

⁶⁵⁹ Dugard *International Law* 528.

also adopted as an addition to these obligations.⁶⁶⁰ This *Convention* prohibits the use of certain explosive devices such as non-detectable fragments,⁶⁶¹ land mines and booby-traps, in conducting an armed battle.⁶⁶²

The provision which determines that terrorist activities occurring during an armed conflict will be regulated by IHL instead of the convention applicable to that specific terrorist act was also included in the *Nuclear Convention* to indicate that the particular convention does not regulate the lawfulness regarding the use of nuclear weapons during an armed conflict, as this is governed by a different branch of law.⁶⁶³ However, like the use of explosives, the use of nuclear weapons can result in grave consequences and cause immense human suffering.⁶⁶⁴ Nuclear weapons are described by the Red Cross as those weapons that cause destruction as well as suffering and have uncontrollable and long-term effects.⁶⁶⁵ Due to the lack of a general international rule prohibiting the use of such weapons,⁶⁶⁶ the ICJ released an advisory opinion declaring the use of such weapons as unlawful.⁶⁶⁷ In this opinion it was stated that: "The use of nuclear weapons can never be compatible with humanitarian law as the effects caused by these weapons cannot be limited to military targets."⁶⁶⁸

In addition, the two conventions analysed above, together with the *1999 Terrorism Funding Convention*, contain the following provision:⁶⁶⁹

Nothing in this Convention shall affect the rights, obligation and responsibilities of states and individuals under international law, in particular the purpose and principles of the Charter of the UN and IHL.

⁶⁶⁰ ICRC 2003 <http://icrc.org>.

⁶⁶¹ *Protocol I on Non-detectable Fragments to the Convention on Certain Conventional Weapons* (1980).

⁶⁶² *Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices to the Convention on Certain Conventional Weapons* (1980).

⁶⁶³ Perera date unknown <http://legal.un.org>.

⁶⁶⁴ Dugard *International Law* 522.

⁶⁶⁵ ICRC 2003 <http://icrc.org>.

⁶⁶⁶ ICRC 2003 <http://icrc.org>.

⁶⁶⁷ ICJ Advisory opinion *Legality of the threat or use of nuclear weapons* (1996).

⁶⁶⁸ ICJ Advisory opinion *Legality of the threat or use of nuclear weapons* (1996) para 92.

⁶⁶⁹ Article 19(1) of the *Convention for the Suppression of Terrorist Bombings* (1997), Article 4(1) of the *Convention for the Suppression of Acts of Nuclear Terrorism* (2005) and Article 21 of the *Convention for the Suppression of the Financing of Terrorism* (1999).

However, to the contrary, the *1999 Terrorism Funding Convention* does not contain a provision that expressly excludes the application of this specific treaty in certain circumstances.⁶⁷⁰ Instead, article 2 determines that the treaty will be applicable to the financing of an attack intended to cause harm to civilians or those not taking active part in hostilities.⁶⁷¹ Furthermore, the specified application requires the intent of compelling a third party to act in a certain manner.⁶⁷² Daniel O'Donnell explains that this provision indicates that the financing of attacks intended to be launched against military personnel during an armed conflict does not constitute an act of terrorism.⁶⁷³ Consequently, for such a financed attack to be regarded as an act of terrorism for the purposes of the 1999 Convention, the attack must be intended to be launched against civilians or non-combatants or combatants who are no longer participating in the conflict.⁶⁷⁴ The inclusion of such a provision indicates that although acts of terrorism committed within an armed conflict are not criminalized by these instruments, there is an emerging consensus that these acts may be punishable as war crimes.⁶⁷⁵

As described in Chapter 2, ISIS has launched several hostage-taking attacks against both civilians and military forces.⁶⁷⁶ Furthermore, members of this group have detonated several car and suicide bombs, resulting in the death and injury of many people.⁶⁷⁷ The group has also been receiving funds in order to enable it to launch such attacks.⁶⁷⁸ This seems to indicate that the actions of this group fall within the scope of the terrorism conventions.⁶⁷⁹ However, the acts of this particular group have been perpetrated during an on-going armed conflict within

⁶⁷⁰ O'Donnell 2006 *IRRC* 869.

⁶⁷¹ Article 2(1)(b) of the *Convention for the Suppression of the Financing of Terrorism* (1999).

⁶⁷² Article 2(1)(b) of the *Convention for the Suppression of the Financing of Terrorism* (1999).

⁶⁷³ O'Donnell 2006 *IRRC* 869.

⁶⁷⁴ O'Donnell 2006 *IRRC* 869.

⁶⁷⁵ Cassese 2006 *JICJ* 945-946.

⁶⁷⁶ Please refer to Chapter 1.1 on the discussion regarding the tactics and methods implemented by the contemporary group ISIS.

⁶⁷⁷ See Chapter 1.1 on the discussion regarding the tactics and methods implemented by the contemporary group ISIS.

⁶⁷⁸ See Chapter 1.1 on the discussion regarding the tactics and methods implemented by the contemporary group ISIS.

⁶⁷⁹ See Chapter 1.1 on the discussion regarding the tactics and methods implemented by the contemporary group ISIS.

the territory of both Syria and Iraq. Also, the characteristics of this group seem to indicate that they should rather be classified as an armed group, as the members of this group are organized and act "under a command responsible for that party."⁶⁸⁰ According to Daniel O'Donnell, the methods resorted to by such groups during an armed conflict should not be associated with terrorism.⁶⁸¹ He continues to state that by branding such acts as terrorism, "the incentive of such groups to distinguish between civilians and military targets is weakened."⁶⁸² Also, the application of the conventions to the acts perpetrated by these modern groups will result in unintended effects, as regular armed forces who launch attacks against civilians might be protected by the exclusion clauses.⁶⁸³

On the other hand, the US prefers to refer to ISIS as a terrorist organisation in order to justify the use of force in the form self-defence against terrorism.⁶⁸⁴ After the 9/11 attacks, this form of what was called self-defence against terrorism was developed in order to circumvent certain international laws and regulations.⁶⁸⁵ More specifically, it can be seen as an attempt to circumvent the international view that the right to use force in the form of self-defence cannot be exercised against non-state actors operating in the territory of another state.⁶⁸⁶ This argument was countered by stating that if such groups operating on the territory of another state present a threat to the interest of other states or to international peace and security, and the territorial state does not take steps to eradicate this threat, force may be use in order to eradicate such a group.⁶⁸⁷ With specific reference to the attacks launched by AQ, the US supported its argument by stating that the skills involved in launching those attacks are an indication that non-state actors are also able to engage in armed conflict.⁶⁸⁸ Furthermore, the US justified its invasion of Afghanistan by arguing that this group had to be

⁶⁸⁰ ICRC date unknown <http://icrc.org>.
⁶⁸¹ O'Donnell 2006 *IRRC* 868.
⁶⁸² O'Donnell 2006 *IRRC* 868.
⁶⁸³ O'Donnell 2006 *IRRC* 868.
⁶⁸⁴ Lekas 2015 *EILR* 334.
⁶⁸⁵ Dugard *International Law* 505-506.
⁶⁸⁶ Dugard *International Law* 506.
⁶⁸⁷ Dugard *International Law* 505.
⁶⁸⁸ Lekas 2015 *EILR* 328.

eliminated as it was being provided with a safe haven from which it was able to plan, orchestrate and launch attacks.⁶⁸⁹ With regard to modern groups such as ISIS and the Khorasan in Syria, the US argues that self-defence against terrorism may be employed as a response where the specific target group is related or affiliated to AQ.⁶⁹⁰ Therefore, as explained by Professor Johan van der Vyver, the US continues to refer to ISIL instead of ISIS, as the group still had connections with AQ at that particular stage and their methods and tactics were still closely related to terrorism.⁶⁹¹ However, as explained in Chapter 2, the quarrel between these groups resulted in a name change as well as the adaptation of modern fighting methods that characteristic of skilled state forces.⁶⁹² Although the international community has become increasingly receptive of the notion of the use of self-defence in these situations,⁶⁹³ and the Security Council has adopted a more active approach with regard to responding to these threats,⁶⁹⁴ it is still important that the particular state should be able to indicate that the response is necessary and that the threat of attack presents an immediate threat to its interest and security.⁶⁹⁵ As explained in Chapter 2,⁶⁹⁶ the initial launching of attacks by the US in Syria was justified by stating that the Khorasan terrorist group in particular was planning attacks against the US.⁶⁹⁷ However, with specific regard to ISIS, on the other hand, it has been argued that this group does not present an immediate threat to the US and, therefore, intervention is not a necessity at this stage.⁶⁹⁸ This argument and response must, therefore, be used carefully, as the necessary elements must be present in justification. The use of this response in the wrong circumstances could easily be regarded as a "violation

⁶⁸⁹ Ciment *World Terrorism* 715; Dugard *International Law* 505.

⁶⁹⁰ Arimatsu and Schmitt 2014 *CJTLB* 14.

⁶⁹¹ Van der Vyver 2015 <http://works.bepress.com>; Lekas 2015 *EILR* 334.

⁶⁹² See Chapter 2.1.2 for an explanation on why AQ disavowed ISIS and how ISIS, therefore, developed into a different group with characteristics that cannot be associated with terrorism.

⁶⁹³ Tams 2009 *EJIL* 378.

⁶⁹⁴ Tams 2009 *EJIL* 376-377.

⁶⁹⁵ Lekas 2015 *EILR* 329.

⁶⁹⁶ See Chapter 2.1, which describes the justification for the US extending its operations to Syria.

⁶⁹⁷ President Obama 23 September 2014 <http://whitehouse.gov>.

⁶⁹⁸ Lekas 2015 *EILR* 335-336; Van der Vyver 2015 <http://works.bepress.com>.

of the international law."⁶⁹⁹ Also, the fact that Al-Assad has not expressly provided the US with consent to launch these operations within the territory of Syria could cast doubt on the legitimacy of this response.⁷⁰⁰ Although Al-Assad has not provided the US with express consent, it has been argued that because Al-Assad is not responding and is trying to eliminate this threat, this is an indication of implied consent.⁷⁰¹

Certain authors also prefer to categorise ISIS as a terrorist organisation.⁷⁰² However, when reflecting on the comprehensive discussion with regards to the elements and characteristics of the terrorism, it is clear that ISIS is not a terrorist group. Although the members of this group are using violent tactics which result in the spreading of fear among the populations of both Iraq and Syria, this is not their main objective. Instead, it is merely a method to ensure that the members of society under its control are regulated and organized and that they obey ISIS as a governing body. By resorting to these measures it ensures that there are no interruptions and complications in achieving its actual goal of establishing the Caliphate. Furthermore, ISIS does not consist of small terrorist networks that function underground and, as stated before, the group has discovered ways to generate and secure its own income and to function properly without relying on international funding and support.⁷⁰³ Due to the fact that it has developed modern ways of evading trackable measures, Counter-terrorism methods will not have an effect on its operations.⁷⁰⁴ Consequently, as said by Stephen Walt, ISIS can instead be seen as a "revolutionary state" consisting of a complex structure with representative forces that are able to engage in armed conflict.⁷⁰⁵ The members of this group possess the skills and ability to participate in open battles and confrontations with both local and international state forces.

⁶⁹⁹ Black and Roberts 2014 <http://theguardian.com>; Arimatsu and Schmitt 2014 *CJTLB* 7; Van der Vyver 2015 <http://works.bepress.com>.

⁷⁰⁰ Van der Vyver 2015 <http://works.bepress.com>.

⁷⁰¹ Arimatsu and Schmitt 2014 *CJTLB* 9-10.

⁷⁰² Lekas 2015 *EILR* 314; Spencer *The complete infidel's guide to ISIS* xxi.

⁷⁰³ Cronin 2015 *Foreign Affairs* 87-98.

⁷⁰⁴ Cronin 2015 *Foreign Affairs* 87-98.

⁷⁰⁵ Walt 2015 *Foreign Affairs* 42; Sekulow *Rise of ISIS* 27-42.

3.4 Conclusion

In response to an increase in terrorist activities during the second half of the 20th century, states developed several local policies and measures. However, as is evident in acts perpetrated by well-known terrorist organisations such as Al-Qaeda and Boko Haram, terrorism can have severe cross-border effects, and several regional policies were also, therefore, developed in response. These measures, though, were not effective in eradicating terrorism, and as a result a global strategy to counter terrorism was developed in 2005.

There are 14 international terrorism conventions, each classifying a specific terrorist act as a criminal activity. Included, for instance, are acts such as hostage taking, offences and acts committed on board an aircraft, terrorist bombings and terrorist funding. The convention relating to the particular offence describes specific terrorist acts and legitimises various responses to these acts. The measures provided for by these conventions have proven to be sufficient to cripple and negatively affect the sustainability of terrorist groups such as Al-Qaeda and Boko Haram. For example, the closing down of sources of funding, the destruction of networks of terrorist cells, the disruption of organisational structures, the killing of leaders, and the interruption of supply routes have adversely affected the proper functioning and continued existence of these groups.

ISIS presents an immense challenge to the applicability and effectiveness of the international terrorism conventions. It has demonstrated that it has the ability to constantly adapt to circumstances, it does not rely on detectable sources for financial support as it generates an income by resorting to criminal activities, and the group has a complex structure and operates on different levels which will not be disrupted by merely eliminating the leadership. Also, the fact that these activities are perpetrated within a continuous armed conflict within Iraq and Syria results in IHL applying, to the exclusion of the international terrorism conventions.

As a result, although the US and several authors prefer to categorize ISIS as a terrorist organisation, it is clear that its characteristics seem to indicate otherwise. ISIS should rather be described as a modern, asymmetrical, organized armed group, as they have an organisational structure, act under a specific command and, as stated by Stephen Walt, have the ability to engage in armed conflict. Consequently, the counterterrorism framework is not appropriate as a paradigm within which to respond to ISIS, a fact which makes it important to investigate the applicability of IHL to the situation. This will be done in Chapter 4.

Chapter 4

International humanitarian law and the use of force in response to armed attacks by ISIS

4.1 Introduction

As established in Chapters 2 and 3, ISIS is not a terrorist organisation and it is, therefore, impossible to respond to this group by using existing international and non-international counter-terrorism measures. This group has revealed the ability to make war like a state armed force, and the acts it has perpetrated have included atrocities that literally "shock the conscience of humanity."⁷⁰⁶

For that reason, it is necessary to determine which other internationally legitimated methods can be implemented to respond to this group. The measures that will be considered include the assignment of individual criminal responsibility to members of the group, acting in individual or collective self-defence, and UN authorisation of a response. These responses are regulated by IHL, which contains rules designed primarily to protect innocent civilians against the negative consequences of war (*jus in bello*). However, for IHL to be applicable in a particular situation, the situation must amount to an armed conflict,⁷⁰⁷ and the ICTY has recognised several elements that should be present for a situation to be recognised as an armed conflict.⁷⁰⁸ The sources of IHL distinguish between international and non-international armed conflict,⁷⁰⁹ and the importance of this distinction is that it gives rise to different levels of humanitarian protection applicable to each category.

Modern conflicts such as those occurring in Iraq and Syria are sufficiently diffuse in character to present a challenge to the strict classification of them as either one

⁷⁰⁶ Bensouda 2015 <http://icc-cpi.int>.

⁷⁰⁷ Crowe and Weston-Scheuber *Principles of international humanitarian law* 1.

⁷⁰⁸ *Prosecutor v Tadic* IT-94-1-T (1995) para 97.

⁷⁰⁹ *Hague Conventions* (1907); *Geneva Conventions* (1949); *Additional Protocols* (1977).

thing or another.⁷¹⁰ As in Syria and Iraq, a single conflict can contain elements of different categories of conflict, and the intervention of and assistance provided by third states can change the status of a conflict. The existence of these modern mixed or hybrid armed conflicts⁷¹¹ complicates the application of IHL, as it is not clear which category of rules and regulations should be applied in these situations.⁷¹²

Consequently, the argument that the distinction between the two conflict categories should be eroded will be examined. Such erosion would make provision for the application of IHL to modern conflicts. Although the status of a particular conflict is irrelevant to the response of non-authorised humanitarian intervention, which will be analysed in Chapter 5, it is important to refer to these categories as the availability of responses is restricted where a conflict is non-international in character. State sovereignty obliges the international community to respect states' ability to deal with domestic problems without interference. Also, where a non-state actor is a party to a particular internal conflict, it is unclear whether the use of force by a second state may be legitimate.

The UN Charter contains a prohibition on the use of force⁷¹³ except in response to armed conflict in two exceptional circumstances, namely individual or collective self-defence,⁷¹⁴ and with the authorisation of the UN SC.⁷¹⁵ With regards to the non-state actor ISIS, it will be determined whether individual or collective self-defence can be used against this group in Iraq and Syria by referring to supporting and opposing arguments. Also, it will be established under which circumstances the UN SC will authorise the use of force, and if such authorisation to respond to ISIS is a possibility.

⁷¹⁰ Lamp 2011 *JCSL* 295; Kalshoven *Reflections on the law of war* 137.

⁷¹¹ Vité 2009 *IRRC* 83; Paulis and Vashakmadze 2009 *IRRC* 95.

⁷¹² Paulus and Vashakmadze 2009 *IRRC* 108.

⁷¹³ Article 2(4) of the *Charter of the UN* (1945).

⁷¹⁴ Article 51 of the *Charter of the UN* (1945).

⁷¹⁵ Chapter VII of the *Charter of the UN* (1945).

4.2 International humanitarian law

Although IHL already existed – it is also referred to as the Law of Armed Conflict - the atrocities of both World Wars resulted in its development and adaptation to regulate "conduct on the battlefield"⁷¹⁶ through combat rules that "limit unnecessary killing and suffering."⁷¹⁷ Therefore, this particular body of international law is based on the idea that:⁷¹⁸

The legitimate scope of military action is not unlimited and that those who are or have been rendered non-combatants are entitled to impartial humanitarian concern and that both they and those charged with their care and welfare in the rendering of humanitarian aid are not legitimate targets in hostilities.

IHL is divided into the *jus in bellum* and *jus in bello*.⁷¹⁹ The *jus in bellum* regulates the circumstances in which armed conflict may be permitted.⁷²⁰ This is specifically regulated by the prohibition on the use of force contained in the UN Charter⁷²¹ as well as the right to self-defence,⁷²² which will be comprehensively analysed later in Chapter 4.⁷²³ The *jus in bello* regulates progressive armed conflicts and it remains applicable, regardless of the lawfulness of the particular armed conflict.⁷²⁴ IHL will be applicable from the commencement of an armed conflict, and it will continue to apply until the hostilities are terminated.⁷²⁵

The sources of IHL include the Hague Conventions⁷²⁶ and Geneva Conventions⁷²⁷ with their Protocols.⁷²⁸ The Hague Conventions, which are accepted as customary

⁷¹⁶ Solis *The law of armed conflict* 7.

⁷¹⁷ Solis *The law of armed conflict* 8.

⁷¹⁸ McCoubrey *International Humanitarian Law* 1.

⁷¹⁹ McCoubrey *International Humanitarian Law* 1.

⁷²⁰ McCoubrey *International Humanitarian Law* 1.

⁷²¹ Article 2(4) of the *Charter of the UN* (1945).

⁷²² Article 51 of the *Charter of the UN* (1945).

⁷²³ Refer to Chapter 4.3 for a comprehensive analysis of the *jus in bellum*.

⁷²⁴ McCoubrey *International Humanitarian Law* 1.

⁷²⁵ McCoubrey *International Humanitarian Law* 29.

⁷²⁶ *Hague Convention III Concerning the Opening of Hostilities; Hague Convention IV Concerning the Laws and Customs of War on Land; Hague Convention V Concerning the Rights and Duties of Neutral Powers and Persons in Case of War on Land; Hague Convention VI Concerning the Status of Enemy Merchant Ships at the Outbreak of Hostilities; Hague Convention VII Concerning the Conversion of Merchant Ships into Warships; Hague Convention VIII Concerning the Laying of Automatic Submarine Contact*

international law,⁷²⁹ were created in order to establish the "rules and laws of war."⁷³⁰ These Conventions are important as they force the parties to a conflict to limit the means used to what is necessary to achieve military objectives⁷³¹ by prohibiting the use of certain types of weapons.⁷³²

The Geneva Conventions, on the other hand, contributed to the establishment of what is known as contemporary IHL.⁷³³ These conventions contain provisions that directly relate to the protection of civilians and others who are not participants in the conflict.⁷³⁴ It was created with the idea that those who are mere victims of a war should be "treated humanely."⁷³⁵ These conventions have also been supplemented by their Additional Protocols with the objective of adapting the rules of IHL to provide for issues and challenges presented by modern day conflicts.⁷³⁶ These two sources of regulation do not function separately, as the ICJ stated in the *Legality of the Threat or Use of Nuclear Weapons* advisory opinion "these two systems have become so inter-related that they are considered to form one single complex system, known as IHL."⁷³⁷

Mines; Hague Convention IX Concerning Bombardment by Naval Forces in Times of War; Hague Convention XI Concerning Certain Restrictions with Regard to the Exercise of the Right to Capture in Naval War; Hague Convention XIII Concerning the Rights and Duties of Neutral Powers in Naval War (1907).

⁷²⁷ Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention III Concerning the Treatment of Prisoners of War; Geneva Convention IV Concerning the Protection of Civilian Persons in Time of War (1949).

⁷²⁸ Additional Protocol I and II (1977) as well as Additional Protocol III (2005).

⁷²⁹ Greenwood "Historical development and legal basis" 28.

⁷³⁰ Dugard *International Law* 520.

⁷³¹ Dugard *International Law* 520.

⁷³² Dugard *International Law* 520, 521; in addition, *Protocol for the Prohibition of the Use in War of Asphyxiating Poisonous or Other Gases, and of Bacteriological Methods of Warfare* (1925), *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (1993), *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (1997).

⁷³³ ICRC 2004 <http://icrc.org>.

⁷³⁴ Dugard *International Law* 520.

⁷³⁵ Dugard *International Law* 524.

⁷³⁶ Crowe and Weston-Scheuber *Principles of international humanitarian law* 39-41; see Chapter 4.3.1 and 4.3.2 for a comprehensive analysis of the *Additional Protocols I and II* (1977).

⁷³⁷ *Legality of the Threat or Use of Nuclear Weapons* 1996 ICJ Reports 256.

The body of IHL contains several measures to ensure that these rules and regulations are effectively enforced.⁷³⁸ They include the obligation of a state to respect the norms and principles of IHL,⁷³⁹ and to ensure the enforcement of IHL through incorporation of these norms into national law.⁷⁴⁰

In addition to these measures, there are also several bodies or organs (mechanisms) which are responsible for ensuring that the rules and norms of this branch of international law are enforced. Internationally they are the UN, the Human Rights Commission, the Fact-Finding Commission and the ICRC.⁷⁴¹ Further, the UN has created the criminal tribunals of Yugoslavia and Rwanda, which were primarily tasked with punishing those who violated IHL during the conflicts that occurred in those areas.⁷⁴² Also, the ICC was established by the *Rome Statute*⁷⁴³ as a permanent institution with the purpose of punishing individuals who have committed serious crimes.⁷⁴⁴ These crimes are acts that shock the conscience of human kind and, therefore, are of international concern.⁷⁴⁵ The crimes punishable by the ICC include the crime of genocide, crimes against humanity, crime of aggression, and war crimes.⁷⁴⁶ Due to the fact that the court has jurisdiction over war crimes, it actively participates in the enforcement and promotion of IHL. War crimes are those acts that gravely or seriously violate the principles of IHL,⁷⁴⁷ and the *Rome Statute* lists these acts in Article 8.⁷⁴⁸ They include the bombarding of villages, denying prisoner of war status to legitimate combatants, and torturing and killing.⁷⁴⁹ However, the list is not exhaustive and other acts can also constitute war crimes for the purposes of

⁷³⁸ ICRC 2004 <http://icrc.org>; Zyberi 2012 <http://uio.no>.

⁷³⁹ Henckaerts, Doswald-Beck and Alvermann *Customary international humanitarian law* 495; Zyberi 2012 <http://uio.no>.

⁷⁴⁰ Zyberi 2012 <http://uio.no>.

⁷⁴¹ Zyberi 2012 <http://uio.no>.

⁷⁴² Gesser 1995 <http://icrc.org>.

⁷⁴³ Crowe and Weston-Scheuber *Principles of international humanitarian law* 173.

⁷⁴⁴ ICC date unknown <http://icc-cpi.int>.

⁷⁴⁵ Preamble of the *Rome Statute* (2002).

⁷⁴⁶ Article 5 of the *Rome Statute* (2002); Cryer *et al* *An Introduction to International Criminal Law and Procedure* 1.

⁷⁴⁷ Crowe and Weston-Scheuber *Principles of international humanitarian law* 179.

⁷⁴⁸ Article 8 of the *Rome Statute* (2002).

⁷⁴⁹ Article 8(2)(a) of the *Rome Statute* (2002).

ICC jurisdiction.⁷⁵⁰ The ICTY established a test which can be used to determine if an act could amount to a war crime.⁷⁵¹ In the *Tadic* case it was emphasised that any serious violation of a rule in customary international law or IHL which protects an important value and which can result in grave consequences if not respected, and which can result in individual criminal responsibility, constitutes a war crime.⁷⁵² The tribunals and the ICC indirectly ensure that IHL is adhered to, as the punishment of this behaviour can act as a deterrent.⁷⁵³ Also, the ICJ promotes the progressive application of IHL by interpreting and defining important humanitarian principles in cases heard by the court.⁷⁵⁴ As emphasised by Vincent Chetail, the case law of the ICJ is important to establish the legal framework of humanitarian law.⁷⁵⁵ Nationally, states and NGO's are relied upon as observers of the effective application of IHL.⁷⁵⁶

Yet, despite all these measures, mechanisms and bodies, the effective functioning of IHL is negatively affected by the behaviour of modern non-state actors such as ISIS. The actions specifically of this group are nullifying the protective function of this body of international law. The tactics being employed by ISIS to achieve its objective of establishing a caliphate in the Middle East are expressly prohibited by provisions contained in the four Geneva Conventions as well as in both of the Additional Protocols. As explained in Chapter 2, ISIS deliberately brutalises, shocks and horrifies in order to ensure compliance and cooperation.⁷⁵⁷ They disproportionately⁷⁵⁸ and indiscriminately⁷⁵⁹ attack people in urban areas⁷⁶⁰ in order to enlarge the impact of their victories.⁷⁶¹ They also capture foreigners with

⁷⁵⁰ Cryer *et al* *An introduction to International Criminal Law and Procedure* 271.

⁷⁵¹ Cryer *et al* *An introduction to International Criminal Law and Procedure* 268.

⁷⁵² *Prosecutor v Tadic* IT-94-1-AR72 (1995).

⁷⁵³ Cryer *et al* *An introduction to International Criminal Law and Procedure* 269.

⁷⁵⁴ Chetail 2003 *IRRC* 235.

⁷⁵⁵ Chetail 2003 *IRRC* 235.

⁷⁵⁶ Zyberi 2012 <http://uio.no>.

⁷⁵⁷ Refer to Chapter 2 for a comprehensive analysis of the tactics, methods and weapons used by ISIS.

⁷⁵⁸ ICRC "IHL and the challenges of contemporary armed conflicts" 52-53.

⁷⁵⁹ ICRC "IHL and the challenges of contemporary armed conflicts" 49-52.

⁷⁶⁰ ICRC 2007 *IRRC* 732-733.

⁷⁶¹ Refer to Chapter 2 for a description of the tactics, methods and weapons used by ISIS, as well as the specific groups targeted by them.

the purpose of torturing and murdering them in an inhumane and shocking manner.⁷⁶² Women are captured and used as sex slaves⁷⁶³ while children are recruited as soldiers. They have also launched attacks against religious and protected historical sites,⁷⁶⁴ private homes and dwellings, as well as businesses.⁷⁶⁵ Villages containing inhabitants who do not cooperate have been deprived of essential resources such as water and food.⁷⁶⁶ People have been forcefully displaced without assistance or support, resulting in grave human rights violations.⁷⁶⁷ Humanitarian aid workers are attacked⁷⁶⁸ and they are prevented from providing assistance to the people affected by the conflict.⁷⁶⁹

All of these activities are prohibited by article 8 of the *Rome Statute*, but the process of prosecuting the members of ISIS is complicated by the fact that both Iraq and Syria are not parties to the ICC.⁷⁷⁰ Although the UN SC can refer a situation to the ICC, this process is constantly prevented by two veto powers, namely Russia and China.⁷⁷¹ As a result, IHL in this situation can be seen as ineffective or even inapplicable, as violations of these rules do not lead to any consequences. State armed forces are not trained to deal with this type of behaviour on the battlefield, and as a result they also disregard the principles of IHL and adapt their tactics and behaviour in order to enable them to confront this challenge.⁷⁷² The ICRC has described this disregarding of IHL as an immense concern, as it violates the principles of humanitarian law.⁷⁷³ As stated before, these principles of humanitarian law were created with the objective of preventing

⁷⁶² Stern and Berger *ISIS: The state of terror* 2; Article 37 of the *fourth Geneva Convention* (1949).

⁷⁶³ Human Rights Watch 2015 <http://hrw.org>; Article 27 of the *fourth Geneva Convention* (1949).

⁷⁶⁴ Article 53 of *Additional Protocol I* and article 16 of *Additional Protocol II* (1977).

⁷⁶⁵ Article 53 of the *Geneva Convention IV* (1949); article 52 of *Additional Protocol I* (1977).

⁷⁶⁶ Alkhshali and Smith-Spark 2015 <http://cnn.com>; article 5 of *Additional Protocol II* (1977).

⁷⁶⁷ IDMC 2015 <http://internal-displacement.org>; UNHCR 2015 <http://unhcr.org>; article 17 of *Additional Protocol II* (1977).

⁷⁶⁸ UN SC 2014 <http://un.org>; ICRC 2007 *IRRC* 720.

⁷⁶⁹ Krinninger 2015 <http://dandc.edu>.

⁷⁷⁰ Bensouda 2015 <http://icc-cpi.int>.

⁷⁷¹ UN News Centre 2014 <http://un.org>.

⁷⁷² ICRC 2007 *IRRC* 732.

⁷⁷³ ICRC 2007 *IRRC* 733.

a repetition of the suffering and shocking violations that occurred during WWII.⁷⁷⁴ Nevertheless, despite all the efforts of the international community, innocent civilians today are even more horribly affected by the consequences of war,⁷⁷⁵ and are still the victims of IHL violations.⁷⁷⁶ The recurrence of such events in the modern world, with all these preventative provisions already in place, is bound to affect the popular opinion of international law negatively, and result in a general distrust and lack of faith in its protection.

However, in order to be able conclusively to determine if IHL has been violated it is important to determine if a particular situation amounts to an "armed conflict," as this branch of international law is applicable only to armed conflicts.⁷⁷⁷ Consequently, the definition of this term is of the utmost importance to understanding the functioning of IHL.⁷⁷⁸ The definition of armed conflict indicates that it can be international or non-international in character⁷⁷⁹ and, therefore, the difference between these two types of armed conflicts will also be examined.⁷⁸⁰

4.2.1 Armed conflict defined

Common Article II of all four of the *Geneva Conventions* determines that "IHL is applicable to all cases of declared war or any other armed conflict."⁷⁸¹ The term armed conflict, however, has not been defined in the Geneva Conventions or the Additional Protocols I and II.⁷⁸² The *Vienna Convention* determines that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the term of the treaty in their context and in the light of its object and purpose."⁷⁸³ When analysing the provisions of the Geneva Conventions and the

⁷⁷⁴ Refer to Chapter 4.2 for an explanation of the establishment of IHL.

⁷⁷⁵ European Commission 2015 <http://ec.eurpoa.eu>.

⁷⁷⁶ ICRC 2007 *IRRC* 719.

⁷⁷⁷ Crowe and Weston-Scheuber *Principles of international humanitarian law* 1.

⁷⁷⁸ See Chapter 4.3 for an explanation of armed conflict.

⁷⁷⁹ Crowe and Weston-Scheuber *Principles of international humanitarian law* 1.

⁷⁸⁰ See Chapter 4.3.1 and 4.3.2 for a discussion of international and non-international armed conflicts.

⁷⁸¹ Common Article II of all four *Geneva Conventions* (1949).

⁷⁸² Balendra 2007 *CLR* 2469.

⁷⁸³ Article 31 of the *Vienna Convention* (1969).

Additional Protocols I and II, it is clear that these documents have the purpose of distinguishing between international and non-international armed conflicts.⁷⁸⁴ This distinction was confirmed in the *Tadic* case, which defined an armed conflict as a resort to armed force or protracted armed violence.⁷⁸⁵ Consequently, the ICTY indicated that armed conflicts have two requirements, which are some sort of organisation of the parties involved and a certain level of intensity.⁷⁸⁶ The requirement of organisation⁷⁸⁷ was confirmed in the *Haradinaj* case, where it was said that "conflict can only exist between parties that are sufficiently organised to confront each other with military means."⁷⁸⁸ The condition of intensity, on the other hand, entails a certain number of casualties and a certain level of destruction caused, as well as the necessity to use force to terminate the violence.⁷⁸⁹ The ICC added the requirement of protraction in the *Diylo* case, and indicated that this element requires the "armed groups to have the ability to plan and carry out military operations for a prolonged time."⁷⁹⁰

These general characteristics of armed conflict were confirmed at the Hague Conference in 2010, in the *Final report on the meaning of armed conflict in International Law*.⁷⁹¹ In this report it was indicated that these criteria had been developed with the purpose of distinguishing more serious armed conflict from mere internal disturbances, isolated or sporadic acts of violence, short-lived insurrections, or terrorism, to which IHL would not be applicable.⁷⁹² Therefore, the importance of establishing if a situation amounts to an armed conflict is specifically based on the applicability of the IHL.⁷⁹³ If an armed conflict exists, IHL will be able to provide for the legal protection of innocent people and the

⁷⁸⁴ Balendra 2007 CLR 2469.

⁷⁸⁵ *Prosecutor v Tadic* IT-94-1-T (1995) para 70.

⁷⁸⁶ *Prosecutor v Tadic* IT-94-1-T (1995) para 70.

⁷⁸⁷ *Prosecutor v Boskoski and Turculovskip* IT-04-82-T (2008) para 177.

⁷⁸⁸ *Prosecutor v Haradinaj* IT-04-84-T (2008) para 60.

⁷⁸⁹ *Prosecutor v Boskoski and Turculovskip* IT-04-82-T (2008) paras 178, 183 and 193.

⁷⁹⁰ *Prosecutor v Diylo* ICC01/04-01/06 (2007) para 234.

⁷⁹¹ International Law Association "Final report on the meaning of armed conflict in International Law" 2.

⁷⁹² International Law Association "Final report on the meaning of armed conflict in International Law" 28.

⁷⁹³ Chemilo 2011 <http://studentpulse.com>.

combatants, as well as for the criminal responsibility of those who violate its principles.⁷⁹⁴

As explained in Chapter 2, and as will be indicated in Chapter 4, ISIS has developed into a complex, organised group with the necessary skills and capacity to confront and in certain circumstances defeat state armed forces.⁷⁹⁵ Furthermore, the extent of the atrocities performed by members of the group and the enormous effort required to try to eliminate it⁷⁹⁶ indicate that the ISIS crisis has reached a level of intensity beyond that of an internal disturbance or riot.⁷⁹⁷

4.2.1.1 International armed conflict

Common Article 2 of all four Geneva Conventions defines an international armed conflict (IAC) as a confrontation which arises between two or more states, even if one of the states does not recognise the state of war.⁷⁹⁸ According to this particular Article, an IAC includes the occupation of a state's territory by the armed forces of another state.⁷⁹⁹ Also, in the commentary on Common Article 2 it is indicated by James Pictet that an IAC includes any intervention of state armed forces, regardless of intensity of the violence, the period of existence of the conflict, or the number of atrocities that occur.⁸⁰⁰ Various authors have also provided extended explanations of the definition of an IAC.⁸⁰¹ When armed forces use arms or violence against the armed forces of another state, this amounts to a Common Article 2 conflict.⁸⁰²

⁷⁹⁴ Chemilo 2011 <http://studentpulse.com>.

⁷⁹⁵ *Prosecutor v Boskoski and Tarculovski* IT-04-82-T (2008) para 199.

⁷⁹⁶ Stigall and Blakesley 2015 *GWILR* 7-8; *Prosecutor v Boskoski and Tarculovski* IT-04 82-T (2008) para 177.

⁷⁹⁷ Stigall and Blakesley 2015 *GWILR* 7-8; Arimatsu and Choudhury 2014 <http://chatamhouse.org>.

⁷⁹⁸ Common Article 2 of all four the *Geneva Conventions* (1949).

⁷⁹⁹ Common Article 2 of all four the *Geneva Conventions* (1949).

⁸⁰⁰ Pictet *Commentary on the Geneva Convention* 32.

⁸⁰¹ ICRC 2008 <http://icrc.org>.

⁸⁰² ICRC 2008 <http://icrc.org>.

4.2.2.2 Non-international armed conflict

Although it became evident during the conflict between America and Iraq that IACs can still occur,⁸⁰³ most of the armed conflicts in the modern world are confined to the territory of a particular state.⁸⁰⁴ Accordingly, these non-international armed conflicts are described as the resort to armed violence between government forces and armed groups, or between such groups.⁸⁰⁵ Nevertheless, these conflicts continue to be regulated by restrictive humanitarian rules⁸⁰⁶ and, as the ICJ has stated, "it constitutes a minimum yardstick."⁸⁰⁷ Common Article 3 of all four Geneva Conventions is applicable during conflicts that occur within the territory of a High Contracting party.⁸⁰⁸ The ICJ described this provision as the "elementary consideration of humanity"⁸⁰⁹ and emphasised that it is applicable alongside more elaborate humanitarian laws and rules during an IAC.⁸¹⁰ In contrast, Common Article 3 is the only protection clause applicable during non-international armed conflicts, except if a conflict falls within the limited scope of Additional Protocol II.⁸¹¹

States are reluctant to recognise the existence of a non-international armed conflict within their borders as it has been argued that such recognition will provide these non-state actors with a status under international law indicating an acknowledgement of the acts they perpetrate.⁸¹² However, the non-recognition of armed conflict that results in the non-application of Common Article 3 principles can lead to serious violations of human rights and humanitarian rules.

⁸⁰³ Sassoli 2006 <http://hpcrresearch.org>

⁸⁰⁴ ICRC 2008 <http://icrc.org>.

⁸⁰⁵ *Prosecutor v Tadic* IT-94-1-T (1995) para 70.

⁸⁰⁶ ICRC 2008 <http://icrc.org>; Byron 2001 *JCSL* 64.

⁸⁰⁷ *Nicaragua v USA* ICJ Reports 1986 para 114; Zahar and Sluiter *International Criminal Law* 114.

⁸⁰⁸ Common Article 3 of all four *Geneva Conventions* (1949).

⁸⁰⁹ *Nicaragua v USA* ICJ Reports 1986 para 114; Zahar and Sluiter *International Criminal Law* 114.

⁸¹⁰ *Nicaragua v USA* ICJ Reports 1986 para 114; Zahar and Sluiter *International Criminal Law* 114.

⁸¹¹ Article 1 of the *Additional Protocol I* (1979) determines that it applies to non-international armed conflict between state forces and organised armed groups who occupy state territory which enables them to carry out military operations and to implement the Protocol.

⁸¹² Graham 2012 *ILS* 46; Junod 1983 *AULR* 30.

The importance of determining if the above-mentioned humanitarian rules are applicable has to do with the establishment of individual criminal responsibility for violations of IHL during such conflicts.⁸¹³ For that reason, it was indicated earlier that article 8 of the *Rome Statute* also refers to certain activities perpetrated during a non-international armed conflict as violating IHL.⁸¹⁴ However, as mentioned before, the jurisdiction of the ICC to prosecute such acts can be negated by a state which decides not to ratify the treaty and thus to become a party thereto.⁸¹⁵

4.2.2.2.1 Application to ISIS

Peaceful protests commenced in Syria in 2011 when the Arab Spring spread to this specific area.⁸¹⁶ The protests soon turned violent as the government resorted to force and extreme methods to end them.⁸¹⁷ As a result of the increasing intensity of these confrontations, the Independent International Commission of Inquiry in Syria said:⁸¹⁸

The Commission is concerned that the armed violence in Syria risks rising to a level of internal armed conflict under international law. If this occurs, the IHL would apply. The ICJ has established that human rights law continues to apply with the IHL applying *lex specialis* in relation to the conduct of hostilities.

Early in 2012 the same Commission predicted that Syria was "on the brink of an armed conflict."⁸¹⁹ By May 2012 the confrontations between the rebel groups and

⁸¹³ Dugard *International Law* 531.

⁸¹⁴ Article 8 of the *Rome Statute* (2002).

⁸¹⁵ Bensouda 2015 <http://icc-cpi.int>.

⁸¹⁶ *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* GA Report A/HRC/C/S-17/2 (2011) para 27.

⁸¹⁷ *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* GA Report A/HRC/C/S-17/2 (2011) para 41-51; Blank and Corn 2013 *VJTL* 725.

⁸¹⁸ *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* GA Report A/HRC/C/S-17/2 (2011) para 97; Geneva Academy 2012 <http://geneva-academy.ch>.

⁸¹⁹ *2nd Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* GA Report A/HRC/19/69 (2012); Geneva Academy 2012 <http://geneva-academy.ch>.

the government forces had become so violent⁸²⁰ that it eventually reached the required level of intensity to be classified as a non-international armed conflict.⁸²¹

Similarly, the Sunni protests against the Shia government that originated in neighbouring Iraq during 2012 were also met with violent responses from the government.⁸²² These clashes continued to intensify to such an extent that the conflict in this territory was also declared a non-international armed conflict during 2014.⁸²³ Concurrently, the government had to respond to the violent actions of ISIS.⁸²⁴ Unlike rebel groups this group was armed, trained and skilled in such a manner that it could openly confront and defeat state armed forces.⁸²⁵ As described in Chapter 2 they took control over several parts of Iraq territory⁸²⁶ and continued to spread into neighbouring Syria, where they did the same. Subsequently the violent acts perpetrated by ISIS together with the drastic, inhumane government reaction contributed to the displacement and deaths of millions of people in these areas. At a minimum, the governments of Iraq and Syria as well as the members of ISIS and of the rebel groups are required to comply with the Common Article 3 provision.⁸²⁷ The requirements in terms of this article include the humane treatment of innocent civilians and persons no longer participating in the hostilities.⁸²⁸ Furthermore, these parties are prohibited from taking hostages and attacking the life and human dignity of persons.⁸²⁹ The fact that ISIS has taken control of territory also indicates that the provisions of Additional Protocol II must be applicable in these territories.⁸³⁰ However, the two countries are not parties to this Protocol and, therefore, it is not applicable to

⁸²⁰ *Report on the human rights situation in Syria* A/HRC/20/37 (2012).

⁸²¹ *Oral update of the Independent International Commission of Inquiry on the Syrian Arab Republic* A/HRC/20/CRP.1 (2012); Geneva Academy 2012 <http://genevaacademy.ch>.

⁸²² OHCHR and UNAMI 2014 <http://ohchr.org>.

⁸²³ OHCHR and UNAMI 2014 <http://ohchr.org>.

⁸²⁴ OHCHR and UNAMI 2014 <http://ohchr.org>.

⁸²⁵ OHCHR and UNAMI 2014 <http://ohchr.org>.

⁸²⁶ OHCHR and UNAMI 2014 <http://ohchr.org>.

⁸²⁷ OHCHR and UNAMI 2014 <http://ohchr.org>; Geneva Academy 2012 <http://genevaacademy.ch>.

⁸²⁸ Common Article 3 of all four *Geneva Conventions* (1949).

⁸²⁹ Common Article 3 of all four *Geneva Conventions* (1949); Geneva Academy 2012 <http://geneva-academy.ch>.

⁸³⁰ Article 1 of the *Additional Protocol II* (1949); Geneva Academy 2012 <http://genevaacademy.ch>.

these particular non-international armed conflicts.⁸³¹ Nevertheless, it has been emphasised by the ICRC that certain principles of Additional Protocol II have been recognised as customary international law, which implies that at a minimum these values should be observed.⁸³² These principles include proportionality and distinction.⁸³³

4.2.1.3 Other types of armed conflicts

IHL, which includes the distinction between international and non-international armed conflicts, was created with the activities of the two World Wars in mind.⁸³⁴ As stated by Nicolas Lamp, it was "developed with particular assumptions about the nature of war and the interest of the parties involved."⁸³⁵ However, it has been indicated on several occasions that asymmetrical conflicts such as that occurring in Syria and Iraq offer a strong challenge to the categorising of armed conflicts.⁸³⁶ As has happened in this case, a conflict initially reserved to the territory of a single state can expand into another state and involve many different actors with distinct goals.⁸³⁷ Conflicts of this kind, can be referred to as transnational or internationalised armed conflicts.

4.2.1.3.1 Transnational armed conflict

US intervention in Afghanistan to confront the terrorist group AQ placed new emphasis on the category of transnational armed conflict.⁸³⁸ This type of conflict occurs where a third state party intervenes in the affairs of another state to confront a non-state actor perpetrating specific acts of conflict on the territory of

⁸³¹ Geneva Academy 2012 <http://geneva-academy.ch>; OHCHR and UNAMI 2014 <http://ohchr.org>.

⁸³² *Resolution on respect for human rights during armed conflicts* GA Res 2444 (XXIII) 1968; Zahar and Sluiter *International Criminal Law* 115; OHCHR and UNAMI 2014 <http://ohchr.org>.

⁸³³ *Resolution on respect for human rights during armed conflicts* GA Res 2444 (XXIII) 1968; Zahar and Sluiter *International Criminal Law* 115; OHCHR and UNAMI 2014 <http://ohchr.org>.

⁸³⁴ Odermatt 2013 *ALF* 19, 20; Stewart 2003 *IRRC* 316-317.

⁸³⁵ Lamp 2011 *JCSL* 295; Odermatt 2013 *ALF* 19.

⁸³⁶ Lamp 2011 *JCSL* 295; Odermatt 2013 *ALF* 19; Kalshoven *Reflections on the law of war* 137.

⁸³⁷ Odermatt 2013 *ALF* 19.

⁸³⁸ Kress 2010 *JCSL* 245.

that particular state.⁸³⁹ As indicated before, this type of conflict does not fall within the ambit of these humanitarian laws and controversy exists as to whether or not such a conflict should be recognised as international or non-international in character. Practice seems to favour the classification or recognition of this particular situation as non-international armed conflict⁸⁴⁰ to which Common Article 3, and in certain circumstances Additional Protocol II apply.⁸⁴¹ As explained by Claus Kress, "the classification of these conflicts as non-international supports intervention by way of self-defence in order to fulfil the obligation of the other state to prevent such actors from launching attacks from its territory."⁸⁴² The US-led coalition's campaign as well as the presence of Iraqi and Peshmerga troops in Syria is an example of a modern transnational armed conflict. The particular states involved in these activities, especially the US, are not assisting Al-Assad. Instead, the US is acting in self-proclaimed self-defence in an extension of its cooperation with the Iraqi government to eliminate ISIS as a threat to international peace and security. The legitimacy of these activities are supported by the argument that Al-Assad is not fulfilling his state responsibilities to eradicate ISIS and to protect Syrians from the suffering caused by this group.

4.2.1.3.2 Internationalised armed conflict

On the other hand, an internal conflict can become internationalised when a third state party intervenes in a conflict occurring within the territory of another state to support a state or an organised armed group.⁸⁴³ The participation of a third state in such an instance indicates the existence of a new, so-called mixed category of conflict.⁸⁴⁴ The *Tadic* case showed that a national conflict can be internationalised in two instances: if a state supports an armed or rebel group in

⁸³⁹ Zahar and Sluiter *International Criminal Law* 278.

⁸⁴⁰ Zahar and Sluiter *International Criminal Law* 279; Kress 2010 *JCSL* 255; Vité 2009 *IRRC* 88; Paulus and Vashakmadze 2009 *IRRC* 112.

⁸⁴¹ Paulus and Vashakmadze 2009 *IRRC* 99, 112.

⁸⁴² Kress 2010 *JCSL* 256.

⁸⁴³ ICRC 2012 <http://icrc.org>; Fleck "The law of non-international armed conflicts" 606-608; Stewart 2003 *IRRC* 315; Gasser 1983 *AJIL* 145.

⁸⁴⁴ Odermatt 2013 *ALW* 29; Sassoli 2006 <http://hpcrresearch.org>; Hoffman date unknown <http://isisc.org>.

its fight against a government, or if a state interferes through military intervention.⁸⁴⁵ In order to determine if sufficient support has been provided to such a group, the actions of that particular group should be attributable to the third state.⁸⁴⁶ For that reason the ICJ established the effective control test which requires "dependence and control of such a nature that the group can be seen as an organ of that state or as acting on behalf of that state."⁸⁴⁷ The court emphasised that the actions of a particular group will not be deemed attributable to a specific state party where the same activities could have been perpetrated without the support or assistance of that particular state.⁸⁴⁸ However, criticism and disputes resulted in the creation of the new "overall control" test.⁸⁴⁹ This test entails "more than the mere provision of financial assistance or military equipment or training."⁸⁵⁰ It has been indicated in Chapter 2 above that the US provided Syrian rebel groups with equipment during the ongoing Civil War in order to enable them to fight Al-Assad. However, the acts of those groups cannot be attributed to the US as they provided them with financial assistance and equipment only.⁸⁵¹ The US did not have control⁸⁵² over the decisions and actions of the rebel groups and they did not assist them in planning attacks against the Syrian government.⁸⁵³ Similarly, the dispatching of military personnel to train Syrian rebel groups and Iraqi forces to confront ISIS is not in itself sufficient to internationalise the armed conflicts occurring in these territories.⁸⁵⁴

The *Tadic* case also introduced the principle that military intervention by a state can internationalise a particular internal conflict.⁸⁵⁵ In this case it was indicated

⁸⁴⁵ *Prosecutor v Tadic* T-94-1-A (1999) para 84; Stewart 2003 *IRRC* 323.

⁸⁴⁶ Fleck "The law of non-international armed conflict" 606; Stewart 2003 *IRRC* 323; *Prosecutor v Tadic* T-94-1-A (1999) para 84.

⁸⁴⁷ *Nicaragua v USA judgement* ICJ Reports 1986 para 109; Stewart 2003 *IRRC* 324.

⁸⁴⁸ Stewart 2003 *IRRC* 324; *Nicaragua v USA* para 115.

⁸⁴⁹ *Prosecutor v Tadic* IT-94-1-A (1999) paras 99-145; Stewart 2003 *IRRC* 324-325; Fleck "The law of non-international armed conflicts" 606.

⁸⁵⁰ *Prosecutor v Tadic* T-94-1-A (1999) para 137.

⁸⁵¹ *Prosecutor v Tadic* T-94-1-A (1999) para 137.

⁸⁵² *Prosecutor v Tadic* T-94-1-A (1999) paras 99-145; Stewart 2003 *IRRC* 324-325; Fleck "The law of non-international armed conflicts" 606.

⁸⁵³ Schmitt 2014 *JNSLP* 147.

⁸⁵⁴ Schmitt 2014 *JNSLP* 147.

⁸⁵⁵ *Prosecutor v Tadic* T-94-1-A para 86; Stewart 2003 *IRRC* 328.

that direct military intervention requires intervention through troops.⁸⁵⁶ In the *Rajic* case it was also found that intervention through such troops should be significant and continuous.⁸⁵⁷ This requirement has not been referred to in other judgments, and it has been argued that this indicates that intervention of any intensity can confer on a situation the status of internationalised conflict.⁸⁵⁸ If direct military intervention is required to internationalise a particular conflict, the presence of Iranian armed forces on Iraqi territory with the purpose of fighting ISIS is sufficient. Also, the Iraqi and Peshmerga troops fighting ISIS in Syria and the Russian troops assisting Al-Assad can be seen as direct military intervention through the use of ground forces, thus internationalising the particular conflict.⁸⁵⁹ Conversely, the uncertainty of the strength of military the intervention required to internationalise a conflict complicates the classification of the US-led coalition airstrikes occurring in both Iraq and Syria. Both direct and indirect military intervention seem to require the presence of foreign armed forces on the territory of the home state. The coalition airstrike campaign does not necessitate the presence of coalition forces on the ground, although it does contribute to ending the activities of ISIS, which has been forced to abandon certain areas. These strikes also intensify the particular conflict and contribute to the number of atrocities occurring in these areas.⁸⁶⁰

As illustrated by the events unfolding in Iraq and Syria, elements of both the international and the non-international categories of armed conflict can concurrently be present in a single conflict.⁸⁶¹ As IHL recognises only two types of conflict, the application and enforcement of humanitarian laws are complicated by the existence of such conflicts.⁸⁶² For that reason one has to ask which humanitarian laws will regulate such conflicts. It has been proposed that the rules

⁸⁵⁶ *Prosecutor v Tadic* T-94-1-A (1999) para 84; Stewart 2003 *IRRC* 328.

⁸⁵⁷ *Prosecutor v Rajic* IT-95-12-R61 1996 para 21; Stewart 2003 *IRRC* 329.

⁸⁵⁸ Stewart 2003 *IRRC* 329.

⁸⁵⁹ *Prosecutor v Tadic* T-94-1-A (1999) para 84; Stewart 2003 *IRRC* 328.

⁸⁶⁰ Human Security Research Group 2012 <http://hsrgroup.org>.

⁸⁶¹ Schindler *The different types of armed conflicts* 150-151; Hoffman date unknown <http://isisc.org>.

⁸⁶² Paulus and Vashakmadze 2009 *IRRC* 108.

of IHL should be applied in segments.⁸⁶³ In other words, international humanitarian rules should apply and be observed by international parties while non-international humanitarian principles should regulate the internal confrontations.⁸⁶⁴ As indicated by Stewart, this argument correlates with the strict interpretation of the Geneva Conventions and their Additional Protocols.⁸⁶⁵ However, the application of different rules to different conflicts occurring within a single territorial state has been described as being impractical⁸⁶⁶ and this "division into isolated segments is artificial."⁸⁶⁷ Therefore, Stewart indicates that such a conflict should rather be classified as wholly international or wholly non-international in character.⁸⁶⁸ Practice seems to suggest that such mixed conflicts require the maximum protection provided for by IHL.⁸⁶⁹ Because of this complication, most authors suggest that the distinction between the categories of conflict should be eroded.⁸⁷⁰ As suggested by Crowe and Weston-Scheuber, most IHL principles are recognised as customary international law and consequently they should automatically apply to non-international armed conflicts.⁸⁷¹ In support, McDonald states that with the increase in the number of internal and internationalised armed conflicts there is greater recognition that the strict division of conflicts is scarcely possible, if it ever was.⁸⁷² As most contemporary conflicts are non-international or mixed in character, it is important that IHL be adapted appropriately to provide the maximum protection to victims of these

⁸⁶³ Gasser 1983 *AULR* 147; Vité 2015 <http://iihl.org>; *Nicaragua v USA* Judgement ICJ Reports (1986) para 219; Sassoli 2006 <http://hpcresearch.org>; Hoffman date unknown <http://isisc.org>; *Prosecutor v Tadic* IT-94-1-A (1999) para 84.

⁸⁶⁴ Gasser 1983 *AULR* 147; Stewart 2003 *IRRC* 333; Vité 2015 <http://iihl.org>; *Nicaragua v USA* ICJ Reports (1986).

⁸⁶⁵ Stewart 2003 *IRRC* 333.

⁸⁶⁶ Stewart 2003 *IRRC* 334; Vité 2015 <http://iihl.org>.

⁸⁶⁷ Stewart 2003 *IRRC* 334; Vité 2015 <http://iihl.org>.

⁸⁶⁸ Stewart 2003 *IRRC* 316.

⁸⁶⁹ Stewart 2003 *IRRC* 334; *Prosecutor v Aleksovski* IT-94-14/1 (1999) Separate Opinion of Judge Li paras 14-18; Fleck "The law of non-international armed conflicts" 606; Farer 1971 *CLR* 43.

⁸⁷⁰ Willmott 2004 *MJIL* 196; Odermatt 2013 *ALF* 19; Crowe and Weston-Scheuber *Principles of international humanitarian law* 21; Reisman and Silk 1988 *AJIL* 465; Stewart 2003 *IRRC* 322; Dugard *International Law* 531; Fleck "The law of non-international armed conflicts" 618.

⁸⁷¹ Crowe and Weston-Scheuber *Principles of international humanitarian law* 21-22; Stewart 2003 *IRRC* 321; Fleck "The law of non-international armed conflicts" 608.

⁸⁷² Stewart 2003 *IRRC* 334.

conflicts. The only way to ensure that this protection is provided is to abandon the strict distinction between these two types of conflict.

Nevertheless, many states are not in favour of this argument as the direct application of international laws to intra-state conflicts could jeopardise state sovereignty.⁸⁷³ At the end of the day, though, innocent people bear the consequences of conflict, and for that reason it is of utmost importance that they be provided with maximum protection, even at the price of sovereignty.⁸⁷⁴

4.3 Use of force as a response to the attacks by ISIS

Over the years, the rules regarding the use of force as a response to armed conflict have changed greatly.⁸⁷⁵ At first, states were permitted to resort to force in any circumstances,⁸⁷⁶ and this general principle legalising the use of force was limited only after the world had experienced the atrocities of WW I.⁸⁷⁷ The League of Nations, as it then was, proposed that states should first attempt to resolve disputes by using less strenuous measures such as arbitration or settlement.⁸⁷⁸ The institution of such a requirement re-emphasised the importance of the principle of state sovereignty.⁸⁷⁹ Simultaneously, the Kellogg Briand Pact established the Treaty for the Renunciation of War, which completely prohibited the use of force by and between states.⁸⁸⁰ Despite the establishment of these forward-looking measures, WW II still occurred, and as a result both the League of Nations and the Kellogg Briand Pact were dissolved.⁸⁸¹ The UN incorporated this prohibition of war into the UN Charter.⁸⁸² In the Preamble it is recognised that one of the functions of the UN is to "save succeeding generations from the

⁸⁷³ Fleck "The law of non-international armed conflicts" 612; Beerli 2015 <http://iihl.org>.

⁸⁷⁴ Crowe and Weston-Scheuber *Principles of international humanitarian law* 23.

⁸⁷⁵ Van den Hole 2003 *AUJLR* 70.

⁸⁷⁶ Van den Hole 2003 *AUJLR* 70.

⁸⁷⁷ Bennet and Strug *Introduction to International Law* 320.

⁸⁷⁸ Bennet and Strug *Introduction to International Law* 320-321.

⁸⁷⁹ Article 10 of the *Covenant of the League of Nations* (1919); Bennet and Strug *Introduction to International Law* 321.

⁸⁸⁰ Van den Hole 2003 *AUJLR* 71.

⁸⁸¹ Bennet and Strug *Introduction to International Law* 322.

⁸⁸² Van den Hole 2003 *AUJLR* 71.

scourge of war."⁸⁸³ More specifically, article 2(4) of the Charter determines that:⁸⁸⁴

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of a state or in any other manner inconsistent with the purpose of the UN.

This article has been described as the "cornerstone" of the UN, and it is recognised as forming part of customary international law.⁸⁸⁵ What exactly is meant by the phrase "use of force" is uncertain, as force could be applied without using weapons.⁸⁸⁶ The application of force could involve only economic and political pressure, for instance.⁸⁸⁷ However, with specific regards to article 2(4), it has been recognised that the "threat or use of force" relates to the occupation and control of a particular state's territory.⁸⁸⁸

There are two exceptions to this general prohibition on the use of force, which are the right to self-defence (article 51) and authorisation by the UN SC (Chapter VII).⁸⁸⁹

4.3.1 Self-defence

With regards to the right to self-defence, article 51 of the UN Charter determines that:⁸⁹⁰

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 UN, until the SC has taken measures necessary to maintain international peace and security. Measures taken by Members in exercise of this right of self-defence shall be immediately reported to the SC and shall not in any way affect the authority and responsibility of the SC under the present Charter to take at any

⁸⁸³ Preamble of the *Charter of the UN* (1945); Bennet and Strug *Introduction to International Law* 322.

⁸⁸⁴ Article 2(4) of the *Charter of the UN* (1945).

⁸⁸⁵ Dugard *International Law* 496; *Nicaragua v USA* ICJ Reports (1986) paras 98-100.

⁸⁸⁶ Bennet and Strug *Introduction to International Law* 326; Dugard *International Law* 496-499.

⁸⁸⁷ Bennet and Strug *Introduction to International Law* 326.

⁸⁸⁸ *Corfu Channel Case (UK v Albania)* ICJ Reports (1949) para 4.

⁸⁸⁹ Arimatsu and Schmitt 2014 *CJTLB* 5; Dugard *International Law* 499.

⁸⁹⁰ Article 51 of the *Charter of the UN* (1945).

time such action as it deems necessary in order to maintain or restore international peace and security.

It is clear from this specific provision that international law recognises the existence of two forms of self-defence referred to as individual and collective self-defence.

4.3.1.1 Individual self-defence

The first of these forms of self-defence was recognised by the courts in the both the *Nicaragua* and the *Caroline* cases, as well as by the UN SC in several resolutions.⁸⁹¹ In the *Caroline* case it was stated that in order for a state to be able to invoke this right, that state must have been the victim of an armed attack.⁸⁹² Furthermore, the state may employ only that amount of force which is necessary and proportionate to the specific attack.⁸⁹³ This being said, the concept of armed attack has not been defined in international law.⁸⁹⁴ The *Nicaragua* case established several factors that should be taken into account when determining if such an attack occurred.⁸⁹⁵ These include the military character of the attack, the attacker's intentions, the amount of force used, and the gravity of the resulting harm.⁸⁹⁶ Also, the ICJ indicated in this case that for an attack to be recognised as an armed attack it should not have taken place only once.⁸⁹⁷ Similarly, the attack should be of a certain "scale" and it should have certain "effects."⁸⁹⁸ The SC found that cross-border raids by paramilitary groups do not constitute armed attacks for the purposes of the right to self-defence.⁸⁹⁹ Conversely, the ICJ found in the *Oil*

⁸⁹¹ *Resolution on the Threats to international peace and security caused by terrorist acts* UN SC Res 1368 (2001); *Resolution on the Threats to international peace and security caused by terrorist acts* UN SC Res 1373 (2001); *Nicaragua v USA* ICJ Reports (1986).

⁸⁹² Bennet and Strug *Introduction to International Law* 332; Fitzgerald 2009 *VJIL* 483.

⁸⁹³ Bennet and Strug *Introduction to International Law* 332; *Legality of the Threat or Use of Nuclear Weapons* ICJ Reports (1996) paras 40-41; Fitzgerald 2009 *VJIL* 479 481.

⁸⁹⁴ Bennet and Strug *Introduction to International Law* 332.

⁸⁹⁵ Dugard *International Law* 500; *Nicaragua v USA* ICJ Reports (1986) para 191.

⁸⁹⁶ *Nicaragua v USA* ICJ Reports (1986) para 191.

⁸⁹⁷ Bennet and Strug *Introduction to International Law* 333.

⁸⁹⁸ *Nicaragua v USA* ICJ Reports (1986) para 195.

⁸⁹⁹ *Resolution on attacks on Botswana by South Africa* UN SC Res 568 (1984).

Platform Case that if these raids are exercised in such a way that they reach a level of "sufficient gravity" they can constitute armed attacks.⁹⁰⁰

The requirements of necessity and proportionality were also analysed in the *Nicaragua* case.⁹⁰¹ Here it was stated that the requirement of necessity is that force should be used only if it is the final option or the last resort.⁹⁰² The requirement of proportionality, on the other hand, entails that a state may use only the amount of force necessary to rebut an attack.⁹⁰³

Iraq is an example of a state that is legally entitled to use the right of individual self-defence, as it has been continuously facing attacks launched by ISIS from neighbouring Syrian territory.⁹⁰⁴ These attacks have been recognised as reaching the required level of gravity to constitute armed attacks.⁹⁰⁵ The use of force is necessary and may be resorted to as other measures will not be practical or sufficient to repel the attacks.⁹⁰⁶ Moreover, the amount of force used by Iraq and the coalition is that which is adequate to withstand and prevent attacks by ISIS and, therefore, it is proportional.⁹⁰⁷

4.3.1.2 Collective self-defence

The right to act in the form of collective self-defence permits one state to assist another state in deterring or preventing further attacks from occurring.⁹⁰⁸ In the past, before a state could assist another state that had been attacked, it had to be established that the interests of the supporting state were also being threatened.⁹⁰⁹ In contemporary international law, however, this requirement is being abandoned in favour of the argument that "an aggression against one state

⁹⁰⁰ *Oil Platform Case (Iran v US)* ICJ Reports (2003) para 64.

⁹⁰¹ Arimatsu and Schmitt 2014 *CJTLB* 15-16; *Legality of the Threat or Use of Nuclear Weapons* ICJ Reports (1996) para 40-41; Fitzgerald 2009 *VJIL* 497.

⁹⁰² Arimatsu and Schmitt 2014 *CJTLB* 15.

⁹⁰³ Arimatsu and Schmitt 2014 *CJTLB* 16.

⁹⁰⁴ Arimatsu and Schmitt 2014 *CJTLB* 12.

⁹⁰⁵ Arimatsu and Schmitt 2014 *CJTLB* 12.

⁹⁰⁶ Arimatsu and Schmitt 2014 *CJTLB* 15.

⁹⁰⁷ Arimatsu and Schmitt 2014 *CJTLB* 16.

⁹⁰⁸ Bennet and Strug *Introduction to International Law* 336.

⁹⁰⁹ Dugard *International Law* 511; *Nicaragua v USA* (1986) paras 545-546 Dissenting opinion of Judge Jennings.

constitutes aggression against all."⁹¹⁰ The SC, for instance, permitted foreign states to aid an attacked state although those foreign states had not been affected by the particular attacks.⁹¹¹ In the *Nicaragua* case, the ICJ did not refer to the fact that the assisting state should also have been attacked, and rather found that the only requirements for the legitimate use of collective self-defence are that there must have been a request for assistance from the attacked state, which must have been the victim of an armed attack.⁹¹²

Once again, the US-led coalition assisting Iraq to counter ISIS attacks is a modern example of international cooperation in the form of collective self-defence. As explained in Chapter 2, the Iraqi government requested the US to "lead international efforts to strike ISIS."⁹¹³ This request represents an approval from the Iraqi government⁹¹⁴ that international states may intervene in its domestic affairs in order to assist it in repelling continuous armed attacks.⁹¹⁵ Conversely, the extension of the US-led campaign to the territory of neighbouring Syria on the basis of the so-called anticipatory or pre-emptive self-defence has led to greater controversy.⁹¹⁶ The US argued that the Khorasan group located in Syria was planning attacks against US interests and that it was about to launch these planned attacks.⁹¹⁷ By invoking the first mentioned type of anticipatory self-defence, a state argues that it is facing an imminent threat to which it needs to respond.⁹¹⁸ Because of the fact that article 51 requires a state to have been a victim of an armed attack, many academic writers are of the opinion that this type of self-defence is not recognised under international law.⁹¹⁹ As indicated by John Dugard, this form of self-defence has not been recognised by the SC or the ICJ,

⁹¹⁰ Bennet and Strug *Introduction to International Law* 336.

⁹¹¹ *Resolution on the situation between Iraq and Kuwait* SC Res 661 (1990); *Resolution on the situation between Iraq and Kuwait* SC Res 678 (1990); Dugard *International Law* 512.

⁹¹² *Nicaragua V USA* ICJ Reports (1986) para 105; Dugard *International Law* 512.

⁹¹³ *Letter from the Permanent Representative of Iraq to the UN addressed to the President of the SC* UN Doc S/2014/691 (2014); Arimatsu and Schmitt 2014 *CJTLB* 8.

⁹¹⁴ Arimatsu and Schmitt 2014 *CJTLB* 8.

⁹¹⁵ Arimatsu and Schmitt 2014 *CJTLB* 7.

⁹¹⁶ Arimatsu and Schmitt 2014 *CJTLB* 8-9.

⁹¹⁷ Pellerin 2014 <http://defence.gov>; Arimatsu and Schmitt 2014 *CJTLB* 9.

⁹¹⁸ Dugard *International Law* 502.

⁹¹⁹ Dugard *International Law* 503.

and as a result it is difficult to establish support for the legality of this response.⁹²⁰ In contrast, others argue that modern threats require the existence of such a right to act in anticipation, and that the right exists in customary international law.⁹²¹ In the *Caroline* case this form was even recognised as forming part of customary international law.⁹²² The second form of self-defence, referred to as pre-emptive self-defence, was created after the 9/11 attacks.⁹²³ After this event President Bush justified the use of pre-emptive action by averring that states should not wait until they are attacked.⁹²⁴ He argued that states should be able to respond to modern groups who do not necessarily present an imminent threat to its interest.⁹²⁵ In this case, states would only have to indicate that there was a possibility that its interest might be attacked.⁹²⁶ In both the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*⁹²⁷ as well as the *Armed Activities in the Territory of the Congo*,⁹²⁸ the ICJ found that states could not act in a particular manner in order to prevent an attack.⁹²⁹

The use of the justification of self-defence against ISIS on Syrian territory has been criticised for various reasons. The first reason is based on the argument that article 51 relates to armed attacks by states only, and not to the acts of non-state protagonists.⁹³⁰ In support of this argument, the ICJ declared in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* that article 51 did not include the right to use self-defence against non-state actors.⁹³¹ Therefore, in order for a state to use force against non-state actors, the

⁹²⁰ Dugard *International Law* 502.

⁹²¹ McDougal 1963 *AJIL* 597; *Nicaragua v USA* (1986) Dissenting opinion of Judge Schwebel paras 347-348; Dugard *International Law* 501.

⁹²² Bennet and Strug *Introduction to International Law* 334.

⁹²³ President Bush 2002 <http://2001-2009.state.gov>; Dugard *International Law* 502.

⁹²⁴ President Bush 2002 <http://2001-2009.state.gov>; Dugard *International Law* 502.

⁹²⁵ Dugard *International Law* 502.

⁹²⁶ Dugard *International Law* 502.

⁹²⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* ICJ Reports (2004) paras 139.

⁹²⁸ *Armed Activities in the Territory of the Congo (DRC v Congo)* ICJ Reports (2005) paras 143 and 148.

⁹²⁹ Dugard *International Law* 502-503.

⁹³⁰ Dugard *International Law* 506.

⁹³¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* ICJ Reports (2004) paras 136.

activities of the group must be attributable to a government.⁹³² Similarly, in the case between the *DRC and Uganda* in 2005, the ICJ also found that Uganda could not justify the use of force on DRC territory by invoking the right to self-defence, as it faced attacks from non-state actors who were not related to the DRC government.⁹³³ However, Judge Simma declared in his dissenting opinion that:⁹³⁴

Such a restrictive reading of Article 51 might well have reflected the state, or rather the prevailing interpretation, of the international law on self-defence for a long time. However, in the light of the more recent developments such as the 9/11 attacks, not only in State practice but also with regard to the accompanying *Opinio Juris*, it ought urgently to be reconsidered, also by the Court.

This argument is supported by John Dugard, who states "that it might have been so interpreted in the pre-terrorist era" but nothing in article 51 excludes armed attacks being launched by non-state actors.⁹³⁵ Furthermore, the acceptance of the use of force in the form of self-defence against terrorism by the US to justify attacks against AQ indicates that this right can be exercised against non-state actors.⁹³⁶ Furthermore, it is recognised that modern non-state actors are able to participate in armed conflict or to launch armed attacks.⁹³⁷ ISIS is an example of a modern non-state organisation that is able to employ armed force comparable to that of state armed forces.⁹³⁸ As a result, the use of force in self-defence against non-state actors is tolerated in situations where there is a necessity to respond to advanced non-state actors such as ISIS.⁹³⁹ The second criticism relates to the requirement that when a state invokes the right of self-defence against a non-state actor functioning on the territory of another state, express consent must be

⁹³² Article 2 of the *Articles on State Responsibility for Internationally Wrongful Acts* (2001); Milanovic 2010 <http://ejiltalk.org>; Arimatsu and Schmitt 2014 *CJTLB* 19; Hakimi 2015 *ILS* 4; *Nicaragua v USA* ICJ Reports (1986) para 115; Brent 2009 *AILJ* 136-138.

⁹³³ *Armed Activities in the Territory of the Congo (DRC v Congo)* ICJ Reports (2005) para 146.

⁹³⁴ *Armed Activities in the Territory of the Congo (DRC v Congo)* ICJ Reports (2005) Dissenting Opinion of Judge Simma para 11.

⁹³⁵ Dugard *International Law* 506; Franck 2001 *AJIL* 839; Bethlehem 2012 *AJIL* 771-774.

⁹³⁶ Dugard *International Law* 506; Gray "The use of force and the international legal order" 602-604; Paust 2015 *AGLR* 173.

⁹³⁷ Lekas 2015 *EILR* 328; Shah 2007 *JCSL* 107.

⁹³⁸ Lekas 2015 *EILR* 328; Shah 2007 *JCSL* 107.

⁹³⁹ Lekas 2015 *EILR* 328; Hakimi 2015 *ILS* 7, 21, 25.

obtained from that particular state.⁹⁴⁰ Due to the fact that Syria has not provided the US-led coalition with consent⁹⁴¹ to conduct airstrikes in its territory, these activities may amount to an act of aggression.⁹⁴² In fact, the US was warned in 2014 not to proceed with such airstrikes as they would be tantamount to attacks on Syria's territorial integrity.⁹⁴³ The requirement of express consent directly relates to the protection of state sovereignty,⁹⁴⁴ which includes the principle that states are entitled to deal with non-state actors by implementing domestic procedures.⁹⁴⁵ The US counters this argument by referring to the responsibility of states to ensure that activities which can negatively affect the interests of other states do not occur within their territory.⁹⁴⁶ As a result, it is argued that if a state is unable or unwilling to fulfil this international obligation of deterring or preventing attacks, foreign states can rely on the right of self-defence.⁹⁴⁷ However, relying on the use of force in self-defence on this basis could be problematic, as it involves the total disregard of a state's sovereignty.⁹⁴⁸ Also, as stated by Monica Hakimi, it permits intervention regardless of the fact that the "state is exercising governance and tries to suppress the violence, but is simply ineffective." Mary O'Connell states that:⁹⁴⁹

If a state or states where the terrorist group is found happens to be making a good faith effort to stop the terrorist group and has some basic ability to do so, then the victim state cannot hold the territorial state responsible for the acts of terrorism and may not respond with armed force on the territory of that state.

⁹⁴⁰ Arimatsu and Schmitt 2014 *CJTLB* 9-10.

⁹⁴¹ Sliney 2015 *UMNSACLR* 12.

⁹⁴² Arimatsu and Schmitt 2014 *CJTLB* 9-10; Hakimi 2015 *ILS* 7. For purposes of this study aggression will not be comprehensively dealt with.

⁹⁴³ Sliney 2015 *UMNSACLR* 12; Karam 2014 <http://news.nationalpost.com>.

⁹⁴⁴ Arimatsu and Schmitt 2014 *CJTLB* 21; Article 20 of the *Articles on State Responsibility* (2001).

⁹⁴⁵ Arimatsu and Schmitt 2014 *CJTLB* 21; Article 20 of the *Articles on State Responsibility* (2001).

⁹⁴⁶ Article 20 of the *Articles on State Responsibility* (2001); Arimatsu and Schmitt 2014 *CJTLB* 21; Paulussen and Szabo 2014 <http://icct.nl>.

⁹⁴⁷ Arimatsu and Schmitt 2014 *CJTLB* 21; Bethlehem 2012 *AJIL* 776-777; Paust 2010 *JTLP* 255-258; Hakimi 2015 *ILS* 13.

⁹⁴⁸ Hakimi 2015 *ILS* 14.

⁹⁴⁹ O'Connell *International Law and the use of force* 319.

The US has also argued that consent can be inferred from the fact that the Syrian government has not resisted or objected to the airstrikes conducted against ISIS.⁹⁵⁰ Instead, the Syrian spokesperson announced that "we are facing one enemy and we should cooperate."⁹⁵¹ The argument that tacit consent is sufficient for states to legitimately rely on self-defence is progressively becoming the accepted position, as more emphasis is being placed on the responsibility of states to prevent international threats from originating within their territory. The international support as well as the fact that no procedural steps were taken against the US after the invasion of Afghanistan indicated that such a restrictive approach was not practical when it came to deterring modern threats to international peace and security. Such events challenge the limits of the existing, which need to be modified to be able to accommodate modern circumstances.

4.3.2 UN SC authorisation

Chapter VII of the UN Charter recognises that forceful measures can also be implemented in response to conflict under the authorisation of the UN SC.⁹⁵² In terms of article 24, the UN SC has the primary responsibility of maintaining international peace and security.⁹⁵³ Therefore, article 39 determines that the UN SC must establish if a particular situation is threatening international peace and security.⁹⁵⁴ ISIS was recognised as an international threat in Resolution 2178 in 2014.⁹⁵⁵ When such a decision is taken, the UN SC can refer the matter to the ICC or it can recommend the use of military means to respond to the situation.⁹⁵⁶ If the UN SC decides to authorise the use of force, article 43 determines that member states are obliged to provide the UN SC with the means necessary to

⁹⁵⁰ Sliney 2015 *UMNSACLR* 13.

⁹⁵¹ Arimatsu and Schmitt 2014 *CJTLB* 10.

⁹⁵² Chapter VII of the *Charter of the UN* (1945); Dugard *International Law* 499; Bennet and Strug *Introduction to International law* 358.

⁹⁵³ Article 24 of the *Charter of the UN* (1945); Sliney 2015 *UMNSACLR* 14.

⁹⁵⁴ Article 39 of the *Charter of the UN* (1945).

⁹⁵⁵ *Resolution on threats to international peace and security caused by terrorist acts* UN SC Res 2178 (2014); Gonzalez 2015 *FILJ* 141.

⁹⁵⁶ Article 39, 41 and 42 of the *Charter of the UN* (1945); Bennet and Strug *Introduction to International Law* 358; Blokker 2000 *EJIL* 543-544.

fulfil this obligation.⁹⁵⁷ In response to the actions by ISIS the UN SC proposed the *Draft Resolution on the Referral of Syria to the ICC*.⁹⁵⁸ This Resolution was vetoed, however, by two members of the SC, namely Russia and China.⁹⁵⁹ The Russian Federation declared that:⁹⁶⁰

One cannot refer to justice when the overriding principle aims at escalating the conflict. The Resolution rejected here today reveals an attempt to use the ICC to further inflame the political passion and lay the groundwork for eventual outside military intervention.

Similarly, China argued that intervention would fuel the political situation in Syria and that the UN should rather "urge the government of Syria to take emergency action in ending the violence within its borders."⁹⁶¹ For these reasons, the UN SC has been reluctant to propose the authorisation of the use of military intervention in response to the attacks by ISIS.⁹⁶² Instead, it has passed several resolutions authorising non-military measures aimed against ISIS and at preventing further attacks.⁹⁶³

The Resolution on Threats to International Peace and Security Caused by Terrorist Acts condemned the human rights violations caused by ISIS and requested all member states to prevent foreign fighters from joining and financing the group.⁹⁶⁴ Similarly, in 2015 Resolution 2199 was passed. It called on all member states to "impair, isolate and incapacitate terrorist threats."⁹⁶⁵ This Resolution was created with the purpose of obliging member states to target the financing system which supports ISIS operations.⁹⁶⁶ Also, the UN SC is currently promoting peace talks

⁹⁵⁷ Article 43 of the *UN Charter* (1945); Sliney 2015 *UMNSACLR* 14.

⁹⁵⁸ *Draft Resolution on the Referral of Syria to the ICC* UN SC Res S/2014/348 (2014).

⁹⁵⁹ UN News Centre 2014 <http://un.org>.

⁹⁶⁰ Churkin 2014 <http://repository.un.org>.

⁹⁶¹ Wang 2014 <http://repository.un.org>.

⁹⁶² Sliney 2015 *UMNSACLR* 15; Gonzalez 2015 *FILJ* 142-143; Schmitt 2014 *JNSLP* 148.

⁹⁶³ Sliney 2015 *UMNSACLR* 15.

⁹⁶⁴ *Resolution on threats to international peace and security caused by terrorist acts* UN SC Res 2170 (2014); Sliney 2015 *UMNSACLR* 15-16.

⁹⁶⁵ *Resolution on threats to international peace and security caused by terrorist acts* UN SC Res 2199 (2015); Sliney 2015 *UMNSACLR* 16.

⁹⁶⁶ *Resolution on threats to international peace and security caused by terrorist acts* UN SC Res 2199 (2015).

between the Syrian government and its opposition.⁹⁶⁷ The purpose of this political process is to ensure the transition of power to the people of Syria, to create a new constitution, and to establish a free election process.⁹⁶⁸ These "peaceful" measures suggested by the UN SC do not seem to be limiting the growth of ISIS and rendering it less efficient as an armed force.⁹⁶⁹

4.4 Conclusion

It is clear from the above that the conflicts in Iraq and Syria amount to internationalised armed conflicts to which the humanitarian rules and regulations of international armed conflict should apply. For that reason, the human rights violations occurring at the hands of ISIS are punishable as acts of crimes in terms of the *Rome Statute*. However, due to the fact that both Iraq and Syria are not parties to the Statute, it is difficult to attribute individual responsibility for the harsh crimes being committed in these areas. Nevertheless, if a situation such as the ISIS crisis presents a threat to international peace and security, the UN SC can refer it to the ICC or authorise member states to use force against the threat. As stated before, the proposal to refer Syria to the ICC was vetoed by two members of the SC, Russia and China, due to their friendly relations with Al-Assad. The UN SC has also been unable to authorise the use of force in the territory of Syria, as such a proposal would most likely also be vetoed by the same permanent members, which have vetoed such proposals in the past.⁹⁷⁰

As a result, a different response must be resorted to in order to eliminate this threat to international peace and security. Although article 2(4) of the UN Charter prohibits the use of force as a response to armed conflict, it recognises two exceptions to this absolute prohibition, namely self-defence and with the authorisation of the UN SC. Because Iraq has been a victim of continuous attacks

⁹⁶⁷ *Resolution on the Middle East (IS)* UN SC Res 2254 (2015); *Letter from the Secretary-General addressed to the President of the UN SC* S/2016/152 (2016).

⁹⁶⁸ *Resolution on the Middle East (IS)* UN SC Res 2254 (2015).

⁹⁶⁹ Sliney 2015 *UMNSACLR* 17.

⁹⁷⁰ Refer to Chapter 5 for a discussion of the vetoing by Russia and China of several proposals suggesting the use of force in response to events in Rwanda, Srebrenica and Rwanda, for example.

launched from Syrian territory by ISIS, it can legally invoke the right of individual self-defence. A US-led coalition is assisting Iraq in fighting ISIS, and this assistance is legal, as it is taking place on the basis of collective self-defence.

In contrast, the expansion of the US-led coalition to Syrian territory has been criticised on the basis that self-defence cannot be used against non-state actors, and Al-Assad has not provided express consent for the intervention. Yet after the 9/11 attacks practice seems to indicate that states have become tolerant towards the use of self-defence against non-state actors if they present a threat to international security. Similarly, it is accepted that if a state does not fulfil its international obligation of eliminating such a threat or preventing such groups from launching attacks against other states (regardless of whether it is unable or unwilling to do so), express consent is not a requirement for the use of force against the relevant non-state actors. The fact that Al-Assad has warned the US against launching airstrikes within Syrian territory might result in the argument that these activities can be regarded as an act of aggression. Consequently, it is necessary to investigate in Chapter 5 the legality of possible humanitarian intervention as a response to the attacks by ISIS.

Chapter 5

Non-authorized humanitarian intervention as a response to the attacks by ISIS

5.1 Introduction

In 2015, HRW reports indicated that the conflict in Syria had resulted in the death of more than 250 000 people.⁹⁷¹ Furthermore, approximately 7.6 million people had been internally displaced, while 4.2 million people had been forced to leave the country in order to seek asylum abroad.⁹⁷² In response to these events reported here, the international community⁹⁷³ had already in 2014 extended its coalition campaign to the territory of Syria on the basis of the legal justification of collective self-defence legitimately exercised in assistance of the Iraqi government.⁹⁷⁴ Nevertheless, because of the fact that Al-Assad had not provided consent for these operations and the US had not been a victim of an armed attack, the intervention in Syria was soon labelled as an act of aggression.⁹⁷⁵

However, the international community could not just withdraw from Syrian territory, as large-scale human rights violations would then just continue to occur. It is suggested here that the intervention will be seen to be legal if it takes the form of a humanitarian intervention made in response to the Syrian crises. Humanitarian intervention is defined as the use of force against the territory of another state with the purpose of terminating suffering and averting human rights violations. However, there are problems with the legality and legitimacy⁹⁷⁶ of this response. As will be elaborated on in the first part of this chapter, many people are opposed to taking this course of action for the following reasons: it occurs

⁹⁷¹ Human Rights Watch 2015 <http://hrw.org>.

⁹⁷² Human Rights Watch 2015 <http://hrw.org>.

⁹⁷³ The "international community" in this context consists of individual states.

⁹⁷⁴ Hudson 2014 <http://foreignpolicy.com>.

⁹⁷⁵ Arimatsu and Schmitt 2014 *CJTLB* 8-10; Hakimi 2015 *ILS* 7.

⁹⁷⁶ The Cambridge dictionary defines legality as action which is lawful and, therefore, in conformity with the law. Legitimacy, on the other hand, is defined as the quality of a specific action of being recognized, supported, reasonable or acceptable.

without the consent of the injured state, it is a direct attack on the sovereignty of that particular state, political motives can be disguised beneath humanitarian purposes, and the response does not have any legal basis in international law.

These arguments became more extensive after the Kosovo intervention in 1999. During the 1980's and 1990's cultural, ethnic and political differences between the Serbs and Albanians in Yugoslavia resulted in a humanitarian crisis⁹⁷⁷ and a threat to international peace and security.⁹⁷⁸ After several attempts to terminate the atrocities peacefully, NATO intervened in 1999 by launching airstrikes.⁹⁷⁹ Although the intervention contributed to the widespread suffering,⁹⁸⁰ it also resulted in a peace agreement which terminated the conflict in the area.⁹⁸¹ Consequently, there were several academics who argued in favour of this response.⁹⁸² For that reason, the Kosovo intervention will be referred to as an example in order to determine whether or not such intervention in Syria can be considered such an exception to the rule. In response to the controversies and mixed feelings surrounding this response the ICISS was created with the purpose of developing guidelines on the use of humanitarian intervention as a response to conflict. The World Summit Outcome Document established the "responsibility to protect" (R2P) doctrine, in terms of which a state has the primary responsibility of protecting its own citizens against human rights violations. If a state is unwilling or unable to do so, the obligation shifts to the international community. As elaborated on in this chapter, the Document has established a range of criteria which must be met before humanitarian intervention can be resorted to. One of the criteria for humanitarian intervention to be legitimate is authorisation by the UN SC. In the past the UN SC has refused to authorise intervention in Rwanda, Srebrenica and

⁹⁷⁷ Hehir *Humanitarian Intervention* 223-225; Mertus *Kosovo: How myths and truths started war*; Hedges 1999 *Foreign Affairs* 31; Wheeler *Saving strangers* 269; Bellamy *Kosovo and international society* 24-26; Daalder and O'Hanlon *Winning ugly* 9.

⁹⁷⁸ *Resolution on Kosovo (FRY)* UN SC Res 1199 (1998).

⁹⁷⁹ Hehir *Humanitarian Intervention* 228-229.

⁹⁸⁰ Hehir *Humanitarian Intervention* 231.

⁹⁸¹ *Military Technical Agreement* (1999); Hehir *Humanitarian Intervention* 232; *Resolution on Kosovo* UN SC Res 1244 (1999).

⁹⁸² Hehir *Humanitarian Intervention* 105; Burke *An equitable framework for humanitarian intervention* 7; Teson *Humanitarian intervention* 150; Weiss *Humanitarian Intervention* 17; Holzgrefe "The humanitarian intervention debate" 39.

Kosovo because two of its members with veto powers, Russia and China, were opposed to such activities. The international community eventually decided to intervene in Kosovo without authorisation, but the non-intervention to terminate the atrocities that occurred in Rwanda and Srebrenica was reprehensible. These two permanent members have vetoed proposals for military action in Syria on several occasions.

For that reason, it is suggested in this Chapter that the intervention in Syria should be based on the response of non-authorised humanitarian intervention. This has been defined as the use of force for humanitarian purposes that has not been authorised by the UN SC under Chapter VII of the UN Charter.⁹⁸³ As will be shown in the different arguments below, this response has resulted in even more controversy. However, as illustrated after the successful war-ending intervention in Kosovo, the international community can be tolerant of such activities. The status of humanitarian intervention is best described by referring to a statement made by John Dugard who said that "humanitarian intervention is like euthanasia: it remains unlawful but tolerated in genuine cases."⁹⁸⁴

By comparing the situation in Syria to that in Kosovo and analysing the facts of the case by referring to a range of factors and criteria provided by different parties it will be demonstrated that Syria can actually present a benchmark for future non-authorised humanitarian intervention. The horror being perpetrated in this country, coupled with the continued reluctance of the UN SC to authorise intervention, create an opportunity to clarify uncertainties and controversies surrounding this specific response to conflict.

5.2 Authorised humanitarian intervention

Nevertheless, before it can be suggested that non-authorised humanitarian intervention should be used in response to the attacks by ISIS, the legal

⁹⁸³ Burke *An equitable framework for humanitarian intervention* 7; Keohane "Introduction" 1.

⁹⁸⁴ Dugard *International Law* 510.

procedures and authorities that ought to be followed need to be eliminated as possibilities.

It has already been indicated in Chapter 4 that the US-led coalition campaign was extended to Syrian territory on the basis of pre-emptive and anticipatory self-defence.⁹⁸⁵ However, as there is a lack of consent from the Syrian government,⁹⁸⁶ these airstrikes can be seen as acts of aggression.⁹⁸⁷ Regardless of the fact that the appropriate action without a doubt would have been to have obtained the necessary consent from the Syrian government,⁹⁸⁸ the strained relationship between the US and Al-Assad has eliminated the possibility of being granted consent.⁹⁸⁹

Alternatively, the coalition states should have approached the UN SC in order to obtain authorisation for the use of force.⁹⁹⁰ In terms of Article 24 of the UN Charter, the UN SC is responsible for maintaining international peace and security.⁹⁹¹ Article 42 determines that the UN SC is authorised to take any action necessary to maintain and restore international peace and security.⁹⁹² Furthermore, member states are obliged to make available to the UN SC armed forces and equipment necessary to effectively exercise this duty.⁹⁹³ But Article 27 provides for the veto powers of the permanent members of the SC,⁹⁹⁴ and two of these members, Russia and China, constantly oppose proposals authorising the use of force. As explained by Hehir, "this threat has often meant that issues have not even been brought before the Council because a veto was inevitable."⁹⁹⁵ Similarly, a proposal to refer the Syrian situation to the ICC was vetoed by Russia

⁹⁸⁵ Arimatsu and Schmitt 2014 *CJTLB* 8-9.

⁹⁸⁶ Sliney 2015 *UMNSACLR* 12.

⁹⁸⁷ Arimatsu and Schmitt 2014 *CJTLB* 8-10; Hakimi 2015 *ILS* 7.

⁹⁸⁸ Arimatsu and Schmitt 2014 *CJTLB* 8, 10.

⁹⁸⁹ Feltman 2011 <http://state.gov>; McMurry 2014 <http://mediaite.com>; Gearan 2014 <http://washingtonpost.com>; Morris 2014 <http://independent.co.uk>.

⁹⁹⁰ *Resolution of the 2005 World Summit Outcome* GA Res 60/1 (2005); Dugard *International law* 511.

⁹⁹¹ Article 24 of the *UN Charter* (1945).

⁹⁹² Article 42 of the *UN Charter* (1945).

⁹⁹³ Article 43 of the *UN Charter* (1945).

⁹⁹⁴ Article 27(3) of the *UN Charter* (1945); Hehir *Humanitarian Intervention* 154.

⁹⁹⁵ Hehir *Humanitarian Intervention* 154.

and China.⁹⁹⁶ The UN SC has not been approached for authorisation, as it is argued that the acceptance of a proposal authorising the use of force is "highly unlikely."⁹⁹⁷

5.3 Non-authorised humanitarian intervention defined

After the Cold War, capitalism and globalisation resulted in the international spread of democracy and consequently the awareness of human rights.⁹⁹⁸ As described by Antonio Cassese: "Human rights are subversive and defined to foster tension and conflict amongst states."⁹⁹⁹ States that did not accept democracy as a form of governance were excluded from international transactions and were simply labelled as "failed states."¹⁰⁰⁰ States that were scrutinised for human rights violations increasingly relied on the concept of state sovereignty.¹⁰⁰¹ Although these states supported the UN obligation of "reaffirming faith in human rights",¹⁰⁰² they were not acceptant towards any means and methods that would violate their sovereignty.¹⁰⁰³ In contrast, democratic states argued that member rights such as sovereignty should be conditional and subject to compliance with international law and, specifically, the protection of human rights.¹⁰⁰⁴ This argument increasingly became the norm as the protection of human rights was internationalised with the creation of several international mechanisms to deal with such violations.¹⁰⁰⁵ These mechanisms included the establishment of the Criminal Tribunal for Rwanda (ICTR) and Yugoslavia (ICTY) as well as the creation of the ICC.¹⁰⁰⁶ Despite the fact that the institution of these measures emphasised that the protection of human rights was an international concern, the international

⁹⁹⁶ *Draft Resolution on the referral of Syria to the ICC* UN SC Res 348 (2014); Adams *Failure to protect* 19-20; UN date unknown <http://research.un.org>; UN News Centre 2014 <http://un.org>.

⁹⁹⁷ Burke *An equitable framework for humanitarian intervention* 344-345.

⁹⁹⁸ Hehir *Humanitarian Intervention* 3.

⁹⁹⁹ Cassese *International Law* 375.

¹⁰⁰⁰ Hehir *Humanitarian Intervention* 3.

¹⁰⁰¹ Hehir *Humanitarian Intervention* 3-4.

¹⁰⁰² Preamble of the *UN Charter* (1945).

¹⁰⁰³ Hehir *Humanitarian Intervention* 4.

¹⁰⁰⁴ Hehir *Humanitarian Intervention* 4.

¹⁰⁰⁵ Hehir *Humanitarian Intervention* 4-5.

¹⁰⁰⁶ Hehir *Humanitarian Intervention* 4.

community was still reluctant to intervene in order to terminate or prevent these crimes in totality.¹⁰⁰⁷ The failure to respond to the Rwanda crisis as well as to prevent the violations in Srebrenica illustrated this reluctance.¹⁰⁰⁸ However, the use of the media in 1999 to convey the harsh conditions and treatment of minorities in Kosovo resulted in an international argument that it was morally and ethically impossible to witness such human rights abuses without attempting to protect the victims.¹⁰⁰⁹ The Arab Spring, which spread through the Middle East and resulted in the Civil War in Syria, once again enflamed this debate as to whether the international community had a right and an obligation to intervene for humanitarian purposes.¹⁰¹⁰ Specifically with regard to Syria the question arose as to: "whether the international community had the obligation to intervene where the hosting state is unwilling or unable to protect the victims against the consequences of war?"¹⁰¹¹ Attempts to answer this question are made more difficult by the fact that the concept of humanitarian intervention has not been defined in international law.¹⁰¹² The difficulty in defining this concept is closely related to the question of whether the branding of a particular activity as humanitarian automatically legitimises the act.¹⁰¹³ Humanitarian activity could be non-military (civil) intervention aimed at aiding war victims in need,¹⁰¹⁴ but the ICRC has stated that:¹⁰¹⁵

Humanitarian endeavours and political action must go their own separate ways if neutrality and impartiality of humanitarian work is not to be jeopardized. It is dangerous to link humanitarian activities aimed at meeting the needs of victims with political measures designed to bring about settlement.

¹⁰⁰⁷ Hehir *Humanitarian Intervention* 5.

¹⁰⁰⁸ Hehir *Humanitarian Intervention* 5.

¹⁰⁰⁹ Hehir *Humanitarian Intervention* 5-7; Burke *An equitable framework for humanitarian intervention* 1.

¹⁰¹⁰ Burke *An equitable framework for humanitarian intervention* 343-344.

¹⁰¹¹ Hehir *Humanitarian Intervention* 15, 100.

¹⁰¹² Hehir *Humanitarian Intervention* 15.

¹⁰¹³ Hehir *Humanitarian Intervention* 16-17.

¹⁰¹⁴ Hehir *Humanitarian Intervention* 16-17.

¹⁰¹⁵ Hehir *Humanitarian Intervention* 17.

Similarly, Kofi Annan has argued that if these concepts are not separated "humanitarian bombing will be used and people will get cynical of the idea."¹⁰¹⁶ Therefore, for the purposes of this chapter the definition provided for by JL Holzgrefe, which focuses only on military action, will be used.¹⁰¹⁷ He defines humanitarian intervention as:¹⁰¹⁸

The threat or use of force across state borders aimed at preventing or ending widespread and grave violations of fundamental human rights of individuals other than its own citizens without the permission of the state within whose territory force is appointed.

Due to the fact that the legality of the concept of humanitarian intervention is highly contested¹⁰¹⁹ and permanent powers veto such proposed resolutions, the UN SC has been hesitant to authorise humanitarian intervention as a response to conflict. Consequently, this chapter will focus on non-authorised humanitarian intervention, which has been defined earlier.¹⁰²⁰ As will be elaborated on hereafter, the legality and legitimacy of humanitarian intervention as a response to conflict is problematic due to the lack of state consent,¹⁰²¹ violation of state sovereignty,¹⁰²² abuse of intervention for political motives¹⁰²³ as well as the exclusion of this concept in the list of exclusions to the use of force provided for by the UN Charter.¹⁰²⁴

5.3.1 Consent

One of the main controversies regarding the legality of humanitarian intervention has to do with the absence of consent by the state that is the target of the

¹⁰¹⁶ Deen 2000 <http://ipsnews.net>; UN 2000 <http://un.org>; Hehir *Humanitarian Intervention* 17.

¹⁰¹⁷ Holzgrefe "The humanitarian intervention debate" 15.

¹⁰¹⁸ Holzgrefe "The humanitarian intervention debate" 18; Burke *An equitable framework for humanitarian intervention* 7; Keohane "Introduction" 1.

¹⁰¹⁹ Burke *An equitable framework for humanitarian intervention* 13; Hehir *Humanitarian Intervention* 25.

¹⁰²⁰ Refer to Chapter 5.1 for the definition on non-authorised humanitarian intervention.

¹⁰²¹ Hehir *Humanitarian Intervention* 22.

¹⁰²² Hehir *Humanitarian Intervention* 46.

¹⁰²³ Dugard *International Law* 509; Hehir *Humanitarian Intervention* 23-24.

¹⁰²⁴ Hehir *Humanitarian Intervention* 19.

intervention.¹⁰²⁵ Many authors argue that it is difficult to establish consent, as consent given could be "ambiguous," "coerced and unreliable" or "hardly voluntary as it borders on duress."¹⁰²⁶ Therefore, McMahan explains that if consent is expressly required the action is no longer humanitarian intervention but the use of force in assistance of the targeted state.¹⁰²⁷ As said by Chesterman, the issue of "non-consent is not significant for operations mandated by the UN SC under Chapter VII, as the UN SC can take action regardless of state consent."¹⁰²⁸

5.3.2 Sovereignty

Furthermore, it is argued that the use of force against the territorial integrity of another state with the objective of protecting innocent people violates the sovereignty of a state and consequently amounts to an act of aggression.¹⁰²⁹ If a state is sovereign it has the right to deal with its own affairs without interference.¹⁰³⁰ As mentioned before, however, the conflicts and atrocities that occurred after the end of the Cold War presented challenges to the notion of untrammelled sovereignty.¹⁰³¹ It is increasingly accepted today that included in the powers derived from a state's is the universal obligation to provide and protect human rights.¹⁰³² As indicated by Kofi Annan, sovereignty was "never meant as a license for governments to trample on human rights and human dignity."¹⁰³³ The development and acceptance of the concept of human security, which has to do with individual and community interest, instead of state security, also illustrated this shift in attitude towards sovereignty.¹⁰³⁴ Chatterjee and Scheid have indicated that "international consensus started to develop regarding the fact

¹⁰²⁵ Hehir *Humanitarian Intervention* 20, 22.

¹⁰²⁶ Hehir *Humanitarian Intervention* 22; Welsh *Humanitarian intervention and international relations* 3; Bellamy and Williams 2011 *International Affairs* 828; Johnstone *International Peacekeeping* 170.

¹⁰²⁷ McMahan "Humanitarian intervention, consent and proportionality"44.

¹⁰²⁸ Chesterman 2011 <http://www.carnegiecouncil.org/resources/journal/index.html>; Hehir *Humanitarian Intervention* 22; article 42 of the *Charter of the UN* (1945).

¹⁰²⁹ McMahan "Humanitarian intervention, consent and proportionality"44.

¹⁰³⁰ McMahan "Humanitarian intervention, consent and proportionality"44.

¹⁰³¹ Hehir *Humanitarian Intervention* 56-58.

¹⁰³² Hehir *Humanitarian Intervention* 46, 58.

¹⁰³³ Annan 1998 <http://www.un.org>; Hehir *Humanitarian Intervention* 60.

¹⁰³⁴ Hehir *Humanitarian Intervention* 58; Kaldor "What is human security?" 177.

that sovereignty cannot shield a state from military intervention where it brutalises its own people."¹⁰³⁵ The UN has also indicated that "defence of the oppressed in the name of morality should prevail over frontiers and legal documents."¹⁰³⁶ This being said, the academic writers who support the use of force for humanitarian purposes regard sovereignty as a barrier to the preservation of rights.¹⁰³⁷

5.3.3 *Political motives*

Another contentious issue pertaining to the legality of humanitarian intervention as a response to conflict relates to the concept of motivation.¹⁰³⁸ While certain authors argue that the motive for intervention should be strictly humanitarian,¹⁰³⁹ others argue that this is an unrealistic expectation, as such interventions can have mixed purposes or aims.¹⁰⁴⁰ Some authors even argue that the motivation is irrelevant provided that the intervention has positive humanitarian consequences.¹⁰⁴¹

The first argument, that for intervention to be regarded as humanitarian it should have only a humanitarian aim, is supported by Bellamy and Miller.¹⁰⁴² Bellamy states that "the right intention stands at the very heart of the Just War tradition's justification for killing."¹⁰⁴³ Similarly, Miller argues that "humanitarian intervention is a form of altruism writ large, a kind of self-sacrificial love."¹⁰⁴⁴ However, in supporting the second argument Berman argues that "such a claim may be

¹⁰³⁵ Chatterjee and Scheid "Introduction" 5; Hehir *Humanitarian Intervention* 57.

¹⁰³⁶ Perez de Cuellar 1991 <https://documents-ddsny.un.org>; Lyons and Mastanduno "Introduction" 2; Hehir *Humanitarian Intervention* 60.

¹⁰³⁷ Hoffman "Intervention: should it go on? Can it go on?" 22; Hehir *Humanitarian Intervention* 57-58.

¹⁰³⁸ Hehir *Humanitarian Intervention* 23.

¹⁰³⁹ Miller 2000 *JRE* 54; Roberts "The UN and humanitarian intervention" 5; Hehir *Humanitarian Intervention* 21, 23, 168; Holzgrefe "The humanitarian intervention debate" 18; Brownlie "Humanitarian intervention" 217.

¹⁰⁴⁰ Hehir *Humanitarian Intervention* 23; Weiss *Humanitarian Intervention* 7; Walzer *Just and unjust wars* 26.

¹⁰⁴¹ Hehir *Humanitarian Intervention* 24; Wheeler *Saving strangers* 39; Teson *Humanitarian intervention* 38.

¹⁰⁴² Hehir *Humanitarian Intervention* 170.

¹⁰⁴³ Bellamy *Just wars: from Cicero to Iraq* 122.

¹⁰⁴⁴ Miller 2000 *JRE* 54.

cynical and must be objectively judged."¹⁰⁴⁵ This is emphasised by Parekh and the International Commission on Intervention and State Sovereignty (ICISS) by stating that although the primary purpose should be to protect the innocent from suffering, there can be other interests and motivations for intervention.¹⁰⁴⁶ As described by Walzer, "motivations are always mixed. A pure moral will doesn't exist in political life and it shouldn't be necessary to pretend such kind of purity."¹⁰⁴⁷ As shown by the US interventions in Kosovo and Libya, the US had an interest in these states which it needed to protect by using military means.¹⁰⁴⁸ It has been argued that such an interest is "necessary for successful humanitarian intervention."¹⁰⁴⁹ As portrayed by the atrocities that occurred in Rwanda, the lack of such an interest can result in non-intervention.¹⁰⁵⁰ Furthermore, as suggested by Seybolt, if states decide to intervene based on moral and ethical grounds, they will withdraw from the conflict as soon as they suffer casualties.¹⁰⁵¹ Due to the fact that humanitarian interventions can involve mixed motivations there are academic writers who support the third argument, that where intervention results in a humanitarian outcome, motivation is unimportant.¹⁰⁵² Wheeler argues that "if an intervention is motivated by non-humanitarian reasons, it can still count as humanitarian provided that the motives and means employed do not undermine the positive humanitarian consequences."¹⁰⁵³ Teson supports this statement by arguing that "the true test is whether the intervention has put an end to human rights deprivations."¹⁰⁵⁴

But if the motivation is disregarded in totality, humanitarian intervention is no longer a distinct response, as it can be viewed as military intervention with a

¹⁰⁴⁵ Hehir *Humanitarian Intervention* 170; Berman "Moral versus legal legitimacy" 165.

¹⁰⁴⁶ Hehir *Humanitarian Intervention* 170-171; Wheeler "Humanitarian intervention after September 11, 2001" 194.

¹⁰⁴⁷ Hehir *Humanitarian Intervention* 171; Walzer *Just and unjust wars* 23.

¹⁰⁴⁸ Hehir *Humanitarian Intervention* 169.

¹⁰⁴⁹ Hehir *Humanitarian Intervention* 172; Seybolt *Humanitarian Military Intervention* 27.

¹⁰⁵⁰ Hehir *Humanitarian Intervention* 169.

¹⁰⁵¹ Hehir *Humanitarian Intervention* 172; Seybolt *Humanitarian Military Intervention* 27.

¹⁰⁵² Hehir *Humanitarian Intervention* 24; Wheeler *Saving strangers* 8.

¹⁰⁵³ Hehir *Humanitarian Intervention* 172; Wheeler *Saving strangers* 38.

¹⁰⁵⁴ Hehir *Humanitarian Intervention* 172; Teson *Humanitarian intervention* 106-107.

humanitarian outcome.¹⁰⁵⁵ It is, therefore, necessary to support the argument put forward by Anthony Lang: "although the motives of the actors cannot be the sole factors analysed when assessing an intervention, it must at least be one of the factors assessed."¹⁰⁵⁶ If no specific motivation is required, states can abuse humanitarian intervention as a method of justifying the crossing of the borders of other states in satisfaction of ulterior political motives.¹⁰⁵⁷

5.3.4 *Legality*

In additions to these factors, the legality of humanitarian intervention is also challenged on the basis that it is contrary to the provisions of international law.¹⁰⁵⁸ As indicated in Chapter 4, article 2(4) of the UN Charter prohibits the use of force against another state.¹⁰⁵⁹ Article 2(7) confirms this principle by stating that the UN cannot authorise intervention in matters that fall within the domestic jurisdiction of any state.¹⁰⁶⁰ For that reason the GA has indicated in Resolution 2625 that "armed intervention is synonymous to aggression."¹⁰⁶¹ The Vienna Convention recognises these provisions as forming part of customary international law from which no derogation is permissible.¹⁰⁶² Although the use of force in self-defence and with the authorisation of the UN SC¹⁰⁶³ are recognised as exceptions, humanitarian intervention does not fall within these categories.¹⁰⁶⁴ Thus, Hehir indicates that under codified international law there is "no law explicitly

¹⁰⁵⁵ Hehir *Humanitarian Intervention* 173-174.

¹⁰⁵⁶ Lang "Humanitarian Intervention" 3.

¹⁰⁵⁷ Dugard *International Law* 509.

¹⁰⁵⁸ Hehir *Humanitarian Intervention* 102; Burke *An equitable framework for humanitarian intervention* 12.

¹⁰⁵⁹ Article 2(4) of the *Charter of the UN* (1945).

¹⁰⁶⁰ Article 2(7) of the *Charter of the UN* (1945).

¹⁰⁶¹ *Resolution on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the UN* GA Res 2625 (XXV) (1970); Hehir *Humanitarian Intervention* 102.

¹⁰⁶² Article 53 and 64 of the *Vienna Convention* (1969); Hehir *Humanitarian Intervention* 102.

¹⁰⁶³ Article 51 and Chapter VII of the *Charter of the UN* (1945).

¹⁰⁶⁴ Burke *An equitable framework for humanitarian intervention* 7.

sanctioning humanitarian intervention."¹⁰⁶⁵ In fact, the ICJ indicated in 1949, that:¹⁰⁶⁶

Only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and as such cannot, whatever be the present defect in international organisation, find a place in international law. Intervention would be reserved for the most powerful states and might easily lead to perverting the administration of international justice itself.

The *Nicaragua* case showed that the "use of force cannot be an appropriate measure to ensure respect for human rights."¹⁰⁶⁷

However, as indicated before, the events during the post-Cold War era, specifically the invasion of Kosovo, established modern views on humanitarian intervention as a response to conflict¹⁰⁶⁸ and the justification for this response.¹⁰⁶⁹ As indicated by Hehir, Chapter VII of the UN Charter could be referred to as a basis for the legality of this response.¹⁰⁷⁰ In terms of this particular chapter of the UN Charter, the UN SC can authorise humanitarian intervention in response to a situation that threatens international peace and security.¹⁰⁷¹ However, as stated earlier, the UN SC is reluctant to authorise such operations, or where such a response has been suggested it has been vetoed by some permanent members. For that reason, states have resorted to unilateral humanitarian intervention, the legality of which is even more contested.¹⁰⁷²

Teson and Weiss argue that the purpose of using force for humanitarian purposes is not to aim at the territorial integrity of a state and, therefore, it cannot be contrary to article 2(4) of the UN Charter.¹⁰⁷³ On the contrary, Wolf argues that "armed intervention, even for the purpose of protecting human rights, violates the

¹⁰⁶⁵ Hehir *Humanitarian Intervention* 105.

¹⁰⁶⁶ The *Corfu Channel Case (UK and Northern Ireland v Albania)* ICJ Rep (1949).

¹⁰⁶⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v the US)* ICJ Rep (1986) para 268; Hehir *Humanitarian Intervention* 105.

¹⁰⁶⁸ Hehir *Humanitarian Intervention* 105.

¹⁰⁶⁹ Burke *An equitable framework for humanitarian intervention* 7.

¹⁰⁷⁰ Hehir *Humanitarian Intervention* 106; Chapter VII of the *Charter of the UN* (1945).

¹⁰⁷¹ Chapter VII of the *Charter of the UN* (1945); *Resolution on Iraq* SC Res 688 (1991).

¹⁰⁷² Hehir *Humanitarian Intervention* 107.

¹⁰⁷³ Teson *Humanitarian intervention* 150; Weiss *Humanitarian Intervention* 17.

territorial integrity of another state and since it would require a change in authority structures to assure respect for human rights, would also be against the political independence of that state."¹⁰⁷⁴ In fact, according to Schachter "the idea that wars waged in a good cause such as democracy and human rights would not involve a violation of territorial integrity or political independence demands an Orwellian construction¹⁰⁷⁵ of those terms."¹⁰⁷⁶ The argument that will take precedence will, therefore, depend on the interpretation of the Charter.¹⁰⁷⁷ Brownlie and Apperley argue that article 2(4) should be strictly interpreted and that it "may not be construed to refer to a particular threshold which must be reached by threats and uses of force in order to render them illegal."¹⁰⁷⁸ The purpose of article 2(4) was to restrict the use of force and not to create loopholes for other exceptions to appear.¹⁰⁷⁹ Chesterman agrees by arguing that article 2(4) does not provide any scope for humanitarian intervention.¹⁰⁸⁰

On the other hand, Lillich indicates that although the primary responsibility to protect international peace and security vests in the UN SC, member states have an obligation to fulfil this duty where the UN SC fails to do so.¹⁰⁸¹ As noted by Holzgrefe, the wording of the Charter could permit non-authorised humanitarian intervention where the UN SC fails to protect human rights.¹⁰⁸² The DIIA and others¹⁰⁸³ argue that the secondary obligation to maintain international peace and security vests in the organisational bodies and not in the member states.¹⁰⁸⁴

¹⁰⁷⁴ Wolf 1988 *MYILS* 339.

¹⁰⁷⁵ As explained by Byers and Chesterman, what they mean by an "Orwellian construction" of the terms is "directly contrary to the ordinary meaning as well as the clear object and purpose of the UN Charter."

¹⁰⁷⁶ Schachter 1984 *AJIL* 649; Byers and Chesterman "Changing the rules about rules?" 185.

¹⁰⁷⁷ Holzgrefe "The humanitarian intervention debate" 38-39.

¹⁰⁷⁸ Brownlie and Apperley 2000 *ICLQ* 878-905; Burke *An equitable framework for humanitarian intervention* 11; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v the US)* ICJ Rep (1986) para 211.

¹⁰⁷⁹ Wolf 1988 *MYIL* 339-340.

¹⁰⁸⁰ Chesterman *Just war or just peace* 53; IICK *Kosovo Report* 168.

¹⁰⁸¹ Lillich 1967 *ILR* 53.

¹⁰⁸² Holzgrefe "The humanitarian intervention debate" 39; Reisman 1985 *YJIL* 279-280.

¹⁰⁸³ Holzgrefe "The humanitarian intervention debate" 40.

¹⁰⁸⁴ DIIA *Humanitarian Intervention* 82; Franck and Rodley 1973 *AJIL* 300.

Also, some academic writers argue that non-authorised humanitarian intervention forms part of customary international law, to which states are bound, regardless of their ratifying a treaty.¹⁰⁸⁵ It is argued that this right was created before the UN was created and it continued to exist after this creation.¹⁰⁸⁶ In response, numerous authors contest the fact that non-authorised humanitarian intervention forms part of customary international law¹⁰⁸⁷ by denying that interventions which occurred in the pre-Charter era amounted to the exercise of a right to non-authorized humanitarian intervention.¹⁰⁸⁸ It is argued that there was "no unambiguous reliance on humanitarian intervention by states."¹⁰⁸⁹ Furthermore, if such a right existed it would not have survived the establishment of the UN Charter, which strictly prohibits the use of force.¹⁰⁹⁰

Regardless of these issues, Hehir indicates that legal reform has been suggested by several authors and bodies.¹⁰⁹¹ These suggestions include "codifying the right to unilateral humanitarian intervention",¹⁰⁹² instituting bodies that are entitled to deploy troops in certain circumstances,¹⁰⁹³ confirming this right as a customary norm,¹⁰⁹⁴ and creating a range of factors that can be taken into account by the UN SC when deciding to authorize such action.¹⁰⁹⁵ However, despite these positive suggestions, the past attempts to legalise such unilateral action¹⁰⁹⁶ have failed as there was no international consensus on the legality of such

¹⁰⁸⁵ Hehir *Humanitarian Intervention* 108; Burke *An equitable framework for humanitarian intervention* 23-24; Cassese 1999 *EJIL* 23-27.

¹⁰⁸⁶ Holzgrefe "The humanitarian intervention debate" 44-45.

¹⁰⁸⁷ Arend and Beck *International Law and the use of force* 137; Hilpold 2001 *EJIL* 445; Hehir *Humanitarian Intervention* 108-109; Burke *An equitable framework for humanitarian intervention* 10; Cassese 1999 *EJIL* 791.

¹⁰⁸⁸ Holzgrefe "The humanitarian intervention debate" 45.

¹⁰⁸⁹ Arend and Beck *International Law and the use of force* 137; Hehir *Humanitarian Intervention* 109.

¹⁰⁹⁰ Holzgrefe "The humanitarian intervention debate" 46.

¹⁰⁹¹ Hehir *Humanitarian Intervention* 116.

¹⁰⁹² Burton 1996 *GLJ* 417-454; Hehir *Humanitarian Intervention* 116; Buchanan "Reforming the international law of humanitarian intervention" 138-140.

¹⁰⁹³ Woodhouse and Ramsbotham 2005 *International peacekeeping* 1995; Held *Debating globalization* 25; Hehir *Humanitarian Intervention* 116.

¹⁰⁹⁴ Buchanan "Reforming the international law of humanitarian intervention" 133-136, 140.

¹⁰⁹⁵ UN High-Level Panel on Threats, Challenges and Change 2004 <http://www.un.org>; Hehir *Humanitarian Intervention* 116-117.

¹⁰⁹⁶ Hehir *Humanitarian Intervention* 115; Weiss *Humanitarian Intervention* 117.

intervention.¹⁰⁹⁷ As described by the UN High-level Panel, such non-authorised action would "undermine the authority of the UN and cause a chain reaction of unilateral aggression."¹⁰⁹⁸

As a result, it seems appropriate to conclude that humanitarian intervention remains an illegal activity that constitutes a breach of international law.¹⁰⁹⁹ However, the international communities' tolerance of the Kosovo intervention¹¹⁰⁰ as well as the Independent International Commission of Kosovo's (IICK) labelling of the US operation in Afghanistan as "illegal but legitimate"¹¹⁰¹ indicates that the legal status of humanitarian intervention can best be described by referring to the separate opinion of Judge Simma. He expressed the opinion that:¹¹⁰²

International law might be deliberately neutral or silent on a certain issue and might tolerate it in a way which breaks from the binary understanding of permission/prohibition and which allows for a range of non-prohibited options. That an act might be tolerated would not necessarily mean that it is legal but rather that it is not illegal.

5.4 Background and contents of the Responsibility to Protect (R2P) doctrine

After the North Atlantic Treaty Organisation (NATO) intervened in Kosovo, the controversial debates on the legitimacy and legality of humanitarian intervention as a response required consensus on the matter.¹¹⁰³ Furthermore, Kofi Annan posed the important question:¹¹⁰⁴

¹⁰⁹⁷ Hehir *Humanitarian Intervention* 114; DIIA *Humanitarian Intervention* 105.

¹⁰⁹⁸ UN High-Level Panel on Threats, Challenges and Change 2004 <http://un.org>; Hehir *Humanitarian Intervention* 115.

¹⁰⁹⁹ Hehir *Humanitarian Intervention* 110; Burke *An equitable framework for humanitarian intervention* 10; Brownlie and Apperley 2000 *ICLQ* 878.

¹¹⁰⁰ Rodley and Cali 2007 *HRLR* 278; Burke *An equitable framework for humanitarian intervention* 7.

¹¹⁰¹ IICK *Kosovo Report* 186.

¹¹⁰² Declaration by Judge Simma 2010 <http://icj-cij.org> para 9; Dugard *International Law* 107.

¹¹⁰³ ICISS 2001 *The report of the ICISS: The responsibility to protect* vii; Hehir *Humanitarian Intervention* 122-123.

¹¹⁰⁴ Annan 2000 *Report: We the peoples: The role of the UN in the 21st century* 48; ICISS 2001 *The report of the ICISS: The responsibility to protect* vii; Hehir *Humanitarian Intervention* 123.

If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?

As a result, the International Commission on Intervention and State Sovereignty (ICISS) was established with the purpose of creating rules that were acceptable to both the supporters and the critics of this response.¹¹⁰⁵ In 2001 this Commission released a report which was titled *The Responsibility to Protect*.¹¹⁰⁶ When publishing this document, the ICISS indicated that "we want no more Rwanda's and we believe the adoption of these proposals in our Report is the best way of ensuring that."¹¹⁰⁷ For that reason, the foreword indicates that the Report is "about the right of humanitarian intervention and the circumstances in which, if ever, it may be invoked against another state for purposes of protecting people."¹¹⁰⁸ The R2P doctrine is based on the principle that states have the primary responsibility¹¹⁰⁹ to protect their citizens against human rights violations, and if they fail to do so, the international community has the secondary responsibility to protect these people.¹¹¹⁰

This doctrine entails the performance of three separate obligations, namely the responsibility to prevent, to rebuild and to react.¹¹¹¹ The responsibility to prevent requires a state to comprehensively deal with tenuous issues before they amount to conflict.¹¹¹² Furthermore, the responsibility to rebuild emphasises that in the event of military intervention, the state must thereafter be rebuilt by "recovering, reconstructing and reconciling."¹¹¹³ The responsibility to react is based on the

¹¹⁰⁵ ICISS 2001 *The report of the ICISS: The responsibility to protect* vii; Hehir *Humanitarian Intervention* 123; Bennett and Strug *Introduction to International Law* 344.

¹¹⁰⁶ Bennett and Strug *Introduction to International Law* 344.

¹¹⁰⁷ ICISS 2001 *The report of the ICISS: The responsibility to protect* viii; Hehir *Humanitarian Intervention* 123.

¹¹⁰⁸ ICISS 2001 *The report of the ICISS: The responsibility to protect* vii.

¹¹⁰⁹ Burke *An equitable framework for humanitarian intervention* 60-61.

¹¹¹⁰ ICISS 2001 *The report of the ICISS: The responsibility to protect* viii; Hehir *Humanitarian Intervention* 123; Bennett and Strug *Introduction to International Law* 345.

¹¹¹¹ ICISS 2001 *The report of the ICISS: The responsibility to protect* xi; Bennett and Strug *Introduction to International Law* 345.

¹¹¹² ICISS 2001 *The report of the ICISS: The responsibility to protect* xi; Hehir *Humanitarian Intervention* 123-124.

¹¹¹³ ICISS 2001 *The report of the ICISS: The responsibility to protect* xi; Hehir *Humanitarian Intervention* 124.

principle that military intervention should take place only in "extreme cases," indicating that all other peaceful measures should first be exhausted in addressing human rights abuses.¹¹¹⁴

In order to determine if a situation justifies humanitarian intervention as a response, the ICISS has established the "Principles for military intervention."¹¹¹⁵ These principles include there being a just cause for the intervention, the right intention motivating it, the measure's being undertaken as a last resort, its having reasonable prospects of success, the use of proportional means, and the right authority for undertaking the action.¹¹¹⁶ The first principle, a just cause, entails that military intervention be undertaken only if there is "serious and irreparable harm" such as "large-scale loss of life or large-scale ethnic cleansing."¹¹¹⁷ Furthermore, the ICISS indicates that the intervention should be conducted with the right intention, which is specified as terminating human suffering.¹¹¹⁸ As indicated before, all other peaceful measures such as sanctions, for example, have to be exhausted before resorting to intervention. Hence, humanitarian intervention should be invoked only as a measure of last resort.¹¹¹⁹ Also, it must be undertaken only if there is reasonable prospects of achieving the required protection.¹¹²⁰ Once military intervention is implemented, the "scale, intensity and duration" of the operation must be those which are necessary to achieve the purpose of protecting people against human rights violations.¹¹²¹ Lastly, the ICISS indicates that humanitarian intervention is illegitimate where it occurs without the authorisation of the UN SC.¹¹²² It addresses the issue of the permanent members'

¹¹¹⁴ ICISS 2001 *The report of the ICISS: The responsibility to protect* xi; Hehir *Humanitarian Intervention* 124.

¹¹¹⁵ ICISS 2001 *The report of the ICISS: The responsibility to protect* xii; Hehir *Humanitarian Intervention* 124; Burke *An equitable framework for humanitarian intervention* 61-63.

¹¹¹⁶ ICISS 2001 *The report of the ICISS: The responsibility to protect* xii.

¹¹¹⁷ ICISS 2001 *The report of the ICISS: The responsibility to protect* xii.

¹¹¹⁸ ICISS 2001 *The report of the ICISS: The responsibility to protect* xii; Hehir *Humanitarian Intervention* 124.

¹¹¹⁹ ICISS *The report of the ICISS: The responsibility to protect* xii.

¹¹²⁰ ICISS *The report of the ICISS: The responsibility to protect* xii.

¹¹²¹ ICISS *The report of the ICISS: The responsibility to protect* xii; Hehir *Humanitarian Intervention* 124-125.

¹¹²² ICISS *The report of the ICISS: The responsibility to protect* xii; Hehir *Humanitarian Intervention* 125.

vetoing such proposals by suggesting that these members should not veto any action or decision which has majority support and does not affect any "vital state interest."¹¹²³

Despite the inclusion of the provision requiring UN SC authorisation, the Report recognises that the UN SC could fail to respond to a particular situation.¹¹²⁴ Therefore, the GA¹¹²⁵ or regional organisations¹¹²⁶ are recognised as alternative bodies entitled to deal with these situations.¹¹²⁷ Also, the report does not exclude the right of states to resort to other means if a particular situation is "conscience-shocking, serious and urgent."¹¹²⁸

5.4.1 International responses to the R2P doctrine

Despite the controversies and opposing arguments which surfaced in response to this proposal,¹¹²⁹ several international bodies accepted this principle as a norm. The AU was the first organisation to provide for this responsibility in law. In the AU's *Constitutive Act* it was determined that the organisation has "the right to intervene in member states in respect of gross circumstances."¹¹³⁰ The international community classified this decision as an indication of a willingness to respect and protect human rights and, therefore, described it as "a significant development in the evolution of the R2P."¹¹³¹ The High-Level Panel Report of 2003 then incorporated the obligation of the international community to respect

¹¹²³ ICISS *The report of the ICISS: The responsibility to protect* xiii.

¹¹²⁴ ICISS *The report of the ICISS: The responsibility to protect* xiii.

¹¹²⁵ Examples of such action taken by the GA include Egypt (1956) and Congo (1960); Burke *An equitable framework for humanitarian intervention* 62.

¹¹²⁶ An example of this activity is the peacekeeping mission in Sierra Leone and Liberia; ECOWAS date unknown <http://ecowas.int>; Burke *An equitable framework for humanitarian intervention* 63.

¹¹²⁷ ICISS *The report of the ICISS: The responsibility to protect* xiii; Hehir *Humanitarian Intervention* 125.

¹¹²⁸ ICISS *The report of the ICISS: The responsibility to protect* xiii; Hehir *Humanitarian Intervention* 125.

¹¹²⁹ Hehir *Humanitarian Intervention* 126-127; Bellamy 2006 *EIA* 151; Macfarlane, Thielking and Weiss 2004 *TWQ* 982.

¹¹³⁰ Article 4(h) of the *Consecutive Act of the AU* (2002).

¹¹³¹ Hehir *Humanitarian Intervention* 130.

and protect other citizens against human rights violations.¹¹³² This report emphasised that although the international law on the use of force should not be changed, the UN SC must take progressive action if international threats existed.¹¹³³ Then in 2005 the GA incorporated the R2P doctrine into a Resolution firstly by stating that citizens should be protected against grave human rights violations.¹¹³⁴ Furthermore, in terms of this Resolution states have an obligation to prevent such abuses and the international community must assist states in exercising these obligations.¹¹³⁵ Nevertheless, despite recognising these responsibilities the Resolution clearly determines that intervention or other action must be taken through the UN.¹¹³⁶ In 2009 discussions for implementation started as states responded to the suggestions made earlier that year by UN Secretary General Ban Ki-Moon.¹¹³⁷ In his report it was indicated that the R2P is an important obligation which is based on three pillars, namely, the responsibility to protect, the responsibility of the international community to help states to exercise this responsibility and timely and decisive response.¹¹³⁸ Although the international reaction to the report was relatively positive,¹¹³⁹ it was decided that the doctrine should focus on prevention and peaceful interventions, it would apply to only the four recognised international crimes, the doctrine was not a legal principle in contrast to international law, and states should develop a "new political will" to act in accordance with these provisions in order for it to be effectively enforced.¹¹⁴⁰ The importance, development and incorporation of this

¹¹³² UN High-Level Panel on Threats, Challenges and Change 2004 <http://un.org>; Hehir *Humanitarian Intervention* 127.

¹¹³³ UN High-Level Panel on Threats, Challenges and Change 2004 <http://un.org>.

¹¹³⁴ *Resolution on the 2005 World Summit Outcome* GA Res 60/1 (2005); Dugard *International Law* 511.

¹¹³⁵ *Resolution on the 2005 World Summit Outcome* GA Res 60/1 (2005).

¹¹³⁶ *Resolution on the 2005 World Summit Outcome* GA Res 60/1 (2005); Dugard *International Law* 511.

¹¹³⁷ Hehir *Humanitarian Intervention* 129.

¹¹³⁸ Ki-moon 2009 <http://un.org>.

¹¹³⁹ Evans "The consequences of non-intervention in Syria" 21.

¹¹⁴⁰ *Resolution on the Responsibility to Protect* GA Res 63/308 (2009).

principle were enhanced by the adoption of two relevant UN reports and the creation of the Office of the Special Adviser in Rwanda.¹¹⁴¹

The UN SC has also placed emphasis on the importance of this principle and the consequences of violating this obligation when addressing conflicted states.¹¹⁴² In 2011, for example, the UN SC released Resolution 1970 in response to the human rights violations which were occurring in Libya.¹¹⁴³ In this document the UN SC strongly condemned the atrocities being perpetrated in this territory and demanded that the government protect its citizens.¹¹⁴⁴ Due to the Libyan government's non-compliance with this responsibility, sanctions were imposed and the situation was referred to the ICC. Nevertheless, gross and shocking violations continued to occur, and as a result Resolution 1973 provided member states with the authority to "take all necessary measures to protect civilians."¹¹⁴⁵ This was the first time that the UN SC authorised intervention against the territory of another state for the purpose of protecting innocent civilians against state violence.¹¹⁴⁶ Although this operation was successful in terminating human suffering, the motives and methods of the member states conducting this intervention resulted in a division among the permanent members.¹¹⁴⁷ Specifically with reference to Russia, as stated by Evans, "the bruises inflicted by this operation will have to heal before any consensus can be expected on tough responses to such situations in the future."¹¹⁴⁸ This is one of the main reasons why the UN SC has been hesitant to authorise the use of force in Syria to end mass murder and the suffering of the general population.¹¹⁴⁹

¹¹⁴¹ Hehir *Humanitarian Intervention* 131; Ki-moon 2011 <http://responsibilitytoprotect.org>; *Resolution on the 2005 World Summit Outcome* GA Res 60/1 (2005).

¹¹⁴² UN date unknown <http://un.org>.

¹¹⁴³ *Resolution on Peace and Security in Africa* UN SC Res 1970 (2011); UN date unknown <http://un.org>.

¹¹⁴⁴ *Resolution on Peace and Security in Africa* UN SC Res 1970 (2011); UN date unknown <http://un.org>.

¹¹⁴⁵ *Resolution on Libya* UN SC Res 1973 (2011); UN date unknown <http://un.org>.

¹¹⁴⁶ Murray and McKay "Introduction" 13.

¹¹⁴⁷ Evans "The consequences of non-intervention in Syria" 20.

¹¹⁴⁸ Evans "The consequences of non-intervention in Syria" 20.

¹¹⁴⁹ Evans "The consequences of non-intervention in Syria" 20-21.

Between 2011 and 2014 the UN SC on several occasions referred to the R2P doctrine by acknowledging and declaring that the Syrian government had an obligation to protect its citizens against human rights abuses, and that it was failing to do so.¹¹⁵⁰ Nevertheless, although the UN refers to the R2P in these Resolutions, this obligation is not physically enforced by taking international action against the regime.¹¹⁵¹ As indicated in Chapter 3, draft resolutions containing several suggestions on how to respond to the particular conflict have been presented. These methods ranged from demanding that the government terminate the violence¹¹⁵² and political solutions¹¹⁵³ to the referral of the situation in Syria to the ICC in order to hold the perpetrators accountable for the atrocities.¹¹⁵⁴ However, all of these resolutions were vetoed by Russia and China.¹¹⁵⁵ There have been no attempts by the UN SC to halt these atrocities by resorting to other international measures involving military intervention. The inaction of the UN SC has resulted in the intensifying of the humanitarian crisis as the death toll continues to rise each year.¹¹⁵⁶ As a result, it is clear that both the UN and the international community are failing to protect the people of Syria,¹¹⁵⁷ thus undercutting the significance of the existence of this principle.¹¹⁵⁸

In order for the R2P doctrine to survive the Syrian catastrophe, it has been suggested that criteria for humanitarian intervention should be established.¹¹⁵⁹

¹¹⁵⁰ *Statement by the President of the UN SC on the situation in the Middle East* S/PRST/2011/16 (2011); UN News Centre 2012 <http://un.org>; UN date unknown <http://un.org>; *Resolution on the Middle East* UN SC Res 2042 (2012); *Resolution on Threats to International Peace and Security* UN SC Res 2170 (2014); Adams *Failure to protect* 9-10.

¹¹⁵¹ As mentioned before, in 2012 a draft resolution was proposed to refer Syria to the ICC but this resolution was vetoed by both Russia and China; see Adams *Failure to protect* 15, 19.

¹¹⁵² *Draft Resolution on the Middle East – Syria* UN SC Res 77 (2012).

¹¹⁵³ *Draft Resolution on the Middle East – Syria* UN SC Res 612 (2011); *Draft Resolution on the Middle East – Syria* UN SC Res 538 (2012).

¹¹⁵⁴ *Draft Resolution on the referral of Syria to the ICC* UN SC Res 348 (2014); Adams *Failure to protect* 19-20.

¹¹⁵⁵ UN date unknown <http://research.un.org>; UN News Centre 2014 <http://un.org>; Adams *Failure to protect* 14-15, 19-20.

¹¹⁵⁶ Murray and McKay "Introduction" 14; Zenko 2014 <http://foreignpolicy.com>; Adams *Failure to protect* 3-5.

¹¹⁵⁷ Adams *Failure to protect* 10.

¹¹⁵⁸ Murray and McKay "Introduction" 14-16.

¹¹⁵⁹ Pattison "The case of criteria " 27.

James Pattison, on the other hand, argues that such criteria already exist,¹¹⁶⁰ and that what is needed instead is clear guidelines relating to the circumstances in which there is a legal duty to intervene.¹¹⁶¹ Furthermore, if there were such a legal duty but there was no intervention, such non-action would have to be regarded as being illegal.¹¹⁶² Ramesh Thakur is of the opinion that this doctrine must be "further clarified and operational safeguards must be tightened to prevent misuse."¹¹⁶³ In order to be "meaningful it must also include military force as an option of last resort (conceptually and not sequentially)."¹¹⁶⁴ It is furthermore suggested by Carment and Landry that regional bodies should play a more active role in responding to such atrocities.¹¹⁶⁵ Also, more focus should be placed on the preventative elements of the R2P.¹¹⁶⁶

The "responsibility while protecting" (RWP) as well as the "responsible protection" (RP) principles which were created in 2011 and 2013 respectively more or less addressed these suggestions,¹¹⁶⁷ but regardless of these suggestions, improvements and additions, the humanitarian crisis in Syria persists. Consequently, it is difficult not to agree with Murray, who suggests that the R2P doctrine be abandoned for:¹¹⁶⁸

A more pragmatic notion of protection grounded in what states are actually capable of in the current structure of the international system. It is unfair to citizens in need and also to states, to expect a miracle when centuries of evidence prove responsibility is not a component of state character.

¹¹⁶⁰ Pattison "The case of criteria " 28.

¹¹⁶¹ Pattison "The case of criteria " 30.

¹¹⁶² Pattison "The case of criteria " 30.

¹¹⁶³ Thakur "Syria and the responsibility to protect" 41.

¹¹⁶⁴ Thakur "Syria and the responsibility to protect" 41.

¹¹⁶⁵ Carment and Landry "R2P in Syria: Regional Dimensions" 52.

¹¹⁶⁶ Carment and Landry "R2P in Syria: Regional Dimensions" 53.

¹¹⁶⁷ Evans "The consequences of non-intervention in Syria" 21-22.

¹¹⁶⁸ Murray "Rationality and R2P: Unfriendly bedfellows" 70.

5.4.2 R2P doctrine criticised

The lack of intervention in Syria can also be contributed to the flaws in the doctrine which have been pointed out by various authors.¹¹⁶⁹ The first critique relates to the fact that the doctrine focuses on prevention instead of intervention.¹¹⁷⁰ It does this by referring to numerous peaceful measures that should be implemented in order to prevent conflict,¹¹⁷¹ probably because intervention is a more controversial issue than prevention.¹¹⁷² However, Burke is of the opinion that "alternative nomenclature does not change the issue at hand in any way whatsoever and using different names cannot affect the legitimacy, legality or justifiability of the act in question."¹¹⁷³ Similarly, Weiss states that this emphasis on prevention is "a superficially attractive but highly unrealistic way to try and pretend that we can finesse the hard issues of what amounts to humanitarian intervention."¹¹⁷⁴ Therefore, it is clear that although the ICISS was created with the purpose of addressing an international disagreement, the report failed to find an answer to the question of whether or not humanitarian intervention could be used to protect innocent people against human rights abuses. Instead, the Commission decided to avoid the controversial issue of intervention and decided to focus on prevention. Prevention in itself is a difficult task and responsibility for a state to discharge. As indicated by Huttenbach "the capability to predict wars escapes even the most knowledgeable."¹¹⁷⁵ This statement is illustrated and supported by the violence that accompanied the Arab Spring.¹¹⁷⁶ None of the North African or Middle East states expected what seemed at first to be peaceful protests to ignite into what is now a civil war in Syria.

¹¹⁶⁹ Burke *An equitable framework for humanitarian intervention* 66; Hehir *Humanitarian Intervention* 132.

¹¹⁷⁰ Burke *An equitable framework for humanitarian intervention* 67; Hehir *Humanitarian Intervention* 132-134.

¹¹⁷¹ ICISS 2001 *The report of the ICISS: The responsibility to protect* 23-27; Hehir *Humanitarian Intervention* 132.

¹¹⁷² Hehir *Humanitarian Intervention* 132; Weiss 2011 *EIA* 2.

¹¹⁷³ Burke *An equitable framework for humanitarian intervention* 67.

¹¹⁷⁴ Weiss *Humanitarian Intervention* 104.

¹¹⁷⁵ Hehir *Humanitarian Intervention* 134.

¹¹⁷⁶ Hehir *Humanitarian Intervention* 134.

Secondly, one of the criteria for the legitimate use of humanitarian intervention includes the motivation of humanitarianism.¹¹⁷⁷ This is problematic as it has been indicated before that it is impossible for interventions to be based solely on humanitarian considerations.¹¹⁷⁸ Furthermore, it is suggested that the permanent members should not veto intervention where their personal interests are not at stake.¹¹⁷⁹ States will not intervene and risk the lives of their soldiers unless they are fighting to protect a personal interest.¹¹⁸⁰

Thirdly, it is argued that the R2P doctrine is ambiguous for the following reasons.¹¹⁸¹ Intervention is limited to circumstances that reach a threshold which has not been defined or qualified by the ICISS.¹¹⁸² Furthermore, the World Summit Outcome does not provide guidelines on how the UN SC should decide whether or not intervention may be authorised.¹¹⁸³ The R2P doctrine was also not referred to in the UN SC Resolutions which authorised intervention in Libya.¹¹⁸⁴ Due to this ambiguity, a "lack of clarity and inconsistent application in state practice",¹¹⁸⁵ this concept is not classified as a norm but rather as an "intersubjective shared standard of behaviour."¹¹⁸⁶

Lastly, the responsibility of states to protect and respect human rights and not to treat citizens as they may want to is not a new concept.¹¹⁸⁷ In fact, this

¹¹⁷⁷ Burke *An equitable framework for humanitarian intervention* 68.

¹¹⁷⁸ Burke *An equitable framework for humanitarian intervention* 68; Hehir *Humanitarian Intervention* 169-172; Wheeler "Humanitarian intervention after September 11, 2001" 194; Walzer *Just and unjust wars* 23; Seybolt *Humanitarian Military Intervention* 27.

¹¹⁷⁹ Burke *An equitable framework for humanitarian intervention* 67; ICISS *The report of the ICISS: The responsibility to protect* xiii.

¹¹⁸⁰ Burke *An equitable framework for humanitarian intervention* 68; Hehir *Humanitarian Intervention* 172; Seybolt *Humanitarian Military Intervention* 27.

¹¹⁸¹ Hehir *Humanitarian Intervention* 137-138; Focarelli 2008 *JCSL* 210.

¹¹⁸² ICISS 2001 *The report of the ICISS: The responsibility to protect* 32-33; Hehir *Humanitarian Intervention* 137.

¹¹⁸³ Hehir *Humanitarian Intervention* 137.

¹¹⁸⁴ Hehir *Humanitarian Intervention* 138; Burke *An equitable framework for humanitarian intervention* 71.

¹¹⁸⁵ Reinhold 2010 *RIS* 74.

¹¹⁸⁶ Reinhold 2010 *RIS* 74.

¹¹⁸⁷ Hehir *Humanitarian Intervention* 139.

responsibility was contained in the Genocide Convention¹¹⁸⁸ and the Universal Declaration of Human Rights¹¹⁸⁹ as well as the Covenant on Civil and Political Rights.¹¹⁹⁰ Nevertheless, all these documents have been unsuccessful in preventing and terminating violations of human rights such as those occurring in Syria.¹¹⁹¹ One might well ask what it is that makes the R2P different, or why this doctrine would be successful in enforcing this responsibility, when it is a mere restating of the law.¹¹⁹² It is true that the R2P doctrine has positively contributed to the development of this part of the international law by determining that where a state fails to fulfil this obligation, the responsibility shifts to the international community.¹¹⁹³ However, as argued elsewhere, it fails to provide regulations, provisions and guidelines which compel international intervention in dire and shocking circumstances.¹¹⁹⁴ Furthermore, despite the UN SC being reluctant to authorise intervention,¹¹⁹⁵ the ICISS has not provided for separate bodies to deal with such situations.¹¹⁹⁶

5.5 Case studies

5.5.1 Case study: Kosovo

The reluctance of the UN SC to intervene in Rwanda and Srebrenica in order to terminate the human rights violations being perpetrated there has harmed its credibility. In Kosovo events the US relied on NATO to assist with unilateral intervention after the UN SC decided not to authorise intervention.¹¹⁹⁷ Before the nature of the intervention can be analysed, however, it is important to provide a brief overview of the events which necessitated an urgent response.

¹¹⁸⁸ Article 1 of the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948).

¹¹⁸⁹ Preamble of the *Universal Declaration of Human Rights* (1948).

¹¹⁹⁰ Preamble of the *International Covenant on Civil and Political Rights* (1966).

¹¹⁹¹ Hehir *Humanitarian Intervention*: 139.

¹¹⁹² Hehir *Humanitarian Intervention* 139; Chesterman 2011 *EIA* 2.

¹¹⁹³ Hehir *Humanitarian Intervention* 140.

¹¹⁹⁴ Hehir *Humanitarian Intervention* 140.

¹¹⁹⁵ Hehir *Humanitarian Intervention* 141.

¹¹⁹⁶ Bain 2010 *RIS* 26.

¹¹⁹⁷ Burke *An equitable framework for humanitarian intervention* 79.

The Federal Republic of Yugoslavia (FRY) has a history of violence based on cultural division and ethnic hatred.¹¹⁹⁸ In the 1980's Albanian students protested at a university to draw attention to their dissatisfaction with the "poor facilities."¹¹⁹⁹ The police terminated these protests but the Kosovo Serbians had been angered by the demands of the Albanians.¹²⁰⁰ In addition, the Serbs argued that the Albanians in political control of the province were responsible for oppression and violence against the Serbs.¹²⁰¹ As these tensions were having a widespread effect on neighbouring regions, Kosovo was declared independent in 1989.¹²⁰² Peace reigned in Kosovo until the Peace Accords, which terminated the conflict in Bosnia, were signed in 1995.¹²⁰³ Many argue that the Albanians were dissatisfied about the fact that no recognition was awarded to the peaceful situation in Kosovo.¹²⁰⁴ As a result, the Kosovo Liberation Army (KLA) started to retaliate against the police forces.¹²⁰⁵ The clashes between this group and the police forces, coupled with attacks launched against Serbs, resulted in suffering and further discord.¹²⁰⁶ The situation developed into a crisis which was recognised by the UN SC in 1998 as a threat to international peace and security.¹²⁰⁷

Despite early "warning that the situation would explode",¹²⁰⁸ the international community decided to respond to the Kosovo situation only in 1999.¹²⁰⁹ As described by the Independent International Commission on Kosovo (IICK), "this failure to respond adequately at an early stage of the evolution of the conflict created difficulty in later stages. At each stage of the conflict, the diplomatic options narrowed."¹²¹⁰ As described by Bellamy, the non-intervention at an earlier stage can be attributed to the fact that the Kosovo crisis was depicted as being

¹¹⁹⁸ Hehir *Humanitarian Intervention* 223.

¹¹⁹⁹ Hehir *Humanitarian Intervention* 224.

¹²⁰⁰ Hehir *Humanitarian Intervention* 224.

¹²⁰¹ Hehir *Humanitarian Intervention* 224; Mertus *Kosovo: How myths and truths started a war*.

¹²⁰² Hehir *Humanitarian Intervention* 224.

¹²⁰³ Hehir *Humanitarian Intervention* 225.

¹²⁰⁴ Hedges 1999 *Foreign Affairs* 31; Judah *Kosovo: War and revenge* 124.

¹²⁰⁵ Hehir *Humanitarian Intervention* 225; Judah *Kosovo: War and revenge* 26.

¹²⁰⁶ Hehir *Humanitarian Intervention* 224-225; Wheeler *Saving strangers* 269.

¹²⁰⁷ *Resolution on Kosovo (FRY)* UN SC Res 1199 (1998).

¹²⁰⁸ Hehir *Humanitarian Intervention* 226-227.

¹²⁰⁹ Hehir *Humanitarian Intervention* 226.

¹²¹⁰ IICK *Kosovo Report* 2000 62.

less important than the conflict in Bosnia.¹²¹¹ Also, the shocking scale of the deaths and displacements was published only in 1998.¹²¹² For that reason in the same year peace negotiations with the KLA were concluded. However, the KLA ignored the provisions of the agreement and violence continued in the area, increasing the numbers of the dead and the displaced.¹²¹³ Consequently, in 1999 the relevant parties were summonsed to attend peace negotiations in France, and instructed that if they did not attend or did not reach an agreement, NATO was to use force to end the conflict.¹²¹⁴ Nevertheless, an agreement between the parties could not be reached as there was a lack of consensus on the legitimacy of the procedures as well as of the provisions contained in the proposed agreement.¹²¹⁵ As a result, shortly after this failed attempt, NATO started launching airstrikes in Kosovo.¹²¹⁶ As previously said, NATO was brought into the picture to legitimise US intervention, as the UN SC had refused to provide authorisation. The GA was also not resorted to, as it was argued that it was "highly unlikely" that two-thirds of the GA would vote in favour of military intervention.¹²¹⁷ This campaign can be compared to the campaign of the coalition currently conducting airstrikes in Iraq and Syria, as several mistakes are being repeated in the Middle East. For instance, like President Obama in Syria now, President Clinton declared at the commencement of the action that he would not send troops into Kosovo.¹²¹⁸ As explained by Hehir, this was a huge mistake, as the "FRY army knew that they did not have to prepare for ground intervention."¹²¹⁹ Furthermore, strikes at that height made it difficult to distinguish between legitimate military targets and urban areas.¹²²⁰ As a result, the campaign contributed to the deaths and displacement of many civilians.¹²²¹ Also, shortly after the campaign commenced,

¹²¹¹ Bellamy *Kosovo and international society* 24-26.

¹²¹² Bellamy *Kosovo and international society* 24-26; Daalder and O'Hanlon *Winning Ugly* 9.

¹²¹³ Hehir *Humanitarian Intervention* 228.

¹²¹⁴ Hehir *Humanitarian Intervention* 228.

¹²¹⁵ Hehir *Humanitarian Intervention* 228.

¹²¹⁶ Hehir *Humanitarian Intervention* 229.

¹²¹⁷ Hehir *Humanitarian Intervention* 230; White 2000 *JCSL* 41.

¹²¹⁸ Hehir *Humanitarian Intervention* 231.

¹²¹⁹ Hehir *Humanitarian Intervention* 231.

¹²²⁰ Hehir *Humanitarian Intervention* 231.

¹²²¹ Hehir *Humanitarian Intervention* 231; IICK *Kosovo Report 2000* 90-94.

the motive evolved from putting an end to ethnic cleansing to defeating the FRY army and preventing displacement.¹²²² Nonetheless, regardless of these negative consequences, NATO intervention resulted in the signing of a peace agreement¹²²³ which was enforced by the UN SC Resolution 1244.¹²²⁴

The divided opinion among the international community on the military intervention which occurred in Kosovo, as described by Hehir, "propelled the issue of humanitarian intervention to the top of the political agenda."¹²²⁵ On the one hand, Western states were being praised for intervening on behalf of those suffering despite the lack of personal interest.¹²²⁶ This indicated that the operation was perceived by some as an intervention for the international protection of values and morality.¹²²⁷ Also, as a positive development in the field of human rights.¹²²⁸ In general, it was described as a "hopeful sign that we are indeed entering the third age of the human rights revolution: the era of enforcement."¹²²⁹

On the other hand, many argued that the motive of the protection of human rights was used to cloak the hidden agenda of expanding political interest and influence.¹²³⁰ In addition, criticism referred to the negative effect that the operation had on international relations¹²³¹ as well as the legitimate status of the UN¹²³² and international law in general.¹²³³

With regard to international relations, it was argued that such military action would jeopardise relationships with Russia and China, who had vetoed intervention.¹²³⁴ In response, it was argued that for this reason non-authorised

¹²²² Prokopijevic "Humanitarian Intervention" 187.

¹²²³ *Military Technical Agreement* (1999); Hehir *Humanitarian Intervention* 232.

¹²²⁴ *Resolution on Kosovo* UN SC Res 1244 (1999).

¹²²⁵ Hehir *Humanitarian Intervention* 233.

¹²²⁶ Hehir *Humanitarian Intervention* 233-234.

¹²²⁷ Chatterjee and Scheid "Introduction" 7; Hehir *Humanitarian Intervention* 233-234.

¹²²⁸ Hehir *Humanitarian Intervention* 233.

¹²²⁹ Hehir *Humanitarian Intervention* 233.

¹²³⁰ Hehir *Humanitarian Intervention* 234-235.

¹²³¹ Mandelbaum 1999 *Foreign Affairs* 2-8.

¹²³² Hehir *Humanitarian Intervention* 235.

¹²³³ Hehir *Humanitarian Intervention* 235.

¹²³⁴ Mandelbaum 1999 *Foreign Affairs* 2-8.

humanitarian intervention should be mandatory in certain circumstances.¹²³⁵ As stated by Bellamy, "democratic states cannot be prevented by undemocratic states to protect foreign people against human rights abuses."¹²³⁶ The exercise of their veto powers by these two states has also tremendously affected the legitimacy of the UN SC. States argue that they won't even bother to approach the UN SC for authorisation as the vetoing of any suggestion by Russia and China is inevitable. Despite this argument, the majority felt that the operation conducted by NATO was illegal and contrary to the provisions of international law.¹²³⁷ However, NATO defended its actions by referring to the concept that force may be used in "extreme circumstances to avert humanitarian catastrophe."¹²³⁸ Although this is not a recognised international legal principle, those supporting the Kosovo intervention stated that morality could outweigh traditional law.¹²³⁹ Therefore, it is impossible not to agree with the IICK and the ICISS, as referred to by Hehir, that the non-authorised humanitarian intervention in Kosovo could be seen as "much-needed amendments to international law."¹²⁴⁰ The unilateral action in Kosovo was an important benchmark for the future of humanitarian intervention, as the ICISS was established shortly after the operation had ended and a peace agreement was signed.¹²⁴¹ As explained before, the ICISS created the World Summit Outcome in which the R2P principle was incorporated. According to Bellamy, it was the international recognition arising from the Kosovo events that states had a responsibility to protect their citizens against human rights violations that led to the integration of this concept.¹²⁴² In addition, this international recognition "provided a catalyst for new thinking about the use of

¹²³⁵ Daalder and O'Hanlon *Winning ugly* 218; Hehir *Humanitarian Intervention* 237.

¹²³⁶ Bellamy *Kosovo and international society* 212; Hehir *Humanitarian Intervention* 237.

¹²³⁷ Hehir *Humanitarian Intervention* 236; Dugard *International Law* 510.

¹²³⁸ Hehir *Humanitarian Intervention* 236; Dugard *International Law* 510; Buchanan "Reforming the international law of humanitarian intervention" 132.

¹²³⁹ Hehir *Humanitarian Intervention* 236; Buchanan "Reforming the international law of humanitarian intervention" 131.

¹²⁴⁰ IICK *Kosovo Report 2000* 10; ICISS 2001 *The report of the ICISS: The responsibility to protect* 3; Hehir *Humanitarian Intervention* 237; Bennett and Strug *Introduction to International Law* 344.

¹²⁴¹ Bennett and Strug *Introduction to International Law* 344.

¹²⁴² Bellamy *Responsibility to Protect* 164; Hehir *Humanitarian Intervention* 238.

armed force for humanitarian purposes."¹²⁴³ In conclusion, it can be argued that the international legal status of humanitarian intervention after the Kosovo events can be described as follows: it is tolerated in exceptional circumstances,¹²⁴⁴ and it is illegal but legitimate.¹²⁴⁵

5.5.2 Case study: Syria

As pointed out in Chapter 2, the situation in Syria has been described as one of the worst humanitarian crises since WWII.¹²⁴⁶ Since 2012 the Syrian population has been the victim of violent attacks launched by both its government and the armed organisation ISIS. Together, these attacks have resulted in the deaths of thousands and displacement of millions of people. Today Syria is characterised by the images of refugees enduring terrible and dangerous adventures in order to obtain asylum abroad. As indicated in the same chapter, the international community started launching airstrikes against ISIS in late 2014.¹²⁴⁷ These airstrikes, which started in Iraq,¹²⁴⁸ were justified on the grounds of collective self-defence, as the Iraqi government had requested the US to assist in averting armed attacks by this group.¹²⁴⁹ However, the justification for the extension of this campaign to neighbouring Syria on the same grounds has been somewhat more troublesome.¹²⁵⁰ Because the US has not been the victim of an armed attack mounted by ISIS and may this claim to be acting in self-defence, and because the Syrian government has not approached the US to assist the government, which would allow the US to claim to be acting on the basis of collective self-defence, these activities could easily be viewed as acts of aggression.¹²⁵¹ For that reason,

¹²⁴³ Bellamy *Responsibility to Protect* 164.

¹²⁴⁴ Stromseth "Rethinking Humanitarian Intervention."

¹²⁴⁵ IICK *Kosovo Report 2000* 10.

¹²⁴⁶ European Commission 2015 <http://ec.europa.eu>.

¹²⁴⁷ President Obama 7 August 2014 <http://whitehouse.gov>.

¹²⁴⁸ Hudson 2014 <http://foreignpolicy.com>.

¹²⁴⁹ *Letter from the Permanent Representative of Iraq to the UN addressed to the President of the SC* UN Doc S/2014/691 (2014); Arimatsu and Schmitt 2014 *CJTLB* 8.

¹²⁵⁰ Arimatsu and Schmitt 2014 *CJTLB* 8-9.

¹²⁵¹ Arimatsu and Schmitt 2014 *CJTLB* 9-10; Hakimi 2015 *ILS* 7.

the possibility of humanitarian intervention under the R2P doctrine as a response to the attack by ISIS in Syria will be considered.

The Syrian crisis has been described as "a model for humanitarian intervention under the R2P doctrine."¹²⁵² As determined before, the R2P doctrine is based on the principle that a state has the primary responsibility to protect its citizens against human rights violations.¹²⁵³ If a state is, however, unwilling or unable to do so, the responsibility shifts to the international community.¹²⁵⁴ As the Syrian government has been responsible for performing attacks against its own population, it is clear that the state is unwilling to exercise the R2P.¹²⁵⁵ Furthermore, the inability of the state to deter the attacks by ISIS and to eliminate this group in totality indicates that the Syrian government is unable to fulfil its primary obligation to protect its citizenry. As a result, it is the international community that is responsible for mitigating the humanitarian crisis.¹²⁵⁶ The World Summit Outcome Document requires the international community in attempting to bring a conflict to an end to implement peaceful measures before resorting to military action.¹²⁵⁷ The international community has already attempted to influence the situation through peaceful measures such as sanctions, ceasefire agreements, flight embargoes, observer missions, and attempted referrals to the ICC,¹²⁵⁸ yet none of these actions has been successful in averting the violent attacks and widespread human rights violation continue to take place.¹²⁵⁹ As all the possible peaceful measures seem to have been exhausted,¹²⁶⁰ the international community is entitled to mobilise an immediate forcible response,¹²⁶¹ but before such a response can be mounted the Outcome Document explicitly

¹²⁵² Aljazy and Aljaghoub 2012 *YIMEL* 202.

¹²⁵³ Aljazy and Aljaghoub 2012 *YIMEL* 203.

¹²⁵⁴ Aljazy and Aljaghoub 2012 *YIMEL* 204

¹²⁵⁵ Aljazy and Aljaghoub 2012 *YIMEL* 204.

¹²⁵⁶ Aljazy and Aljaghoub 2012 *YIMEL* 204; *Resolution on the 2005 World Summit Outcome GA Res 60/1* (2005).

¹²⁵⁷ ICISS 2001 *The report of the ICISS: The responsibility to protect* 29-31.

¹²⁵⁸ Aljazy and Aljaghoub 2012 *YIMEL* 205; *Report on implementing the R2P GA Report A/63/677* (2009).

¹²⁵⁹ Aljazy and Aljaghoub 2012 *YIMEL* 205.

¹²⁶⁰ Aljazy and Aljaghoub 2012 *YIMEL* 205.

¹²⁶¹ Aljazy and Aljaghoub 2012 *YIMEL* 204.

requires authorisation of the intervention by the UN SC.¹²⁶² Sadly, several proposals for such military intervention has been vetoed by Russia and China¹²⁶³ and there is no indication that these states will adopt a different approach in the near future.¹²⁶⁴

For that reason it is suggested that the international community should resort to unilateral or non-authorised humanitarian intervention as a response to the conflict in Syria. As with the Kosovo intervention, the question is whether such an intervention would be legal? As indicated by Henriksen and Schack, the US, the UK and Denmark have argued that international law is not opposed to such military intervention.¹²⁶⁵ With specific reference to Syria, White House Counsel Rummel, for instance, has stated that "although such an operation does not fit a traditionally required legal basis under international law without UN backing, it would nevertheless be justified and legitimate within international law."¹²⁶⁶ The US legal adviser supported this statement by specifying that "international law has evolved to such an extent that an intervention such as the one contemplated in Syria may be legal."¹²⁶⁷ He seemed to suggest that intervention in such a case without UN authorisation could be seen as a "law-making moment."¹²⁶⁸ The UK and Denmark referred to the Kosovo case as the "precedent" to justify such intervention.¹²⁶⁹ However, there is no reference in any of these statements to relevant international law in support of these arguments. Henriksen and Schack attempt to reconcile these arguments with international law by referring to the modern interpretation of the UN Charter, state practice, customary international law and the necessity as a ground for precluding wrongfulness.¹²⁷⁰

¹²⁶² ICISS 2001 *The report of the ICISS: The responsibility to protect* xii.
¹²⁶³ Burke *An equitable framework for humanitarian intervention* 344.
¹²⁶⁴ Burke *An equitable framework for humanitarian intervention* 345.
¹²⁶⁵ Henriksen and Schack 2014 *JUFIL* 123.
¹²⁶⁶ Henriksen and Schack 2014 *JUFIL* 126.
¹²⁶⁷ Henriksen and Schack 2014 *JUFIL* 126.
¹²⁶⁸ Henriksen and Schack 2014 *JUFIL* 126.
¹²⁶⁹ Henriksen and Schack 2014 *JUFIL* 127.
¹²⁷⁰ Henriksen and Schack 2014 *JUFIL* 128-147.

The guidelines on the interpretation of treaties contained in the Vienna Convention determine that they should be interpreted by taking into account developments in law.¹²⁷¹ This being said, the R2P doctrine was developed after the UN Charter was established. Some argue that the interpretation of the UN Charter with consideration of the principles in the World Summit Outcome Document forms a right to unilateral humanitarian intervention.¹²⁷² In fact, it is argued that the R2P is an "emerging norm that will at some point crystallize into legally binding principle."¹²⁷³ These arguments are somewhat loose as attempts to justify the use of unilateral humanitarian intervention,¹²⁷⁴ as the World Summit Outcome explicitly refers to the required authorisation by the UN SC, in order presumably to prevent international controversy.¹²⁷⁵

In addition, for a principle to be regarded as state practice it must be "widespread and the parties must by common consent in fact apply the treaty in a manner which its provisions do not envisage."¹²⁷⁶ The mixed feelings and opinion surrounding the Kosovo intervention as well as the strong opposition to humanitarian intervention in Syria indicate that states have not yet reached a mutual agreement and understanding of the actual status of unilateral humanitarian intervention.¹²⁷⁷

However, this does not serve to deny the possibility that this concept could still form part of customary international law. As stated in the *Nicaragua* case, "not all customary law has the exact same content as the rules in the UN Charter."¹²⁷⁸ Consequently, such a customary international principle is able to exist under international law.¹²⁷⁹ Nevertheless, it has been argued elsewhere that the limited

¹²⁷¹ Article 31 of the *Vienna Convention* (1969).

¹²⁷² Henriksen and Schack 2014 *JUFIL* 131.

¹²⁷³ Henriksen and Schack 2014 *JUFIL* 131; Aljazy and Aljaghoub 2012 *YIMEL* 197; UN High-Level Panel on Threats, Challenges and Change 2004 <http://www.un.org>.

¹²⁷⁴ Henriksen and Schack 2014 *JUFIL* 132.

¹²⁷⁵ ICISS 2001 *The report of the ICISS: The responsibility to protect* xii.

¹²⁷⁶ Henriksen and Schack 2014 *JUFIL* 133; Dorr and Schmalenbach *Vienna Convention* 556-558.

¹²⁷⁷ Henriksen and Schack 2014 *JUFIL* 140, 142.

¹²⁷⁸ *Nicaragua v USA* ICJ Reports (1986) para 174.

¹²⁷⁹ Henriksen and Schack 2014 *JUFIL* 142.

number of cases of humanitarian intervention which have occurred after the UN was established is insufficient to support the belief that such a customary law has been created.¹²⁸⁰ The fact that the total prohibition on the use of force, to which there are only two recognised exceptions, is recognised as customary international law, also negatively affects this argument.¹²⁸¹

The final ground for reconciliation proposed by these two writers is "necessity as a circumstance precluding legal wrongfulness."¹²⁸² The Draft Articles on State Responsibility determine that:¹²⁸³

Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of the State unless the act: a) is the only way for the State to safeguard an essential interest against a grave and imminent peril and b) does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

Necessity as a justification for unilateral humanitarian intervention has found some support,¹²⁸⁴ and the reliance on necessity is described as "the strongest argument for the compatibility of unilateral humanitarian intervention with international law."¹²⁸⁵ The reason for this is that it provides a "legal tool that allows for the balancing of territorial sovereignty versus humanitarian considerations."¹²⁸⁶ Nonetheless, Henriksen and Schack provide a range of factors resulting in the rejection of the notion that necessity may justify the circumvention of international law.¹²⁸⁷

Regardless of the fact that unilateral humanitarian intervention is not reconcilable with international law, the reaction of the international community to the Kosovo intervention indicates that it is tolerated in exceptional circumstances. Like

¹²⁸⁰ Holzgrefe "The humanitarian intervention debate" 45-46; Arend and Beck *International Law and the use of force* 137; Hehir *Humanitarian Intervention* 109.

¹²⁸¹ Henriksen and Schack 2014 *JUFIL* 143.

¹²⁸² Henriksen and Schack 2014 *JUFIL* 144.

¹²⁸³ Article 25 and 26 of the *Draft Articles on State Responsibility* (2001).

¹²⁸⁴ Henriksen and Schack 2014 *JUFIL* 145; *Legality of the use of force (Serbia and Montenegro v Belgium)* (1999) paras 13-14; Spiermann 2002 *NJIL* 543.

¹²⁸⁵ Henriksen and Schack 2014 *JUFIL* 145.

¹²⁸⁶ Henriksen and Schack 2014 *JUFIL* 145.

¹²⁸⁷ Henriksen and Schack 2014 *JUFIL* 146-147.

Kosovo, the Syrian population is facing tremendous human rights violations and there is, therefore, no reason why this action should not be an acceptable response to the crisis. At the end of the day, the end could justify the means and if the operation is successful in eliminating threats to human rights and terminating the conflict in that territory, the international community will have no choice but to tolerate the intervention. Furthermore, non-authorised humanitarian intervention is a suitable response to the Syrian crisis, as it is compatible with the wide variety of criteria identified by the ICISS and the UK. It is also reconcilable with the criteria referred to by Ciaran Burke in *An equitable framework for humanitarian intervention*.

The first criterion determined by the ICISS in the World Summit Outcome Document is that the intervention must be for a just cause.¹²⁸⁸ As specified by the Commission, this cause should be to protect people who are victims of serious and irreparable harm.¹²⁸⁹ These circumstances include large-scale loss of life, which loss is the product of state action or neglect, and also large-scale ethnic cleansing.¹²⁹⁰ These activities include acts of genocide, crimes against humanity, and even civil war.¹²⁹¹ The analysis of this standard indicates that intervention in Syria would be for a justifiable cause, as there is large-scale loss of life at the hands of both the government and ISIS. Furthermore, ISIS is launching indiscriminate attacks against Christians and Yazidis¹²⁹² in such a manner as could be characterised as ethnic cleansing. The atrocities in Syria have definitely reached the threshold of required of characterisation as genocide and crimes against humanity.¹²⁹³ The ICISS describes how a just cause is to be identified, and this includes reaching international consensus that a catastrophe is taking place, together with reports compiled by the Red Cross reflecting the actual

¹²⁸⁸ ICISS 2001 *The report of the ICISS: The responsibility to protect* 32.

¹²⁸⁹ ICISS 2001 *The report of the ICISS: The responsibility to protect* 32.

¹²⁹⁰ ICISS 2001 *The report of the ICISS: The responsibility to protect* 32.

¹²⁹¹ ICISS 2001 *The report of the ICISS: The responsibility to protect* 33.

¹²⁹² Sekulow *Rise of ISIS* x.

¹²⁹³ Burke *An equitable framework for humanitarian intervention* 345-346; UN Human Rights Council 2012 <http://ohchr.org>; OHCHR 2016 <http://www.ohchr.org>.

statistics of deaths and displacements.¹²⁹⁴ In addition, the ICISS requires that the motive for intervention should be to end human suffering.¹²⁹⁵ The Commission clearly specifies that states may not resort to intervention in order to advance certain political objectives such as overthrowing the government.¹²⁹⁶ However, an intervention may be conducted with the motive of weakening the government's potential to harm its own people.¹²⁹⁷ In other words, the US motive of eliminating Al-Assad and establishing a democratic government might militate against the possibility of that the intervention in Syria is acknowledged to be humanitarian in intent. The ICISS recognises the fact that the motivation for intervention cannot always totally exclude self-interest, for example,¹²⁹⁸ but they do specify that self-interest may not be the primary reason for the intervention, and it must be understandable.¹²⁹⁹ The Document also determines that all peaceful solutions must have been considered before resorting to force as a last resort.¹³⁰⁰ With regard to Syria, as described above, all peaceful measures have been exhausted,¹³⁰¹ including sanctions, flight embargoes, ceasefire agreements, negotiations and referrals to the ICC. The international community will, therefore, be able to resort to military coercion¹³⁰² in response to the Syrian conflict.

The requirement of that the response should be proportionate means that the scale, duration and intensity of the intervention should be the minimum required to achieve the humanitarian objective.¹³⁰³ As a guideline, the Commission has determined that the ends have to justify the means and must be in line with the magnitude of the original provocation.¹³⁰⁴ Of course, certain complex situations may require a longer time to resolve than simple cases. For example, the Kosovo intervention lasted only a few months before a peace agreement was reached and

¹²⁹⁴ ICISS 2001 *The report of the ICISS: The responsibility to protect* 34.

¹²⁹⁵ ICISS 2001 *The report of the ICISS: The responsibility to protect* 35.

¹²⁹⁶ ICISS 2001 *The report of the ICISS: The responsibility to protect* 35.

¹²⁹⁷ ICISS 2001 *The report of the ICISS: The responsibility to protect* 35.

¹²⁹⁸ ICISS 2001 *The report of the ICISS: The responsibility to protect* 36.

¹²⁹⁹ ICISS 2001 *The report of the ICISS: The responsibility to protect* 36.

¹³⁰⁰ ICISS 2001 *The report of the ICISS: The responsibility to protect* 36.

¹³⁰¹ ICISS 2001 *The report of the ICISS: The responsibility to protect* 36.

¹³⁰² ICISS 2001 *The report of the ICISS: The responsibility to protect* 36.

¹³⁰³ ICISS 2001 *The report of the ICISS: The responsibility to protect* 37.

¹³⁰⁴ ICISS 2001 *The report of the ICISS: The responsibility to protect* 37.

the conflict ended. However, as different parties with different interests and motives are involved in the Syrian intervention, this mission could be expected to last much longer than the Kosovo operation. The Commission has also determined that for intervention to be legitimate, there must be reasonable prospects of success.¹³⁰⁵ The purpose of the imposition of this criterion is to ensure that the intervention does not aggravate the situation and trigger a larger conflict. Unfortunately, as in the Kosovo intervention, the intervention's contribution to the damage to people and places is unavoidable. Airstrikes and open confrontations with armed organisations such as ISIS which have no consideration for humanitarian laws can be expected to cause casualties. However, in such cases it is necessary to consider the following: how does the number of casualties caused by the intervention compare with the number of people who are saved and protected against further human rights abuses and fatalities? By taking all of these factors into account, it is difficult not to see how humanitarian intervention as a response to the atrocities in Syria cannot be legitimate in terms of the ICISS criteria.

As supporters of the right to unilateral humanitarian intervention, the UK for example has established its own distinctive criteria to determine the legitimacy of this response in certain circumstances.¹³⁰⁶ The first requirement is that there must be "convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief."¹³⁰⁷ In addition, it must be "objectively clear that there is no practicable alternative to the use of force if lives are to be saved."¹³⁰⁸ Lastly, "the proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim."¹³⁰⁹ By referring to specific events, the Prime Minister averred that all these

¹³⁰⁵ ICISS 2001 *The report of the ICISS: The responsibility to protect* 37.

¹³⁰⁶ Henriksen and Schack 2014 *JUFIL* 127.

¹³⁰⁷ Prime Minister's Office 2013 <http://gov.uk>; Henriksen and Schack 2014 *JUFIL* 127.

¹³⁰⁸ Prime Minister's Office 2013 <http://gov.uk>; Henriksen and Schack 2014 *JUFIL* 127.

¹³⁰⁹ Prime Minister's Office 2013 <http://gov.uk>; Henriksen and Schack 2014 *JUFIL* 127.

requirements were met in the Syrian case.¹³¹⁰ For example, the first criterion was met by referring to the statistics of deaths and displacements in Syria.¹³¹¹ The second criterion was fulfilled by referring to the different peaceful attempts made to bring the crisis to an end.¹³¹² Lastly, it was argued that humanitarian intervention would be necessary to deter further attacks and to prevent a humanitarian catastrophe.¹³¹³

Ciaran Burke established six criteria for the legitimate use of humanitarian intervention and directly applied those criteria to the situation in Syria.¹³¹⁴ First of all, according to Burke, it must be established that the "government has committed a series of gross and systematic human rights violations."¹³¹⁵ HRW as well as the Red Cross have reported on several violating activities occurring within Syria at the hands of state forces. For example, it has been reported that innocent civilians were fired at, used as shields, and abused while being detained as prisoners, and that chemical weapons were used against them. Furthermore, the UN has in several resolutions also condemned the human rights violations and recognised the situation as a threat to international peace and security. Secondly, Burke states that Syria is a party to numerous human rights documents and is, therefore, bound by customary international law.¹³¹⁶ The third criterion demands "a determination beyond reasonable doubt that a peaceful means of putting an end to the violations at hand will not be achievable in a sufficiently proximate time frame to prevent gross human rights abuses from continuing."¹³¹⁷ As indicated several times above, peaceful measures have been unsuccessful in terminating the violations in Syria.¹³¹⁸ The fourth criterion relates to the fact that there is no resolution available through the UN SC, as Russia and China are likely to veto a

¹³¹⁰ Prime Minister's Office 2013 <http://gov.uk>; Henriksen and Schack 2014 *JUFIL* 127.

¹³¹¹ Prime Minister's Office 2013 <http://gov.uk>.

¹³¹² Prime Minister's Office 2013 <http://gov.uk>.

¹³¹³ Prime Minister's Office 2013 <http://gov.uk>.

¹³¹⁴ Burke *An equitable framework for humanitarian intervention* 345.

¹³¹⁵ Burke *An equitable framework for humanitarian intervention* 345.

¹³¹⁶ Burke *An equitable framework for humanitarian intervention* 346.

¹³¹⁷ Burke *An equitable framework for humanitarian intervention* 346.

¹³¹⁸ Burke *An equitable framework for humanitarian intervention* 346-347.

proposed intervention.¹³¹⁹ The fifth criterion is closely related to the third requirement, in that only military intervention must be available.¹³²⁰ All other methods must have been attempted unsuccessfully, so that only force remains as an option to end the conflict. Lastly, Burke notes that the intervention must take place "in good faith and may not be undertaken in vain."¹³²¹ This means that the operation should be conducted by militarily advanced states who have the sole intention of ending the human suffering.¹³²²

5.6 Conclusion

It is clear, then, that non-authorised humanitarian intervention can be used as a legitimate response to terminate the conflict and human rights violations in Syria. As indicated before, however, the legality and legitimacy of this response are constantly being challenged by international authors and academics. The most common opposing arguments include the following. First of all, it is argued that the UN SC is the main body which can authorise the use of force, and if states act contrary to the decisions of the UN SC, that would jeopardise the legitimacy of this body.¹³²³ The passive attitude taken by the UN SC in response to the atrocities which occurred in Rwanda, Srebrenica and Kosovo have already significantly injured the reputation of the UN SC. Furthermore, the fact that Russia and China continue to veto such military proposals discourages states from even approaching the UN SC for such authorisation. Secondly, it is argued that such intervention could be used to disguise the furtherance of personal and political interests.¹³²⁴ As indicated before, the reality of the matter is that personal interests and humanitarian motives can almost never be too far removed from one another.¹³²⁵ In fact, such self-interest could be necessary for the successful conduct of such an operation. For instance, if states intervene to protect an

¹³¹⁹ Burke *An equitable framework for humanitarian intervention* 347.

¹³²⁰ Burke *An equitable framework for humanitarian intervention* 347.

¹³²¹ Burke *An equitable framework for humanitarian intervention* 347.

¹³²² Burke *An equitable framework for humanitarian intervention* 347-348.

¹³²³ Hehir *Humanitarian Intervention* 145.

¹³²⁴ Hehir *Humanitarian Intervention* 23-24, 169-176.

¹³²⁵ Brown "Ethics, interests and foreign policy" 23; Walzer *Just and unjust wars* 26; Weiss *Humanitarian Intervention* 7.

interest, they will invest more time and money in such a conflict, and they will not easily withdraw when confronted with casualties.¹³²⁶ The third argument is that this response is a direct attack on the territorial integrity and thus the sovereignty of a state. However, the predominant view is that human rights are of international concern, and that a state cannot violate such rights to the exclusion of the international community.¹³²⁷ Thus, a state must earn its sovereignty by respecting and protecting human rights. Lastly, the most common opposing argument is that this response does not have a legal basis in international law.¹³²⁸ It is true that this response is not one of the exceptions to the use of force provided for by the UN Charter.¹³²⁹ Also, the lack of consensus in the debate indicates that the response is definitely not recognised as common state practice.¹³³⁰ Nor has it been resorted to in so many cases that it can be classified as customary international law.¹³³¹ Regardless of the fact that it is not expressly referred to in the sources of international law, the international community was tolerant of the non-authorised intervention that occurred in Kosovo.¹³³² In fact, after this intervention a general consensus emerged that although this it was illegal it was legitimate.¹³³³ If such a military intervention could result in a peace agreement in Syria, there is no reason as to why the reaction of the international community should not be the same as with the Kosovo intervention.

After carefully dissecting the Syrian conflict, it is clear that it is a complex matter with many different parties and interests involved. As revealed by the fact that there is no existing legal response to the conflict, it is clear that this is a modern situation which falls outside the limited parameters of the existing international law framework. However, this does not mean that the international community

¹³²⁶ Hehir *Humanitarian Intervention* 173-176.

¹³²⁷ Hehir *Humanitarian Intervention* 146.

¹³²⁸ Hehir *Humanitarian Intervention* 102-110; Burke *An equitable framework for humanitarian intervention* 12-15.

¹³²⁹ Burke *An equitable framework for humanitarian intervention* 7.

¹³³⁰ Henriksen and Schack 2014 *JUFIL* 133-142.

¹³³¹ Henriksen and Schack 2014 *JUFIL* 142-144.

¹³³² Stromseth "Rethinking Humanitarian Intervention."

¹³³³ IICK *Kosovo Report 2000* 10; Burke *An equitable framework for humanitarian intervention* 1; Dugard *International Law* 510.

can simply ignore the suffering and abuse occurring in Syria. Where concepts and mechanisms such as non-authorised humanitarian intervention cannot be reconciled with existing international law, the law should be adapted accordingly. Consequently, it is impossible not to concur with a statement made by Hurrell: "There are many aspects of international law that require reform, but humanitarian intervention is presented as uniquely important by virtue of the degree to which international society is affected morally and practically by humanitarian catastrophe."¹³³⁴

¹³³⁴ Hurrell 2005 "Legitimacy and the use of force" 30; Hehir *Humanitarian Intervention* 312.

Chapter 6

Conclusion

ISIS is a non-state actor that uses modern asymmetrical tactics such as crucifixions, suicide and car bombings, rape and beheadings to target people who are not Sunni-Muslims. This group was created with the purpose of establishing a caliphate under the guidance and leadership of Al-Baghdadi. ISIS did not appear overnight, as it finds its roots in the terrorist organisation Al-Qaeda, which was responsible for the 9/11 attacks. ISIS originated in Iraq and due to the instability which was caused in Syria as a result of the Arab Spring the group was able to extend its field of operations to this neighbouring state. Its ability to openly confront state armed forces and the skills and training of its members have assisted it in gaining territory in both Iraq and Syria, placing millions of people under its control. The rapid expansion of this group and its international support is a confirmation of the fact that this group is no longer just a threat to the Middle East but rather to the international community as a whole. For example, several people have left their countries to join the ISIS mission in Iraq and Syria, silent sympathisers are launching attacks on domestic ground, and terrorist organizations such as Al-Shabaab and Boko Haram have pledged allegiance to the group. As a result, a US-led coalition campaign was formed in 2014 with the purpose of launching airstrikes in Iraq and Syria.

The fact that ISIS has revealed the ability to constantly adapt to its surroundings makes it difficult to classify it in terms of categories existing under international law such as rebel groups, liberation movements and insurgencies. ISIS started in Iraq as a rebel group under the name JAN, but it soon started targeting fellow rebel groups who were fighting for democracy, as ISIS had its own objective of creating a state adhering to Sharia law. ISIS is not a liberation movement as it is not internationally recognised as fighting for freedom. Furthermore, it is not an insurgency movement as the group already portrays the symbolic elements of a "state building actor." As a result, domestic responses such as counterinsurgency methods would not be effective in eradicating this group.

The several authors prefer to classify ISIS as a terrorist organization (as does the US, for idiosyncratic reasons described above) but a comparison with the internationally recognised terrorist organisation Boko Haram reveals that such a classification is not appropriate. The chief characteristic of terrorism is the use of violence against civilians with the purpose of provoking fear and conveying a specific message. Also, unlike ISIS but as in the acts perpetrated by Boko Haram, terrorists do not have a need to gain territory, and instead focus their attention on sporadic acts with the purpose of forcing a selected audience to obey its commands. In addition, as illustrated by the discussion of the international counterterrorism framework, the existing counterterrorism conventions and policies would not be effective in eradicating ISIS. As said before, the measures provided for by these conventions would not have a crippling effect on the activities of this particular group as their structure and organisation is much more integrated and complex than those of any other group in history. On the other hand, these counterterrorism measures have severely limited the effectiveness of well-known terrorist organisations such as Al-Qaeda and Boko Haram.

Other international responses which could be activated in response to the depredations of this group include the attribution of individual criminal responsibility, individual or collective self-defence, and UN authorisation. All of these responses are regulated by IHL, but for IHL to be applicable the situation must amount to an armed conflict. The IHL distinguishes between international and non-international armed conflicts, but the conflicts in Iraq and Syria have revealed that this stringent distinction is outdated and that it needs to be eroded. The analysis of the characteristics of each category of conflict in context shows that a conflict can contain elements of both kinds. The conflicts in Iraq and Syria are complex, and they amount to internationalised armed conflicts to which humanitarian law should apply. Consequently, ISIS could be held criminally responsible for human rights violations in terms of the Rome Statute. However, the fact that Iraq and Syria are not parties to the Statute makes it difficult to ensure their prosecution for the crimes committed in their territory. The UN SC can also refer a particular situation to the ICC if it presents a threat to

international peace and security. There was an attempt to refer the situation in Syria to the ICC in 2014, but the proposal was vetoed by the permanent SA members Russia and China as a result of their friendly relations with Al-Assad.

The international community could, therefore, consider the use of force in order to respond to the attacks by ISIS. Although the UN Charter prohibits the use of force, it provides for certain exceptions. With regards to individual self-defence, Iraq can legitimately exercise this form of self-defence against ISIS as the state has been the victim of continuous armed attacks. The US-led coalition is also legitimately assisting Iraq with its fight against ISIS on the basis of collective self-defence, as Iraq formally requested assistance from the US. The extension of the US-led coalition campaign to the territory of Syria on the basis of pre-emptive or anticipatory self-defence, however, has resulted in criticism, on the grounds that self-defence cannot be used as a justification of action against non-state actors, and that Al-Assad has not provided his consent to the intervention. Nonetheless, states have become more tolerant towards the use of pre-emptive or anticipatory self-defence against non-state actors since 9/11, as it is clear that non-state actors can present an immense challenge to international peace and security. Also, the inability or unwillingness of a particular state to prevent a group from launching attacks from its territory can be seen as implied consent for the use of force. However, Al-Assad has warned the US not to launch attacks in Syria, and the US airstrikes launched in this territory can, therefore, easily be regarded as acts of aggression.

For that reason, humanitarian intervention can be used as a legitimate and valid response to the attacks by ISIS. However, as explained in Chapter 5, there are several controversies surrounding this response. The international community does not support the use of force for humanitarian purposes, as it violates sovereignty, it occurs without consent of the particular state under attack, it is not contained in any of the international legal instruments, and it can easily be used as a method to further the political objectives of the intervening state. Nevertheless, the international community became more tolerant towards this response after it resulted in the conclusion of a peace agreement in 1999 which

brought an end to the atrocities which occurred in Kosovo. As a result, the ICISS was created with the purpose of establishing guidelines for the legitimate use of humanitarian intervention in response to armed conflict. The ICISS established the R2P doctrine, which entails that each state has the primary responsibility to prevent non-state actors from launching armed attacks on others from its territory. Also, where a particular state is unable or unwilling to do perform this function, the responsibility devolves on the international community. The ICISS's World Summit Outcome of 2005 also contains a list of requirements that need to be met before humanitarian intervention may be used in response to armed conflict.

Unfortunately, the ICISS included the prerequisite for intervention of authorisation by the UN SC. Although the UN SC is responsible for maintaining international peace and security, its reluctance to authorise the use of force where serious human rights violations have occurred has affected its credibility. For example, the UN SC failed to authorise the use of force in response the humanitarian crises which occurred in Rwanda, Srebrenica and Kosovo. The main reason for the failure of the UN SC to intervene in these situations is the fact that Russia and China vetoed these proposals. As stated by Hehir, "this threat often meant that issues have not even been brought before the Council because a veto was inevitable."¹³³⁵ This is exactly why the international community has not approached the UN SC to authorise the use of force in Syria. As stated before, Russia and China have already vetoed a proposal to refer the Syrian crisis to the ICC due to their friendly relations with Al-Assad. Consequently, the answer to the research question "under which circumstances can humanitarian intervention be used in response to the attacks by ISIS?" is that authorisation by the UN SC is "highly unlikely"¹³³⁶ under any circumstances.

For that reason, it is suggested that non-authorised humanitarian intervention should be used in response to the attacks by ISIS. It is a fact that the legality of

¹³³⁵ Hehir *Humanitarian Intervention* 154.

¹³³⁶ Burke *An equitable framework for humanitarian intervention* 344-345.

non-authorised humanitarian intervention is even more frequently challenged and criticised than authorised humanitarian intervention. Nevertheless, the use of unilateral humanitarian intervention in response to the events in Kosovo resulted in its characterisation as being "a hopeful sign that we are indeed entering the third age of the human rights revolution: the era of enforcement."¹³³⁷ As determined in Chapter 5, the situation in Syria complies with all the requirements identified by the ICISS and the UK, as described by the author Ciaran Burke. In addition, the casualties and displacements are greater than those that motivated the Kosovo intervention. Consequently, it is impossible not to agree with Aljazy and Aljaghoub, who state that Syria is a "perfect model for humanitarian intervention."¹³³⁸ Should the use of force for humanitarian purposes result in the termination of the Syrian crisis, the international community will have no other choice but to be tolerant towards this response, regardless of the fact that the majority is of the opinion that it is illegal. It is, therefore, appropriate to conclude with the following words of Ciaran Burke:¹³³⁹

If a State or coalition of States raises its banner and deploys troops for the humanitarian cause, perhaps rather than either condemn such action as illegal, or resort to morality and political theory – in lieu of legality – to justify it, the international community will look to equity, that is, to the law, for a solution. If States indeed decide to do so, they may well discover that what seems to be the right thing to do may well also be the legal thing.

¹³³⁷ Hehir *Humanitarian Intervention* 235.

¹³³⁸ Aljazy and Aljaghoub 2012 *YIMEL* 202.

¹³³⁹ Burke *An equitable framework for humanitarian intervention* 350.

Bibliography

Literature

9/11 Commission 2004 *Final Report of the National Commission*

9/11 Commission 2004 *Final Report of the National Commission on terrorist attacks upon the US* 9/11 Commission on terrorism 1-428

Adams *Failure to protect*

Adams S *Failure to protect: Syria and the UN SC* (Global Centre for the Responsibility to Protect New York 2015)

Adnan and Reese 2014 *Middle East Security Report 24*

Adnan S and Reese A *Middle East Security Report 24: Beyond the Islamic State; Iraqi's Sunni insurgency* Institute for the study of war 2014 9-25

Akpınarlı *The fragility of the failed states paradigm*

Akpınarlı N *The fragility of the failed states paradigm: A different international law perception of the absence of effective government* (Martinus Nijhoff Publishers Leiden 2010)

Aldrich 2003 *AJIL*

Aldrich GA "The Taliban, Al-Qaeda and the determination of illegal combatants" 2003 *AJIL* 891-899

Aljazy and Aljaghoub 2012 *YIMEL*

Aljazy IM and Aljaghoub MM "Libya and Syria: Responsibility to protect and the politics of power" 2012 *YIMEL* 196-210

Arend and Beck *International Law and the use of force*

Arend A and Beck R *International Law and the use of force: Beyond the UN Charter paradigm* (Routledge London 1993)

Arimatsu and Schmitt 2014 *CJTLB*

Arimatsu L and Schmitt MN "Attacking IS and the Khorasan group: surveying the international law landscape" 2014 *CJTLB* 2-29

Bain 2010 *RIS*

Bain W "Responsibility and obligation in the Responsibility to Protect" 2010 *RIS* 25-46

Balendra 2007 *CLR*

Balendra N "Defining armed conflict" 2007 *CLR* 2462-2512

Bellamy 2006 *EIA*

Bellamy A "Whither the responsibility to protect? Humanitarian intervention and the 2005 World Summit" 2006 *EIA* 143-169

Bellamy and Williams 2011 *International Affairs*

Bellamy A and Williams P "The new politics of protection? Cote d'Ivoire, Libya and the responsibility to protect " 2011 *International Affairs* 825-850

Bellamy *Just wars: from Cicero to Iraq*

Bellamy A *Just wars: from Cicero to Iraq* (Polity London 2006)

Bellamy *Kosovo and international society*

Bellamy A *Kosovo and international society* (Pallgrave Macmillan UK London 2002)

Bellamy *Responsibility to protect*

Bellamy A *Responsibility to protect* (Polity Press London 2009)

Bello *Countering Boko Haram*

Bello M *Countering Boko Haram: Preservation of Nigeria's security or violations of human rights?* (Masters-dissertation University of Zirve 2014)

Bennett 2013 *PILROC*

Bennett AM 2013 "Islamic history & AQ: a primer to understanding the rise of Islamic movements in the modern world" 2013 *PILROC* 316-370

Bennett and Strug *Introduction to International Law*

Bennet TW and Strug J *Introduction to International Law* (Juta Cape Town 2013)

Bereczki 2015 *IJJS*

Bereczki RL "From Islam to Jihad recognition" 2015 *AGORA International Journal of Juridical Sciences* 5-12

Bergen *The Osama Bin Laden I know*

Bergen PL *The Osama Bin Laden I know: An oral history of AQ's leader* (Free Press New York 2006)

Berman "Moral versus legal legitimacy"

Berman F "Moral versus legal legitimacy" in Reed C and Ryall D (eds) *The price of peace* (Cambridge University Press Cambridge 2007) 157-179

Bethlehem 2012 *AJIL*

Bethlehem D "Self-defence against an imminent or actual armed attack by a non-state actor" 2012 *AJIL* 770-777

Blank and Corn 2013 *VJTL*

Blank LR and Corn GA "Losing the forest for the trees: Syria, law and the pragmatics of conflict recognition" 2013 *VJTL* 693-746

Blokker 2000 *EJIL*

Blokker N "Is the authorization authorized? Powers and practice of the UN SC to authorize the use of force by coalitions of the able and willing" 2000 *EJIL* 541-568

Brent 2009 *AILJ*

Brent M "Responding to attacks by non-state actors: The attribution requirement of self-defence" 2009 *AILJ* 133-160

Brisard and Martinez *Zarqawi: The new face of AQ*

Brisard JC and Martinez D *Zarqawi: The new face of AQ* (Polity Press Cambridge 2005)

Brown "Ethics, interests and foreign policy"

Brown C "Ethics, interests and foreign policy" in Smith KE and Light M (eds) *Ethics and foreign policy* (Cambridge University Press Cambridge 2001) 15-33

Brownlie "Humanitarian intervention"

Brownlie I "Humanitarian intervention" in Moore J (ed) *Law and civil war in the modern world* (Johns Hopkins University Press Baltimore 1974) 217-228

Brownlie and Apperley 2000 *ICLQ*

Brownlie I and Apperley CJ "Kosovo crisis inquiry: Memorandum on the international law aspect" 2000 *ICLQ* 878-905

Buchanan "Reforming the international law of humanitarian intervention"

Buchanan A "Reforming the international law of humanitarian intervention" in Holzgrefe JL and Keohane RO *Humanitarian Intervention: Ethical, legal and political dilemmas* (Cambridge University Press Cambridge 2003) 130-174

Burke *An equitable framework for humanitarian intervention*

Burke C *An equitable framework for humanitarian intervention* (Hart Publishing Portland 2013)

Burton 1996 *GLJ*

Burton M "Legalising the sublegal" 1996 *GLJ* 417-454

Byers and Chesterman "Changing the rules about rules"

Byers M and Chesterman S "Changing the rules about rules" in Holzgrefe and Keohane R (eds) *Humanitarian intervention: Ethical, legal and political dilemmas* (Cambridge University Press Cambridge 2003)

Byron 2001 *JCSL*

Byron C "Armed Conflict: International or Non-International?" 2001 *JCSL* 63-90

Cafarella 2014 *Middle East Security Report 25*

Cafarella J *Middle East Security Report 25: Jabhat Al-Nusra* Institute for the study of war 2014 11-66

Caris and Reynolds *Middle East Report 22*

Caris CC and Reynolds S *Middle East Report 22: ISIS governance in Syria* Institute for the study of war 9-40

Carment and Landry "R2P in Syria: Regional dimensions"

Carment D and Landry J "R2P in Syria: Regional dimensions" in Murray RW and McKay A (ed) *Into the eleventh hour: R2P, Syria and humanitarianism in crisis* (E-International Relations Bristol 2014) 50-55

Cassese 1999 *EJIL*

Cassese A "Ex iniuria ius oritur: Are we moving towards international legitimation of forcible humanitarian countermeasures in the world community" 1999 *EJIL* 23-30

Cassese 1999 *EJIL*

Cassese A "A follow-up: Forcible humanitarian countermeasures and opinion necessitates" 1999 *EJIL* 791-800

Cassese 2006 *JICJ*

Cassese A "Multifaceted criminal notion of terrorism in international law" 2006 *JICJ* 933-958

Cassese *International Law*

Cassese A *International Law* 2nd ed (Oxford University Press New York 2005)

Chatterjee and Scheid "Introduction"

Chatterjee DK and Scheid DE "Introduction" in Chatterjee DK and Scheid DE (eds) *Ethics and Foreign Intervention* (Cambridge University Press New York 2003) 1-18

Chesterman *Just war or just peace?*

Chesterman S *Just war or just peace* (Oxford University Press Oxford 2002)

Chetail 2003 *IRRC*

Chetail V "The contribution of the International Court of Justice to international humanitarian law" 2003 *IRRC* 235-268

Ciment (ed) *World terrorism*

Ciment J (ed) *World terrorism: An encyclopaedia of political violence from ancient times to the Post 9/11* 2nd ed (Routledge Taylor & Francis Group London 2015)

Cockburn *The rise of Islamic State*

Cockburn P *The rise of Islamic State: ISIS and the new Sunni revolution* (Verso New York 2015)

Combs *Terrorism in the 21st century*

Combs C *Terrorism in the 21st century* (Pearson Education New York 2009)

Comella "Implementation of the 8 July 2005 amendment to the Convention on the physical protection of nuclear material"

Comella PA "Implementation of the 8 July 2005 amendment to the Convention on the physical protection of nuclear material" in Apikyan S and Diamond D *Countering nuclear and radiological terrorism* (Springer Dordrecht 2006) 31-45

Cronin 2015 *Foreign Affairs*

Cronin AK "ISIS is not a terrorist group: Why counterterrorism won't stop the latest jihadist threat" 2015 *Foreign Affairs* 87-98

Crowe and Weston-Scheuber *Principles of international humanitarian law*

Crowe J and Weston-Scheuber K *Principles of international humanitarian law* (Edward Elgar Cheltenham 2013)

Cryer *et al* *An introduction to international criminal law and procedure*

Cryer R *et al* *An introduction to international criminal law and procedure* 3rd ed (Cambridge University Press United Kingdom 2014)

Daalder and O'Hanlon *Winning ugly*

Daalder IO and O'Hanlon ME *Winning ugly: NATO's war to save Kosovo* (Brookings Institute Press Washington DC 2000)

De Mesquita 2013 *JPE*

De Mesquita EB "Rebel tactics" 2013 *JPE* 323-357

Diaz-Paniagua *Negotiating terrorism*

Diaz-Paniagua CF *Negotiating terrorism: The negotiation dynamics of four UN counter terrorism treaties 1997-2005* (City University of New York New York 2008)

DIIA *Humanitarian Intervention*

DIIA *Humanitarian Intervention: Legal and political aspects* (Danish Institute of International Affairs Copenhagen 1999)

Dorr and Schmalenbach *Vienna Convention on the law of treaties*

Dorr O and Schmalenbach K (eds) *Vienna Convention on the law of treaties – a commentary* (Springer London 2012)

Dugard *International Law*

Dugard J *International Law: A South African perspective* 4th ed (Juta Cape Town 2011)

Edre 2004 *Netherlands: IAPL*

Edre UO "The status in international law of national liberation movements and their use of armed force" 2004 *Netherlands: IAPL* 2-32

ElBaradei "Nuclear security"

ElBaradei M "Nuclear security – measures to protect against nuclear terrorism" *IAEA's Board of Governors General Conference* (6 September 2005 Vienna) 1-13

Englehart 2009 *JPR*

Englehart NA "State capacity, state failure and human rights" 2009 *JPR* 163-180

Evans "The consequences of non-intervention in Syria"

Evans G "The consequences of non-intervention in Syria: Does the responsibility to protect have a future?" in Murray RW and McKay A *Into the eleventh hour: R2P, Syria and humanitarianism in crisis* (Global Centre for Responsibility to Protect New York 2015) 18-25

Farer 1971 *CLR*

Farer T "Humanitarian law and armed conflicts: Toward the definition of international armed conflict" 1971 *CLR* 37-72

Fitzgerald 2009 *VJIL*

Fitzgerald MA "Seizing weapons of mass destruction from foreign-flagged ships on the High Seas under Article 51 of the UN Charter" 2009 *VJIL* 474-505

Fleck "The law of non-international armed conflicts"

Fleck D "The law of non-international armed conflicts" in Fleck D (ed) *The handbook of IHL* 2nd ed (Oxford University Press New York 2008) 605-633

Focarelli 2008 *JCSL*

Focarelli C "The responsibility to protect doctrine and humanitarian intervention: too many ambiguities for a working doctrine" 2008 *JCSL* 191-214

Forcese and Mamikon 2015 *UBCLR*

Forcese C and Mamikon A 2015 "Neutrality law anti-terrorism, and foreign fighters: legal solutions to the recruitment of Canadians to foreign insurgencies" 2015 *UBCLR* 305-360

Franck 2001 *AJIL*

Franck TM "Terrorism and the right of self-defence" 2001 *AJIL* 839-843

Franck and Rodley 1973 *AJIL*

Franck T and Rodley N "After Bangladesh: The law of humanitarian intervention by military force" 1973 *AJIL* 275-305

Furtado *Inter-rebel group dynamics*

Furtado CS Furtado *Inter-rebel group dynamics: cooperation or competition: the case of South Asia* (PhD-dissertation University of Illinois 2007)

Ganor 2002 *PPR*

Ganor B "Defining terrorism: is one man's terrorist another man's freedom fighter?" 2002 *PPR* 287-304

Gasser 1983 *AULR*

Gasser HP "Internationalized non-international armed conflicts: case studies of Afghanistan, Kampuchea and Lebanon" 1983 *AULR* 145-161

Gasser 2002 *IRRC*

Gasser HP "Acts of terror, terrorism and international humanitarian law"
2002 *IRRC* 547-570

Goldie 1987 *SJILC*

Goldie LFE "Profile of a terrorist: distinguishing freedom fighters from
terrorists" 1987 *SJILC* 125-140

Gonzalez 2015 *FILJ*

Gonzalez O "Pen and sword: legal justifications for the US engagement
against ISIS" 2015 *FILJ* 133-180

Graham 2012 *ILS*

Graham DE "Defining non-international armed conflict: A historically
difficult task" 2012 *ILS* 43-55

Greenwood "Historical development and legal basis"

Greenwood C "Historical development and legal basis" in Fleck D (ed) *The
Handbook of IHL* 2nd ed (Oxford University Press New York 2008)

Greenwood "Scope of application of Humanitarian Law"

Greenwood "Scope of application of Humanitarian Law" in Fleck D (ed) *The
Handbook of IHL* 2nd ed (Oxford University Press New York 2008) 45-78

Gunning " Hamas: Socialization and the logic of compromise"

Gunning J " Hamas: Socialization and the logic of compromise" in Heiberg
M, O'Leary B and Tirman J (eds) *Terror, insurgency and the state*
(University of Pennsylvania Press Philadelphia 2007) 123-156

Hakimi 2015 *ILS*

Hakimi M "Defensive force against non-state actors: The state of play"
2015 *ILS* 1-31

Hanna 1999 *MJILT*

Hanna RM "Right to self-determination in In Re Secession of Quebec" 1999
MJILT 213-246

Hashim 2014 *MEP*

Hashim AS 2014 "The Islamic State: from al-Qaeda affiliate to Caliphate"
2014 *MEP* 69-83

Hazen *What rebels want*

Hazen JM *What rebels want: resources and supply networks in wartime*
(Cornell University Press New York 2013)

Hegseth *Combating violent extremism in Iraq*

Hegseth N *Combating violent extremism in Iraq: The viability of
counterinsurgency strategy* (MLS-dissertation University of Minnesota 2013)

Hehir *Humanitarian Intervention*

Hehir A *Humanitarian Intervention: An introduction* 2nd ed (Polgrave
Macmillan New York 2013)

Held *Debating globalization*

Held D *Debating globalization* (Polity Press London 2005)

Hellyer 2015 *SCJIL*

Hellyer HA 2012 "Jihad re-examined-or jihad repaired: Bellum Iustum in a
world of international (dis)-order" *SCJIL* 35-45

Henckaerts, Doswald-Beck and Alvermann *Customary international humanitarian law*

Henckaerts JM, Doswald-Beck L and Alvermann C *Customary international humanitarian law* (Cambridge University Press Cambridge 2005)

Henriksen and Schack 2014 *JUFIL*

Henriksen A and Schack M "The crisis in Syria and humanitarian intervention" 2014 *JUFIL* 122-147

Hilpold 2001 *EJIL*

Hilpold P "Humanitarian intervention: Is there a need for a legal reappraisal?" 2001 *EJIL* 437-468

Hoffman "Intervention: Should it go on? Can it go on?"

Hoffman S "Intervention: Should it go on? Can it go on?" in Chatterjee D and Scheid D (eds) *Ethics and foreign intervention* (Cambridge University Press Cambridge 2003) 21-31

Hoffman 2012 *GJIA*

Hoffman B "Combatting terrorism: adapting global strategy to the evolving threats of a new decade" 2012 *GJIA* 91-98

Holzgrefe "The humanitarian intervention debate"

Holzgrefe JL "The humanitarian intervention debate" in Holzgrefe JL and Keohane RO (ed) *Humanitarian Intervention: ethical, legal and political dilemmas* (Oxford University Press New York 2003) 15-52

Human Rights Watch 2011 *Report - We've never seen such horror*

Human Rights Watch 2011 *Report - We've never seen such horror: crimes against humanity by Syrian security forces* 8-54

Hummel 2011 *HSR*

Hummel ML "Who is running Al Qaeda?" 2011 *HSR* 1-16

Hurrell "Legitimacy and the use of force"

Hurrell "Legitimacy and the use of force: Can the circle be squared?" in Armstrong D, Farrell T and Maiguashca B (eds) *Force and legitimacy in world politics* (Cambridge University Press Cambridge 2005) 15-32

ICISS 2001 *The report of the ICISS: The responsibility to protect*

ICISS *The report of the ICISS: The responsibility to protect* (International Development Research Centre Ottawa 2001)

ICRC 2007 *IRRC*

ICRC "IHL and the challenges of contemporary armed conflicts: Document prepared by the ICRC for the 30th International conference of the Red Cross and the Red Crescent" 2007 *IRRC* 719-757

ICRC "IHL and challenges of contemporary armed conflicts"

ICRC "IHL and challenges of contemporary armed conflicts" *International conference of the Red Cross and Red Crescent* (28 Nov – 1 Dec 2011) 5-52

ICRC "IHL and challenges of contemporary armed conflict"

ICRC "IHL and challenges of contemporary armed conflicts" *International conference of the Red Cross and Red Crescent* (8-10 Dec 2015) 3-61

ICRC "International conference for the protection of war victims"

ICRC "International conference for the protection of war victims" *Final Declaration* (September-October 1993) 354-466

IICK *Kosovo Report*

IICK *Kosovo Report* (Oxford University Press Oxford 2000)

International crisis group 2012 *Middle East report 128*

International crisis group 2012 *Middle East report 128: Syria's mutating conflict* International crisis group 1-41

International Law Association "Final report on the meaning of armed conflict in International Law"

International Law Association "Final report on the meaning of armed conflict in International Law" *ILA Committee on the Use of Force* (2010).

Jenkins 1998 *Non-proliferation Review*

Jenkins BD "Establishing international standards for physical protection of nuclear material" 1998 *Non-proliferation Review* 98-110

Jenod 1983 *AULR*

Jenod S "Additional Protocol II: History and scope" 1983 *AULR* 29-40

Jo *Compliant rebels*

Jo H *Compliant rebels* (Cambridge University Press Cambridge 2015)

Johnstone 2011 *International Peacekeeping*

Johnstone I "Managing consent in contemporary peacekeeping operations" 2011 *International Peacekeeping* 168-182

Judah *Kosovo: war and revenge*

Judah T *Kosovo: war and revenge* (Yale University Press New Haven 2000)

Junod 1983 *AULR*

Junod S "Additional Protocol II: History and scope" 1983 *AULR* 29-40

Kaldor "What is human security?"

Kaldor M "What is human security?" in Held D (et al) *Debating globalization* (Polity London 2005) Appendix B

Kalshoven *Reflections on the law of war*

Kalshoven F *Reflections on the law of war* (Martinus Nijhoff Publishers Leiden 2007)

Kalyvas 2015 *Perspectives on Terrorism*

Kalyvas SN "Is ISIS a revolutionary group and if yes, what are the implications?" 2015 *Perspectives on Terrorism* 42-46

Keohane "Introduction"

Keohane RO "Introduction" in Holzgrefe JL and Keohane RO (ed) *Humanitarian Intervention: ethical, legal and political dilemmas* (Cambridge University Press New York 2003) 1-11

Kessler "Moral justification for violent responses to terrorism"

Kessler B "Moral justification for violent responses to terrorism" in Shanahan T (ed) *Philosophy 9/11: thinking about the war on terrorism* (Open Court Publishing Company Chicago 2005) 149-170

Kolb and Hyde *An introduction to the International Law of Armed Conflicts*

Kolb R and Hyde R *An introduction to the International Law of Armed Conflicts* (Hart Publishing Oregon 2008)

Kress 2010 *JCSL*

Kress C "Some reflections on the international legal framework governing transnational armed conflicts" 2010 *JCSL* 245-274

Lamp 2011 *JCSL*

Lamp N "Conceptions of war and paradigms of compliance: The 'new war' challenge to IHL" 2011 *JCSL* 225-262

Lang "Humanitarian Intervention"

Lang AF "Humanitarian Intervention: Definition and debates" in Lang AF (ed) *Just Intervention* (Georgetown University Press Washington DC 2003) 1-11

Larson 2008 *FFWA*

Larson DL "Constitution and US foreign policy: The president, the congress and the people" 2008 *FFWA* 143-161

Lekas 2015 *EILR*

Lekas A "ISIS, the largest threat to world peace trending now" 2015 *EILR* 313-349

Lewis 2013 *Middle East Security Report 14*

Lewis JD 2013 *Middle East security report 14: AQ in Iraq resurgent – The breaking of the walls campaign part I* Institute for the study of war 7-41

Lewis 2015 *Middle East Security Report 27*

Lewis JD 2015 *Middle East security report 27: The ISIS defence in Iraq and Syria* Institute for the study of war 9-46

Lillich 1967 *ILR*

Lillich R "Forcible self-help by states to protect human rights" 1967 *ILR* 325-351

LoGaglio 2014 *NSLB*

LoGaglio G "Crisis with ISIS: Using ISIS's development to analyse associated forces under the AUMF" 2014 *NSLB* 125-169

Lyman 1991 *Department of State Dispatch*

Lyman PN "Update on Iraqi refugees and displaced persons" 1991 *Department of State Dispatch* 379-382

Lyons and Mastanduno "Introduction"

Lyons G and Mastanduno M "Introduction" in Lyons G and Mastanduno M (eds) *Beyond Westphalia: State sovereignty and international intervention* (Johns Hopkins University Press Baltimore 1995)

Macfarlane, Thielking and Weiss 2004 *TWQ*

Macfarlane SN, Thielking CJ and Weiss TG "The Responsibility to Protect: Is anyone interested in humanitarian intervention?" 2004 *TWQ* 977-992

Malantowicz 2013 *ALF*

Malantowicz A "Civil war in Syria and the new wars debate" 2013 *ALF* 52-60

Mandelbaum 1999 *Foreign Affairs*

Mandelbaum M "A perfect failure: NATO's war against Yugoslavia" 1999 *Foreign Affairs* 2-8

Margulies 2013 *ILS*

Margulies P "Networks in non-international armed conflicts: crossing borders and defining organized armed groups" 2013 *ILS* 54-76

Martin *Essentials of terrorism*

Martin G *Essentials of terrorism: concepts and controversies* (Sage Los Angeles 2014)

McCoubrey *International Humanitarian Law*

McCoubrey H *International Humanitarian Law: The regulation of Armed Conflicts* (Dartmouth Publishing Company Aldershot 1990)

McDougal 1963 *AJIL*

McDougal MS "The Soviet Cuban quarantine and self-defence" 1963 *AJIL* 597-604

McLeod 2009 *MLR*

McLeod DM "Derelict of duty: The American news media, terrorism and the war in Iraq" 2009 *MLR* 87-112

McMahan "Humanitarian intervention, consent and proportionality"

McMahan J "Humanitarian intervention, consent, and proportionality" in Davis NA, Keshen R and McMahan J *Ethics and Humanity: Themes from the Philosophy of Jonathan Glover* (Oxford University Press New York 2010) 44-72

Mertus *Kosovo: How myths and truths started war*

Mertus JA *Kosovo: How myths and truths started war* (University of California Press Berkley 1999)

Metz and Millen *Insurgency and counterinsurgency in the 21st century*

Metz S and Millen R *Insurgency and counterinsurgency in the 21st century: reconceptualising threat and response* (DIANE Publishing Collingdale 2004)

Miller 2000 *JRE*

Miller R "Humanitarian intervention altruism and the limits of casuistry"
2000 *JRE* 3-35

Mockaitis *The 'new' terrorism*

Mockaitis TR *The 'new' terrorism: myths and reality* (Stanford University
Press California 2008)

Mura *The symbolic scenarios of Islamism*

Mura A *The symbolic scenarios of Islamism: A study in Islamic political
thought* (Ashgate Publishing Ltd Burlington 2015)

Murray "Rationality and T2P: unfriendly bedfellows"

Murray RW " Rationality and Responsibility to Protect " in Murray RW and
McKay A (ed) *Into the eleventh hour: R2P, Syria and humanitarianism in
crisis* (E-International Relations Bristol 2014) 66-71

Murray and McKay "Introduction"

Murray RW and McKay A "Introduction" in Murray RW and McKay A (ed)
Into the eleventh hour: R2P, Syria and humanitarianism in crisis (E-
International Relations Bristol 2014) 10-17

Nandlall "Where are my rights?"

Nandlall K "Where are my rights?" in COSTI Immigrant Service and UNHCR
A book of poems: Expressions from our youth (Pristine Printing Toronto
2011)

Nassief 2014 *Middle East Security Report 17*

Nassief I 2014 *Middle East Security Report 17: the campaign for Homs and
Aleppo* Institute for the study of war 9-54

Noe *Micro-level impacts of conflict and the duration of armed groups*

Noe D *Micro-level impacts of conflict and the duration of armed groups*
(PhD-dissertation University of Gottingen 2003)

O'Bagy 2013 *Middle East Security Report 9*

O'Bagy E 2013 *Middle East Security Report 9: The Free Syrian Army*
Institute for the study of war 9-49

O'Connell 2008 *JCSL*

O'Connell ME "Defining armed conflict" 2008 *JCSL* 393-400

O'Connell *International Law and the use of force*

O'Connell ME *International Law and the use of force: Cases and Materials*
2nd ed (Foundation Press New York 2009)

Odermatt 2013 *ALF*

Odermatt J "Between law and reality: "New Wars" and internationalised
armed conflict" 2013 *ALF* 19-32

O'Donnell 2006 *IRRC*

O'Donnell D "International treaties against terrorism and the use of
terrorism during armed conflict and by armed forces" 2006 *IRRC* 853-880

Oler 2007 *Reporter*

Oler A "Brief introduction to the Sunni-Shi'ite struggle: 6 key points" 2007
Reporter 2-9

O'Neill 2008 *AAJ*

O'Neill M "Back to the future: The enduring characteristics of insurgency
and counterinsurgency" 2008 *AAJ* 41-56

Pattison "The case for criteria"

Pattison J "The case for criteria: Moving the R2P forward after the Arab Spring" in Murray RW and McKay A (ed) *Into the eleventh hour: R2P, Syria and humanitarianism in crisis* (E-International Relations Bristol 2014) 26-32

Paulus and Vashakmadze 2009 *IRRC*

Paulus A and Vashakmadze M "Asymmetrical war and the notion of armed conflict – a tentative conceptualization" 2009 *IRRC* 95-125

Paust 2010 *SCJIL*

Paust JJ "Terrorism's proscription and core elements of an objective definition" 2010 *SCJIL* 51-68

Paust 2010 *JTLP*

Paust JJ "Self-defence targeting of non-state actors and permissibility of US use of drones in Pakistan" 2010 *JTLP* 237-279

Paust "Terrorism as an international crime"

Paust JJ "Terrorism as an international crime" in Nesi G (ed) *International cooperation in counter-terrorism: The UN and Regional organisations in the fight against terrorism* (Ashgate Burington 2006) 25-31

Paust 2015 *AGLR*

Paust JJ "Operationalizing the use of drones against non-state terrorists under international law of self-defence" 2015 *AGLR* 166-203

Pejic "Armed conflict and terrorism"

Pejic J "Armed conflict and terrorism: There is a (big) difference" in de Frias AMS, Samuel K and White N (eds) *Counter-terrorism: International law and practice* (Oxford University Press New York 2012) 171-204

Pfanner 2009 *IRRC*

Pfanner T "Various mechanisms and approaches for implementing IHL and protecting and assisting war victims" 2009 *IRRC* 279-328

Pictet *Commentary on the Geneva Convention*

Pictet JS *Commentary on the Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field* (International Committee of the Red Cross Switzerland 1952)

President Bush 2006 *Public Papers of the Presidents of the US*

President Bush 2006 "Remarks on the death of the senior AQ associate Al-Zarqawi" *Public Papers of the Presidents of the US* 1099-1100

President Bush 2007 *Public Papers of the Presidents of the US*

Bush G (President) "Remarks to military personnel and families at the Charleston air base, South Carolina" 2007 *Public Papers of the Presidents of the US* 2007 1005-1010

President Bush 2007 *Public Papers of the Presidents of the US*

President Bush "Remarks to military personnel and families at the Charleston air base, South Carolina" 2007 *Public Papers of the Presidents of the US* 2007 1005-1010

Prokopijevic "Humanitarian intervention"

Prokopijevic M "Humanitarian intervention" in Meggle G (ed) *Ethics of humanitarian intervention* (Ontas Frankfurt 2004) 189-206

Quaye *Liberation struggles in international law*

Quaye CO *Liberation struggles in international law* (Temple University Press Philadelphia 1991)

Rajan *Al Qaeda's global crisis*

Rajan J *Al Qaeda's global crisis: the Islamic State, Takfir and genocide of Muslims* (Routledge New York 2015)

Reinalda *Routledge history of international organisations*

Reinalda B *Routledge history of international organisations: from 1815 to present day* (Routledge London 2009)

Reinhold 2010 *RIS*

Reinhold T "The Responsibility to Protect: Much ado about nothing?" 2010 *RIS* 55-78

Reisman 1985 *YJIL*

Reisman WM "Criteria for the lawful use of force in international law" 1985 *YJIL* 279-285

Reisman and Silk 1988 *AJIL*

Reisman WM and Silk J "Which law applies to the Afghan conflict?" 1988 *AJIL* 459-486

Riedel *The search for Al Qaeda*

Riedel B *The search for Al Qaeda: its leadership, ideology and future* (Brookings Institution Washington 2008)

Ritter "International humanitarian law in civil war"

Ritter EH "International humanitarian law in civil war" in Newman E and DeRouen K (eds) *Routledge handbook of Civil Wars* (Routledge New York 2014) 323-332

Roberts "The UN and humanitarian intervention"

Roberts A "The UN and humanitarian intervention" in Welsh J (ed) *Humanitarian intervention and international relations* (Oxford University Press Oxford 2006)

Rodley and Cali 2007 *HRLR*

Rodley NS and Cali B "Kosovo revisited: Humanitarian intervention on the fault lines of international law" 2007 *HRLR* 275-298

Romaniuk and Webb "Introduction"

Romaniuk SN and Webb SC "Introduction" in Romaniuk SN and Webb SN *Insurgency and counterinsurgency in modern war* (CRC New York Press 2015)

Romero 1997 *NULR*

Romero VC "Equal protection held hostage: ransoming the constitutionality of the hostage taking act" 1997 *NULR* 573-609

Schachter 1984 *AJIL*

Schachter O "The legality of pro-democratic invasion" 1984 *AJIL* 645-650

Schindler *The different types of armed conflicts*

Schindler D *The different types of armed conflicts according to the Geneva Conventions and the Additional Protocols* (Sijthoff Alphen aan den Rijn 1979)

Schmidt 2015 *SDLP*

Schmidt R "Absence of Northern Nigeria's social development and the rise of Boko Haram" 2015 *SDLP* 23-23

Schmitt 2011 *ILS*

Schmitt MN "The status of opposition fighters in non-international armed conflicts" 2011 *ILS* 120-144

Schmitt 2014 *JNSLP*

Schmitt MN "Legitimacy versus Legality Redux: Arming the Syrian rebels" 2014 *JNSLP* 139-159

Sekulow *Rise of ISIS*

Sekulow J *Rise of ISIS: A threat we can't ignore* (Howard Books New York 2014)

Seybolt *Humanitarian Military Intervention*

Seybolt T *Humanitarian Military Intervention: The conditions for success and failure* (Oxford University Press Oxford 2007)

Shah 2007 *JCSL*

Shah NA "Self-defence, anticipatory self-defence and pre-emption: International Law's response to terrorism" 2007 *JCSL* 95-126

Sliney 2015 *UMNSACLR*

Sliney SA "Right to act: US legal basis under the law of armed conflict to pursue the Islamic State in Syria" 2015 *UMNSACLR* 1-23

Smith *Boko Haram: Inside Nigeria's unholy war*

Smith M *Boko Haram: Inside Nigeria's unholy war* (IB Tauris New York 2015)

Solis *The law of armed conflict*

Solis *The law of armed conflict: International Humanitarian Law* (Cambridge University Press New York 2010)

Spencer *The complete infidel's guide to ISIS*

Spencer R *The complete infidel's guide to ISIS* (Regnery Publishing New Jersey 2015)

Stern and Berger *ISIS: the state of terror*

Stern J and Berger JM *ISIS: the state of terror* (William Collins London 2015)

Stern 1984 *Foreign Affairs*

Stern M "Iran-Iraq War" 1984 *Foreign Affairs* 128-143

Sterio 2015 *STLR*

Sterio M "The applicability of the humanitarian intervention "exception" to the Middle Eastern refugee crisis: why the international community should intervene against ISIS" 2015 *STLR* 325-359

Stewart 2003 *IRRC*

Stewart JG "Towards a single definition of armed conflict in IHL: a critique of internationalized armed conflict" 2003 *IRRC* 313-349

Stigall and Blakesley 2015 *GWILR*

Stigall DE and Blakesley CL "Non-state armed groups and the role of transnational criminal law during armed conflicts" 2015 *GWILR* 1-42

Stromseth "Rethinking Humanitarian Intervention"

Stromseth J "Rethinking Humanitarian Intervention" in Holzgrefe J and Keohane R (eds) *Humanitarian intervention* (Cambridge University Press Cambridge 2005) 232-272

Svarc "Law as a homeland security tool in the defence against terrorism"

Svarc "Law as a homeland security tool in the defence against terrorism: The universal legal framework for the criminal justice response to terrorism" in Charvat JPIAG *Homeland security organisation in defence against terrorism* (IOS Press Ankara 2009) 93-116

Tasdemir 2015 *RILP*

Tasdemir F "Terrorism within the context of civil war and ISIS" 2015 *RILP* 41-68

Taylor 2014 *ILSA JICL*

Taylor LL "Boko Haram terrorism: reaching across international boundaries to aid Nigeria in the humanitarian crisis" 2014 *ILSA JICL* 1-23

Teson *Humanitarian intervention*

Teson F *Humanitarian intervention: An enquiry into law and morality* (Transnational New York 1988)

Thakur "Syria and the responsibility to protect"

Thakur R "Syria and the R2P" in Murray RW and McKay A (ed) *Into the eleventh hour: R2P, Syria and humanitarianism in crisis* (E-International Relations Bristol 2014) 38-43

Tams 2009 *EJIL*

Tams CJ "The use of force against terrorists" 2009 *EJIL* 359-397

Trapp "The interaction of the international terrorism suppression regime"

Trapp KN "The interaction of the international terrorism suppression regime and IHL in domestic criminal prosecutions: The UK experience" in Jinks D, Maogoto JN and Solomon S *Applying IHL in judicial and quasi-judicial bodies* (TMC Asser Press London) 165-182

Trumbull and Martin 2011 *VJTL*

Trumbull C and Martin JB "Election and government formation in Iraq: An analysis of the judiciary's role" 2011 *VJTL* 331-388

Tuerk 2008 *UMICLR*

Tuerk H "Combatting terrorism at sea – the suppression of unlawful acts against the safety of maritime navigation" 2008 *UMICLR* 337-367

Van den Hole 2003 *AUJLR*

Van den Hole L "Anticipatory self-defence under international law" 2003 *AUJLR* 69-106

Vité 2009 *IRRC*

Vité S "Typology of armed conflicts in IHL: Legal concepts and actual situations" 2009 *IRRC* 69-94

Walt 2015 *Foreign Affairs*

Walt SM "ISIS as revolutionary state: New twist on an old story" 2015 *Foreign Affairs* 42-51

Walzer *Just and unjust wars*

Walzer M *Just and unjust wars* (Basic Books New York 1992)

Weiss *Humanitarian intervention*

Weiss TG *Humanitarian intervention* 2nd ed (Polity Press Cambridge 2012)

Weiss and Hassan *ISIS: Inside the army of terror*

Weiss M and Hassan H *ISIS: Inside the army of terror* (Regan Arts New York 2015)

Welsh *Humanitarian intervention and international relations*

Welsh J *Humanitarian intervention and international relations* (Oxford University Press New York 2006)

Wheeler *Saving strangers*

Wheeler N *Saving strangers: humanitarian intervention in international society* (Oxford University Press Oxford 2002)

Wheeler "Humanitarian intervention after September 11, 2001"

Wheeler N "Humanitarian intervention after September 11, 2001" in Lang A (ed) *Just intervention* (Georgetown University Press Washington DC 2003) 192-217

White "The UN and counter-terrorism"

White ND "The UN and counter-terrorism" in de Frias AMS, Samuel K and White N (eds) *Counter-terrorism: International law and practice* (Oxford University Press New York 2012) 54-82

White 2000 *JCSL*

White N "The legality of bombing in the name of humanity" 2000 *JCSL* 27-43

Whitesell 1993 *DJILP*

Whitesell SE "The Kurdish crisis: An international incident study" 1993 *DJILP* 455-480

Willmott 2004 *MJIL*

Willmott D "Removing the distinction between international and non-international armed conflict in the Rome Statute of the ICC" 2004 *MJIL* 196-219

Wolf 1988 *MYILS*

Wolf D "Humanitarian intervention" 1988 *MYILS* 333-366

Wolfrum and Fleck "Enforcement of international humanitarian law"

Wolfrum R and Fleck D "Enforcement of international humanitarian law" in
Fleck D (ed) *The handbook of humanitarian law in armed conflict* 2nd ed
(Oxford University Press New York 2008) 675-722

Zahar and Sluiter *International Criminal Law*

Zahar A and Sluiter G *International Criminal Law: a critical introduction*
(Oxford University Press Oxford 2012)

Zych 2009 *WYAJ*

Zych T "The scope of the obligation to respect and to ensure respect for
IHL" 2009 *WYAJ* 251-270

Case law

Armed Activities in the Territory of the Congo (DRC v Congo) ICJ Reports (2005)

Corfu Channel Case (UK v Albania) ICJ Reports (1949)

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory ICJ Reports (2004)

Legality of the Threat or Use of Nuclear Weapons ICJ Reports (1996)

Nicaragua v USA ICJ Reports (1986)

Oil Platform Case (Iran v US) ICJ Reports (2003)

Prosecutor v Akayesu ICTR-96-4-T (1998)

Prosecutor v Aleksovski IT-94-14/1 (1999)

Prosecutor v Boskoski and Turculovskip IT-04-82-T (2008)

Prosecutor v Diylo ICC01/04-01/06 (2007)

Prosecutor v Haradinaj IT-04-84-T (2008)

Prosecutor v Limaj IT-03-66-T (2005)

Prosecutor v Tadic IT-94-1-AR72 (1995)

Prosecutor v Tadic IT-94-1-T (1995)

International instruments

2nd Report of the Commission of Inquiry on the Syrian Arab Republic A/HRC/19/69

Additional Protocol I (1979)

Additional Protocol II (1979)

Additional Protocol III (2005)

African model for anti-terrorism law (2011)

An agenda for peace: Preventative diplomacy and related matters GA Res 47/120 (1992)

Articles on State Responsibility for Internationally Wrongful Acts (2001)

Charter of the United Nations (1945)

Constitutive Act of the AU (2002)

Convention against hostage taking (1979)

Convention for suppression of unlawful seizure of an aircraft (1970)

Convention for the suppression of acts of nuclear terrorism (2005)

Convention for the suppression of terrorist bombings (1999)

Convention for the suppression of terrorist funding (1999)

Convention for the suppression of unlawful acts against safety and aviation (1971)

Convention for the suppression of unlawful acts against the safety of maritime navigation (1988)

Convention on certain conventional weapons (1980)

Convention on offences and certain acts committed on board an aircraft (1963)

Convention on the making of plastic explosives for the purpose of the detection (1998)

Convention on the physical protection of nuclear material (1979)

Convention on the prevention and punishment of crimes against internationally protected persons (1973)

Convention on the prevention and punishment of the crime of genocide (1948)

Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (1993)

Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (1997)

Convention on the suppression of unlawful acts relating to international civil aviation (2010)

Covenant of the League of Nations (1919)

Draft Resolution on the Middle East-Syria UN SC Res 538 (2012)

Draft Resolution on the Middle East-Syria UN SC Res 612 (2011)

Draft Resolution on the Middle East-Syria UN SC Res 77 (2012)

Draft Resolution on the Referral of Syria to the ICC UN SC Res 348 (2014)

Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949)

Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949)

Geneva Convention III Concerning the Treatment of Prisoners of War (1949)

Geneva Convention IV Concerning the Protection of Civilian Persons in Time of War (1949)

Hague Convention III Concerning the Opening of Hostilities (1907)

Hague Convention IV Concerning the Laws and Customs of War on Land (1907)

Hague Convention V Concerning the Rights and Duties of Neutral Powers and Persons in Case of War on Land (1907)

Hague Convention VI Concerning the Status of Enemy Merchant Ships at the Outbreak of Hostilities (1907)

Hague Convention VII Concerning the Conversion of Merchant Ships into Warships (1907)

Hague Convention VIII Concerning the Laying of Automatic Submarine Contact Mines (1907)

Hague Convention XI Concerning Certain Restrictions with Regard to the Exercise of the Right to Capture in Naval War (1907)

Hague Convention XIII Concerning the Rights and Duties of Neutral Powers in Naval War (1907)

Hague Convention IX Concerning Bombardment by Naval Forces in Times of War (1907)

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966)

Legal Consequences of the Construction of a Wall in the Occupational Palestinian Territory ICJ Reports (2004)

Letter dated 19 May 2015 from the chair of the SC committee pursuant to Res 1267 and Res 1989 concerning Al-Qaeda and associated individuals or entities addressed to the president of the SC S/2015/358 (2015)

Letter from the Permanent Representative of Iraq to the UN addressed to the President of the SC UN Doc S/2014/691 (2014)

Letter from the Secretary-General addressed to the President of the UN SC S/2016/152 (2016)

Military Technical Agreement (1999)

OAU Convention on the prevention and combatting of terrorism (1999)

Oral update of the independent international commission of inquiry on the Syrian Arab Republic A/HRC/20/CRP.1 (2012)

Protocol for suppression of unlawful acts against the safety of fixed platforms located on the continental shelf (1988)

Protocol for the Prohibition of the Use in War of Asphyxiating Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925)

Protocol I on Non-detectable Fragments to the Convention on Certain Conventional Weapons (1980)

Protocol II on prohibitions or restrictions on the use of mines, booby-traps and other devices to the Convention on certain conventional weapons (1980)

Protocol supplementary to the Convention for the suppression of unlawful seizure of an aircraft (2010)

Protocol to amend the Convention on offences and certain other acts committed on board an aircraft (2014)

Report of the independent international commission of inquiry on the Syrian Arab Republic GA Report A/HRC/S-17/2 (2011)

Report of the Secretary-General on the work of the organisation GA Res A/50/1 (1995)

Report on implementing the R2P GA Report A/63/677 (2009)

Report on the human rights situation in Syria GA Report A/HRC/20/37 (2012)

Resolution of Kosovo (FRY) UN SC Res 1199 (1998)

Resolution on foreign terrorist fighters SC Res 2178 (2014)

Resolution on Iraq SC Res 1060 (1996)

Resolution on Iraq SC Res 688 (1991)

Resolution on Kosovo UN SC Res 1244 (1999)

Resolution on Libya UN SC Res 1973 (2011)

Resolution on measures to eliminate international terrorism GA Res 51/210 (1996)

Resolution on peace and security in Africa UN SC Res 1970 (2011)

Resolution on terrorism SC Res 1566 (2004)

Resolution on the 2005 World Summit Outcome GA Res 60/1 (2005)

Resolution on the attacks on Botswana by South Africa UN SC Res 568 (1984)

Resolution on the Combatting of terrorism SC Res 1373 (2001)

Resolution on the Combatting of terrorism SC Res 1624 (2005)

Resolution on the Declaration on principles of international law concerning friendly relations and co-operation among states in accordance with the UN Charter GA Res 2625 XXV (1970)

Resolution on the Declaration on the granting of independence to colonial countries and people GA Res 1514 XV (1960)

Resolution on the Declaration on the granting of independence to colonial countries and people GA Res 1514 XV (1960)

Resolution on the Declaration on the importance of universal realization of the right to self-determination GA Res 2649 XXV (1970)

Resolution on the implementation of the Declaration on the granting of independence to colonial countries and people GA Res 2105 XX (1965)

Resolution on the importance of universal realization of the right to self-determination GA Res 2649 XXV (1970)

Resolution on the importance of universal realization of the right to self-determination GA Res 3070 XXVIII (1973)

Resolution on the Middle East (IS) UN SC Res 2254 (2015)

Resolution on the Middle East UN SC Res 2042 (2012)

Resolution on the renewal of inspections in Iraq SC Res 1441 (2002)

Resolution on the respect for human rights in armed conflicts GA Res 2444 XXIII (1986)

Resolution on the Responsibility to Protect GA Res 63/308 (2009)

Resolution on the Situation between Iran and Iraq SC Res 479 (1980)

Resolution on the Situation between Iran and Iraq SC Res 540 (1983)

Resolution on the Situation between Iran and Iraq SC Res 582 (1986)

Resolution on the Situation between Iran and Iraq SC Res 620 (1988)

Resolution on the Situation between Iraq and Kuwait SC Res 660 (1990)

Resolution on the Situation between Iraq and Kuwait SC Res 661 (1990)

Resolution on the Situation between Iraq and Kuwait SC Res 678 (1990)

Resolution on the Situation between Iraq and Kuwait SC Res 687 (1991)

Resolution on the Threats to International Peace and Security caused by terrorist acts UN SC Res 1368 (2001)

Resolution on the Threats to International Peace and Security caused by terrorist acts UN SC Res 1373 (2001)

Resolution on the UN global counter-terrorism strategy GA Res 66/288 (2006)

Resolution on Threats to International Peace and Security caused by terrorist acts UN SC Res 2178 (2014)

Resolution on threats to international peace and security caused by terrorist acts UN SC Res 2199 (2015)

Rome Statute (2002)

Statement by the President of the SC on the situation in the Middle East S/PRST/2011/16 (2011)

Statement by the President of the SC S/PRST/2014/23 (2014)

Universal Declaration of Human Rights (1948)

UNSCOM Note by Secretary-General S/1996/848 (1996)

Vienna Convention on the Law of Treaties (1969)

Internet sources

Air University 2007 <http://au.af.mil>

Air University 2007 *A military guide to terrorism in the 21st century*
<http://www.au.af.mil/au/awc/awcgate/army/guidterr/ch02.pdf> accessed 24 Oct 2015

Al-Adnani 2014 <http://tricertops.brynmawr.edu>

Al-Adnani AM 2014 *This is the promise of Allah* <http://triceratops.brynmawr.edu/dspace/bitstream/handle/10066/14242/ADN20140629.pdf?sequence=1> accessed 29 Sept 2015

Al-Ayham 2013 <http://syriadirect.org>

Al-Ayham 2013 *Rebel infighting enough to thwart the revolution says FSA spokesman* <http://syriadirect.org/news/rebel-infighting-%E2%80%98enough-to-thwart-the-revolution%E2%80%99-says-fsa-spokesman/> accessed 11 Oct 2015

Al-Baghdadi date unknown <http://gatestoninstitute.org>

Al-Baghdadi AB date unknown *A message to the Mujahidin and the Muslim ummah in the month of Ramadan* <http://www.gatestoneinstitute.org/documents/baghdadi-caliph.pdf> accessed 07 Oct 2015

Al-Khatteeb and Gordts 2014 <http://brookings.edu>

Al-Khatteeb L and Gordts E 2014 *How ISIS uses oil to fund terror* <http://www.brookings.edu/research/interviews/2014/09/27-isis-oil-funds-terror-alkhatteeb> accessed 2 Oct 2015

Alkshali and Smith-Spark 2015 <http://cnn.com>

Alkshali H and Smith-Spark H 2015 *ISIS fighters close Ramadi dam gates, cut off water to loyalist towns* <http://edition.cnn.com/2015/06/04/middle-east/iraq-isis-ramadi/> accessed 15 Feb 2016

Al-Zawahiri 2005 <http://ctc.usma.edu>

Al-Zawahiri 2005 *Al-Zawahiri's letter to Al-Zarqawi (English translation)* <https://www.ctc.usma.edu/posts/zawahiris-letter-to-zarqawi-english-translation-2> accessed 09 Oct 2015

Annan 1998 <http://www.un.org/press/en/1998/19980626.sgsm6613.html>

Annan K 1998 *Secretary-General reflects on 'intervention' in thirty-fifth annual ditchley foundation lecture* <http://www.un.org/press/en/1998/19980626.sgsm6613.html> accessed 19 Apr 2016

Annan 2004 <http://un.org>

Annan K 2004 *Terrorism strikes at very heart of all UN stands for, says Secretary-General in message to Tashkent ceremony* <http://www.un.org/press/en/2004/sgsm9372.doc.htm> accessed 07 Nov 2015

Arimatsu and Choudhury 2014 <http://chatamhouse.org>

Arimatsu L and Choudhury M 2014 *The legal classification of armed conflicts in Syria, Yemen and Libya* https://www.chathamhouse.org/sites/files/chathamhouse/home/chatham/public_html/sites/default/files/20140300ClassificationConflictsArimatsuChoudhury1.pdf accessed 17 Feb 2016

Arseneault 2015 <http://english.rfi.fr>

Arseneault M 2015 *Nigeria intelligence chief calls for untangling of Boko Haram funding* <http://www.english.rfi.fr/africa/20150521-defeating-boko-haram-one-bank-account-time> accessed 22 Oct 2015

AU 2014 <http://peaceau.org>

AU 2014 The African Union counterterrorism network <http://www.peaceau.org/en/page/64-counter-terrorism-ct> accessed 17 Oct 2015

Beerli 2015 <http://iihl.org>

Beerli C 2015 *The distinction between international and non-international armed conflicts: Challenges for IHL?* <http://www.iihl.org/wp-content/uploads/2015/11/Beerli.pdf> accessed 2 Mar 2016

Bensouda 2015 <http://icc-cpi.int>

Bensouda F 2015 *Statement by the prosecutor of the ICC, Fatou Bensouda, on the alleged crimes committed by ISIS* https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx accessed 15 Feb 2016

Bilger 2014 <http://understandingwar.org>

Bilger A 2014 *ISIS annual reports reveal metrics-driven military command* http://www.understandingwar.org/sites/default/files/ISWBackgrounder_ISIS_Annual_Reports_0.pdf accessed 17 Oct 2015

Black and Roberts 2014 <http://theguardian.com>

Black I and Roberts D 2014 *ISIS air strikes: Obama's plan condemned by Syria, Russia and Iran* <http://www.theguardian.com/world/2014/sep/11/assad-moscow-tehran-condemn-obama-isis-air-strike-plan>

Botelho 2015 <http://edition.cnn.com>

Botelho G 2015 *Terror attacks on 3 continents: ISIS claims responsibility in Tunisia, Kuwait* <http://edition.cnn.com/2015/06/26/africa/tunisia-terror-attack> accessed 29 Sept 2015

Bureau of democracy 2002 <http://2001-2009.state.gov>

Bureau of democracy 2002 *Iraq: a population silenced* <http://2001-2009.state.gov/g/drl/rls/15996.htm> accessed 08 Oct 2015

Central Intelligence Agency 2009 <http://fas.org>

Central Intelligence Agency 2009 *Guide to the analysis of insurgency* <https://fas.org/irp/cia/product/insurgency.pdf> accessed 16 Oct 2015

Centre for non-proliferation studies 2010 <http://cns.miis.edu>

Centre for non-proliferation studies 2010 *Hostage Convention* <http://cns.miis.edu/inventory/pdfs/hostage.pdf> accessed 09 Nov 2015

Chemilo 2011 <http://studentpulse.com>

Chemilo GC 2011 *Defining armed conflict in IHL* http://www.studentpulse.com/articles/508/defining-armed-conflict-in-international-humanitarian-law?utm_expid=22625156-1.jO__KIIlQVuEPc9uLGsmiQ.0&utm_referrer=https%3A%2F%2Fwww.google.co.za%2F accessed 10 Feb 2016

Chesterman 2011 <http://carnegiecouncil.org>

Chesterman S 2011 *Leading from behind: The R2P, the Obama doctrine and humanitarian intervention after Libya* <http://www.carnegiecouncil.org/resources/journal/index.html> accessed 10 Sept 2016

Churkin 2014 <http://repository.un.org>

Churkin V *Security Council meeting on the situation on the Middle East* http://repository.un.org/bitstream/handle/11176/32727/S_PV.7180-EN.pdf?sequence=3&isAllowed=y accessed 17 Mar 2016

Clarion Project 2015 <http://clarionproject.org>

Clarion Project 2015 *12 rules for living under ISIS: follow or be killed*
<http://www.clarionproject.org/news/rules-living-under-isis-follow-or-be-killed> accessed 3 Oct 2015

Cockburn 2014 <http://lrb.co.uk>

Cockburn P 2014 *ISIS Consolidates* <http://lrb.co.uk> accessed 28 Sept 2015

Cordesman 2005 <http://csis.org>

Cordesman AH 2005 *Iraqi's evolving insurgency* [http://csis.org/files/media/](http://csis.org/files/media/csis/pubs/051209_iraqiinsurg.pdf)
[csis/pubs/051209_iraqiinsurg.pdf](http://csis.org/files/media/csis/pubs/051209_iraqiinsurg.pdf) accessed 09 Oct 2015

Declaration by Judge Simma 2010 <http://icj-cij.org>

Declaration by Judge Simma 2010 *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* <http://icj-cij.org/docket/index.php?p1=3&p2=4&case=141&p3=4> accessed 13 Sept 2016

Deen 2000 <http://ipsnews.net>

Deen T 2000 *Politics: Annan fears new threat of humanitarian bombing*
<http://ipsnews.net/2000/11/politics-annan-fears-new-threat-of-humanitarian-bombing/> accessed 06 Nov 2016

De Lourdes Vez Carmona 2006 <http://oecd-nea.org>

De Lourdes Vez Carmona M 2006 *The international regime on the physical protection of nuclear material and the amendment to the Convention on the physical protection of nuclear material* https://www.oecd-nea.org/law/nlb/nlb-76/031_045.pdf accessed 10 Nov 2015

Department of State 2009 <http://state.gov>

Department of State 2009 *Counterinsurgency guide* <http://www.state.gov/documents/organisation/119629.pdf> accessed 17 Oct 2015

Department of State 2015 <http://state.gov>

Department of State 2015 *Nigeria travel warning* <http://travel.state.gov/content/passports/en/alertswarnings/nigeria-travel-warning.html> accessed 22 Oct 2015

ECOWAS date unknown <http://ecowas.int>

ECOWAS date unknown *History* <http://www.ecowas.int/about-ecowas/history/> accessed 06 Jun 2016

European Commission 2015 <http://ec.europa.eu>

European Commission 2015 *Syria crisis: ECHO factsheet* http://ec.europa.eu/echo/files/aid/countries/factsheets/syria_en.pdf accessed 3 Oct 2015

Feltman 2011 <http://state.gov>

Feltman JD 2011 *US policy on Syria* <http://www.state.gov/p/nea/rls/rm/176948.htm> accessed 27 Aug 2016

Ford 2014 <http://nationalinterest.org>

Ford J 2014 *The origins of Boko Haram* <http://nationalinterest.org/feature/the-origins-boko-haram-10609> accessed 21 Oct 2015

Foreign and Commonwealth Office 2015 <http://gov.uk>

Foreign and Commonwealth Office 2015 *Foreign travel advice: Nigeria* <https://www.gov.uk/foreign-travel-advice/nigeria> accessed 22 Oct 2015

Gambhir 2015 <http://understandingwar.org>

Gambhir H 2015 ISIS global intelligence summary http://www.understandingwar.org/sites/default/files/ISIS%20INSTUM_Final.pdf accessed 12 Oct 2015

Gearan 2014 <http://washingtonpost.com>

Gearan A 2014 *US rules out coordinating with Assad on airstrikes against Islamist in Syria* https://www.washingtonpost.com/world/national-security/us-rules-out-coordinating-with-assad-on-airstrikes-against-islamists-in-syria/2014/08/26/cda02e0e-2d2e-11e4-9b98-848790384093_story.html accessed 27 Aug 2016

Genocide Watch 2016 <http://genocidewatch.org>

Genocide Watch 2016 *Prevent and punish ISIS's genocide and Syria's crimes against humanity and rescue and protect the victims* <http://genocidewatch.net/2016/06/27/prevent-and-punish-isiss-genocide-and-syrias-crimes-against-humanity-and-rescue-and-protect-the-victims/> accessed 26 Aug 2016

Geneva Academy 2012 <http://geneva-academy.ch>

Geneva Academy 2012 *Rule of Law in Armed Conflicts Projects: RULAC Syria: Applicable International Law* http://www.geneva-academy.ch/RULAC/print_state.php?page=6&id_state=211 accessed 09 Mar 2016

Gesser 1995 <http://icrc.org>

Gesser HP 1995 *The UN and IHL: The ICRC and the UN's involvement in the implementation of IHL* <https://www.icrc.org/eng/resources/documents/misc/57jmuk.htm> accessed 06 Feb 2016

Hoffman date unknown <http://isisc.org>

Hoffman T date unknown *Can foreign military intervention internationalize a non-international armed conflict?* <http://www.isisc.org/dms/images/stories/PDF/Paper%20Hoffman.pdf> accessed 27 Feb 2016

Hudson 2014 <http://foreignpolicy.com>

Hudson J 2014 *Iraq asks US for airstrikes against AQ splinter group* <http://www.foreignpolicy.com/2014/06/18/iraq-asks-u-s-for-airstrikes-against-al-qaeda-splinter-group/> accessed 14 Oct 2015

Human Rights Watch 2011 <http://hrw.org>

Human Rights Watch 2011 *Syria: gang attacks peaceful demonstrators; police look on* <http://www.hrw.org/news/2011/02/03/syria-gang-attacks-peaceful-demonstrators-police-look> accessed 11 Oct 2015

Human Rights Watch 2012 <http://hrw.org>

Human Rights Watch 2012 *Syria torture centre's revealed* <https://www.hrw.org/news/2012/07/03/syria-torture-centers-revealed> accessed 11 Oct 2015

Human Rights Watch 2012 <http://hrw.org>

Human Rights Watch 2012 *Spiraling violence: Boko Haram attacks and Security force abuses in Nigeria* <https://www.hrw.org/report/2012/10/11/spiraling-violence/boko-haram-attacks-and-security-force-abuses-nigeria> accessed 21 Oct 2015

Human Rights Watch 2013 <http://hrw.org>

Human Rights Watch 2013 *World report 2013: Syria* <https://www.hrw.org/world-report/2013/country-chapters/syria> accessed 11 Oct 2015

Human Rights Watch 2015 <http://hrw.org>

Human Rights Watch 2015 *A long way home: Life for the women rescued from Boko Haram* <https://www.hrw.org/news/2015/07/29/long-way-home-life-women-rescued-boko-haram> accessed 22 Oct 2015

Human Rights Watch 2015 <http://hrw.org>

Human Rights Watch 2015 *World report 2015: Syria* <https://www.hrw.org/world-report/2015/country-chapters/syria> accessed 11 Oct 2015

Human Rights Watch 2015 <http://hrw.org>

Human Rights Watch 2015 *Iraq: Women suffer under ISIS* <https://www.hrw.org/news/2016/04/05/iraq-women-suffer-under-isis> accessed 09 Oct 2015

Human Security Research Group 2012 <http://hsrgroup.org>

Human Security Research Group 2012 *Chapter 5: State based armed conflict* http://hsrgroup.org/docs/Publications/HSR2012/HSRP2012_Chapter%205.pdf accessed 21 Mar 2016

International crisis group 2013 <http://crisisgroup.org>

International crisis group 2013 *Make or break: Iraqi's Sunnis and the state* <http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-iran-gulf/iraq/144-make-or-break-iraq-s-sunnis-and-the-state.aspx> accessed 09 Oct 2015

International crisis group 2014 <http://crisisgroup.org>

International crisis group 2014 *Curbing violence in Nigeria: the Boko Haram insurgency* <http://www.crisisgroup.org/en/regions/africa/west-africa/nigeria/216-curbing-violence-in-nigeria-ii-the-boko-haram-insurgency.aspx> accessed 21 Oct 2015

ICAO date unknown <http://icao.int>

ICAO date unknown *The postal history of ICAO: Legal instruments related to aviation security* http://www.icao.int/secretariat/postalhistory/legal_instruments_related_to_aviation_security.htm accessed 08 Nov 2015

ICAO 2014 <http://icao.int>

ICAO 2014 *Protocol to amend the Convention on offences and certain other acts committed on board an aircraft* http://www.icao.int/Meetings/AirLaw/Documents/Protocole_mu.pdf accessed 11 Nov 2015

ICC date unknown <http://icc-cpi.int>

ICC date unknown *About the Court* https://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx accessed 08 Feb 2016

ICRC date unknown <http://icrc.org>

ICRC date unknown *The domestic implementation of IHL: A manual* <http://icrc.org/eng/assets/files/publications/icrc-002-4028.pdf> accessed 05 Feb 2016

ICRC 2003 <http://icrc.org>

ICRC 2003 *Use of nuclear, biological or chemical weapons: Current international law and policy statements* <https://www.icrc.org/eng/resources/documents/misc/5ksk7q.htm> accessed 10 Apr 2016

ICRC 2004 <http://icrc.org>

ICRC 2004 *National enforcement of IHL* https://www.icrc.org/eng/assets/files/other/kit_national_enforcement.pdf accessed 03 Feb 2016

ICRC 2004 <http://icrc.org>

ICRC 2004 *What are the origins of IHL?* <https://www.icrc.org/eng/resources/documents/misc/5kzfr8.htm> accessed 03 Feb 2016

ICRC 2008 <http://icrc.org>

ICRC 2008 *How is the term armed conflict defined in IHL?* <https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> accessed 14 Oct 2015

ICRC 2011 <http://icrc.org>

ICRC 2011 *International review of the Red Cross: Humanitarian debate* <https://www.icrc.org/eng/resources/international-review/review-882-armed-groups/review-882-all.pdf> accessed 14 Oct 2015

ICRC 2012 <http://icrc.org>

ICRC 2012 *Internal conflicts or other situations of violence – what is the difference for victims?* <https://www.icrc.org/eng/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm> accessed 14 Oct 2015

ICRC 2014 <http://icrc.org>

ICRC 2014 *How does law protect in war?* <https://www.icrc.org/casebook/doc/book-chapter/the-distinction-book-chapter.htm> accessed 16 Oct 2014

ICRP 2015 <http://responsibilitytoprotect.org>

ICRP 2015 *The crisis in Nigeria* <http://www.responsibilitytoprotect.org/index.php/crisis-in-nigeria> accessed 26 Oct 2015

IDMC 2015 <http://internal-displacement.org>

IDMC 2015 *Global overview 2015: people internally displaced by conflict and violence* <http://www.internal-displacement.org/assets/library/Media/>

201505-Global-Overview-2015/20150506-global-overview-2015-en.pdf

accessed 28 Sept 2015

IDMC 2015 <http://internal-displacement.org>

IDMC 2015 *Nigeria IDMC figures analysis* <http://www.internal-displacement.org/sub-saharan-africa/nigeria/figures-analysis> accessed 22 Oct 2015

IFTTA 2014 <http://iftta.org>

IFTTA 2014 ICAO: Tokyo Convention amended by new protocol <http://iftta.org/news/icao-tokyo-convention-amended-new-protocol> accessed 11 Nov 2015

IMO date unknown <http://imo.org>

IMO date unknown *Convention for the suppression of unlawful acts against the safety of maritime navigation, Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf* <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx> accessed 13 Nov 2015

ISCA date unknown <http://islamicsupremecouncil.org>

ISCA date unknown *Understanding Islamic Law* <http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html> accessed 28 Sept 2015

Kabbani date unknown <http://theislamicsupremecouncil.org>

Kabbani SMH date unknown *Understanding Islamic Law* <http://theislamicsupremecouncil.org> accessed 28 Sept 2015

Karadsheh and Alkhshali 2015 <http://edition.cnn.com>

Karadsheh J and Alkhshali H 2015 *Gunmen attack hotel in Libya; at least 10 killed* <http://edition.cnn.com/2015/01/27/middleeast/libya-corinthia-hotel-attack/index.html> accessed 29 Sept 2015

Karam 2014 <http://news.nationalpost.com>

Karam S 2014 *Syria warns US against bombing ISIS without permission* http://news.nationalpost.com/2014/08/25/syria-warns-u-s-against-bombing-isis-without-permission/#_federated=1 accessed 15 Mar 2016

Kerkkanen 2014 <http://fiia.fi>

Kerkkanen A 2014 *The failure of the security paradigm in Syria: The human security perspective* http://www.fiia.fi/en/publication/389/the_failure_of_the_security_paradigm_in_syria/ accessed 11 Apr 2016

Ki-moon 2009 <http://un.org>

Ki-moon B 2009 *Secretary-General welcomes adoption of text on R2P* <http://un.org/News/Press/docs/2009/sgsm12452.doc.htm> accessed 08 Jun 2016

Ki-moon 2011 <http://responsibilitytoprotect.org>

Ki-moon B 2011 *The role of regional and sub-regional arrangements in implementing the responsibility to protect* [http://www.responsibilitytoprotect.org/FINAL%20report%20summary%202011\(2\).pdf](http://www.responsibilitytoprotect.org/FINAL%20report%20summary%202011(2).pdf) accessed 08 Jun 2016

Kozac 2015 <http://understandingwar.org>

Kozac C 2015 *Turkey expands campaign against ISIS and the PKK* <http://understandingwar.org/background/turkey-expands-campaign-against-isis-and-pkk> accessed 30 Sept 2015

Krinninger 2015 <http://dandc.edu>

Krinninger L 2015 *Humanitarian aid: More, not less* <http://www.dandc.eu/en/article/challenges-humanitarian-aid-isis-controlled-areas> accessed 15 Feb 2016

Kuruvilla 2014 <http://nydailynews.com>

Kuruvilla C 2014 *Two French girls used social media to plot suicide attack* <http://www.nydailynews.com/news/world/teen-girls-plotted-bomb-french-synagogue-report-article-1.1925344> accessed 29 Sept 2015

Landis 2014 <http://clarionproject.org>

Landis J 2014 *The battle between ISIS and Syria's rebel militias* <http://www.clarionproject.org/research/battle-between-isis-and-syria%E2%80%99s-rebel-militias> accessed 15 Oct 2015

Lee and Tawfeeq 2015 <http://edition.cnn.com>

Lee I and Tawfeeq M 2015 *At least 26 killed in North Sinai attack* <http://edition.cnn.com/2015/01/29/africa/egypt-north-sinai-attack/index.html> accessed 28 Sept 2015

Lewis, Ghambir and Sterling 2014 <http://understandingwar.org>

Lewis JD, Ghambir H and Sterling E 2014 *ISIS's global messaging strategy fact sheet* <http://www.understandingwar.org/sites/default/files/GLOBAL%20ROLLUP%20Update.pdf> accessed 06 Oct 2015

Lister 2014 <http://brookings.edu>

Lister 2014 *Profiling the Islamic State* <http://www.brookings.edu/research/reports2/2014/12/profiling-islamic-state-lister> 17 Oct 2015

Mack 2008 <http://icrc.org>

Mack M 2008 *Increasing respect for IHL in non-international armed conflicts* https://www.icrc.org/eng/assets/files/other/icrc_002_0923.pdf accessed 15 Oct 2015

McMurry 2014 <http://mediaite.com>

McMurry E 2014 *State Dept: US did not ask Assad's permission to strike in Syria* <http://www.mediaite.com/online/state-dept-u-s-did-not-ask-assads-permission-to-strike-in-syria/> accessed 28 Aug 2016

McQuaid and Asfura-Heim 2015 <http://realcleardefense.com>

McQuaid J and Asfura-Heim P 2015 *Why counterterrorism alone can't defeat Boko Haram* http://www.realcleardefense.com/articles/2015/03/18/why_counterterrorism_operations_alone_cant_defeat_boko_haram-2.html accessed 26 Oct 2015

Melzer 2011 <http://icrc.org>

Melzer N 2011 *Interpretive guidance on the notion direct participation in hostilities under international law* <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf> accessed 14 Oct 2015

Milanovic 2010 <http://ejiltalk.org>

Milanovic M 2010 *Self-defence and non-state actors: indeterminacy and jus ad bellum* <http://www.ejiltalk.org/self-defense-and-non-state-actors-indeterminacy-and-the-jus-ad-bellum/> accessed 9 Mar 2016

Miller 2015 <http://yaleglobal.yale.edu>

Miller C 2015 *Border chaos: Europe reacts to Syrian refugee crisis* <http://yaleglobal.yale.edu/content/border-chaos-europe-reacts-syrian-refugee-crisis> accessed 17 Apr 2016

Moore 2007 <http://smallwarsjournal.com>

Moore S 2007 *The basics of counterinsurgency* <http://smallwarsjournal.com/documents/moorecoinpaper.pdf> accessed 17 Oct 2015

Morris 2014 <http://independent.co.uk>

Morris N 2014 *David Cameron makes the case for airstrikes on ISIS in Syria and Iraq and warns: "Assad is part of the problem"* <http://www.independent.co.uk/news/uk/david-cameron-labels-assad-part-of-the-problem-as-he-refuses-to-rule-out-air-strikes-against-isis-9710370.html> accessed 28 Aug 2016

Morris 2015 <http://listverse.com>

Morris M 2015 *10 dark facts about Boko Haram* <http://listverse.com/2015/01/31/10-dark-facts-about-boko-haram/> accessed 15 Jan 2016

Neumann 2015 <http://icsr.info>

Neumann PR 2015 *Foreign fighters total in Syria/Iraq now exceeds 20 000* <http://icsr.info/2015/01/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/> accessed 29 Sept 2015

OHCHR 2011 <http://ohchr.org>

OHCHR 2011 *Guiding principles on business and human rights: implementing the United Nations "protect, respect and remedy" framework* http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf accessed 25 Nov 2015

OHCHR 2015 <http://ohchr.org>

OHCHR 2015 *Boko Haram* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16176&LangID=E> accessed 21 Oct 2015

OHCHR 2016 <http://ohchr.org>

OHCHR 2016 *UN Commission of inquiry on Syria: ISIS is committing genocide against the Yazidis* <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20113&LangID=E> accessed 26 Aug 2016

OHCHR and UNAMI 2014 <http://ohchr.org>

OHCHR and UNAMI 2014 *Report on the protection of civilians in the non-international armed conflict in Iraq* http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC%20Report_FINAL_18July2014A.pdf accessed 22 Sept 2016

Oktem 2015 <http://internationalpoliticalforum.com>

Oktem K 2015 *Turkey's reluctant fight against ISIS* <http://internationalpoliticalforum.com/turkeys-reluctant-fight-against-isis/> accessed 07 Oct 2015

Oxford dictionary date unknown <http://oxforddictionary.com>

Oxford dictionary date unknown *Terrorist* <http://www.oxforddictionaries.com/definition/english/terrorist> accessed 25 Oct 2015

Paulussen and Szabo 2014 <http://icct.nl>

Paulussen C and Szabo KT 2015 *Testing the validity of the US self-defence arguments against the Khorasan group in Syria* <http://icct.nl/publication/testing-the-validity-of-us-self-defence-arguments-against-the-khorasan-group-in-syria/> accessed 15 Mar 2016

Pellerin 2014 <http://defense.gov>

Pellerin C 2014 *Successful Syrian strikes only the beginning* <http://www.defense.gov/news/newsarticle.aspx?id=123241> accessed 10 Mar 2016

Pellerin 2015 <http://defense.gov>

Pellerin C 2015 *US, Turkey finalizing details of anti-ISIL airstrikes* <http://archive.defense.gov/news/newsarticle.aspx?id=129466> accessed 07 Oct 2015

Perera date unknown <http://legal.un.org>

Perera R date unknown *Audio-visual Library of International Law: Convention for suppression of acts of nuclear terrorism* <http://legal.un.org/avl/ha/icsant/icsant.html> accessed 09 Nov 2015

Perez de Cuellar 1991 <https://documents-ddsny.un.org/doc/UNDOC/GEN/N91/409/73/IMG/N9140973.pdf?OpenElement>

Perez de Cuellar J 1991 *Report of the Secretary-General on the work of the Organisation* <https://documents-ddsny.un.org/doc/UNDOC/GEN/N91/409/73/IMG/N9140973.pdf?OpenElement> accessed 15 May 2016

Pincus and Milbank 2004 <http://washingtonpost.com>

Pincus W and Milbank D 2004 *AQ-Hussein link dismissed* <http://www.washingtonpost.com/wp-dyn/articles/A47812-2004Jun16.html> accessed 06 Oct 2015

Phillips 2006 <http://heritage.org>

Phillips J *The evolving AQ threat* <http://www.heritage.org/research/lecture/the-evolving-al-qaeda-threat> accessed 26 Oct 2015

Powell 2003 <http://theguardian.com>

Powell C 2003 *Full text of Colin Powell's speech* <http://www.theguardian.com/world/2003/feb/05/iraq.usa3> accessed 5 Oct 2015

President Bush 2002 <http://2001-2009.state.gov>

President Bush 2002 *US National Security Strategy: Prevent our enemies from threatening us, our allies and our friends with weapons of mass destruction* <http://2001-2009.state.gov/r/pa/ei/wh/15425.htm> accessed 10 Mar 2016

President Bush 2002 <http://georgewbush-whitehouse.archives.gov>

President Bush 2002 *President Bush outlines Iraqi threat* <http://www.georgewbush-whitehouse.archives.gov/news/releases/2002/10/20021007-8.html> accessed 17 June 2016

President Bush 2003 <http://georgewbush-whitehouse.archives.gov>

President Bush 2003 *Address to the nation* <http://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030317-7.html> accessed 5 Oct 2015

President Obama 7 August 2014 <http://whitehouse.gov>

President Obama 7 August 2014 *Statement by the President* <https://www.whitehouse.gov/the-press-office/2014/08/07/statement-president> accessed 30 Sept 2015

President Obama 10 September 2014 <http://whitehouse.gov>

President Obama 10 September 2014 *Statement by the President* <https://www.whitehouse.gov/the-press-office/2014/09/10/statement-president-isil-1> accessed 30 Sept 2015

President Obama 23 September 2014 <http://whitehouse.gov>

President Obama 23 September 2014 *Statement by the President* <https://www.whitehouse.gov/the-press-office/2014/09/23/statement-president-airstrikes-syria> accessed 30 Sept 2015

President Obama 2015 <http://iipdigital.usembassy.gov>

President Obama 2015 *Remarks on progress in fight against ISIL*
<http://iipdigital.usembassy.gov/st/english/texttrans/2015/07/20150707316648.html#axzz3nDtw5TPt> accessed 30 Sept 2015

Prime Minister's Office 2013 <http://gov.uk>

Prime Minister's Office 2013 *Chemical weapons use by Syrian regime: UK government legal position* <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version> accessed 16 Sept 2016

Qsiyer 2015 <http://studies.aljazeera.net>

Qsiyer K 2015 The IS in Libya: expansion of political crisis
<http://studies.aljazeera.net/en/reports/2015/06/201562310837854715.htm>
accessed 18 Oct 2015

Rodriguez 2014 <http://defense.gov>

Rodriguez D 2014 Department of Defence Press briefing by Gen Rodriguez in the Pentagon briefing room on Ebola responses <http://www.defense.gov/News/News-Transcripts/Transcript-View/Article/606973> accessed 14 Oct 2015

Sandoz 1998 <http://icrc.org>

Sandoz Y 1998 *The ICRC as guardian of IHL* <https://www.icrc.org/eng/resources/documents/misc/about-the-icrc-311298.htm> accessed 07 Feb 2016

Sassoli 2006 <http://hpcrresearch.org>

Sassoli M 2006 *Transnational armed conflicts and IHL* <http://www.hpcrresearch.org/sites/default/files/publications/OccasionalPaper6.pdf> accessed 27 Feb 2016

Saul date unknown <http://legal.un.org>

Saul P date unknown *Audio-visual Library of International Law: International Convention against taking hostages* <http://legal.un.org/avl/ha/icath/icath.html> accessed 08 Nov 2015

Schmitt and Gordon 2014 <http://nytimes.com>

Schmitt E and Gordon MR 2014 *The Iraq army was crumbling long before its collapse, US officials say* <http://www.nytimes.com/2014/06/13/world/middleeast/american-intelligence-officials-said-iraqi-military-had-been-in-decline.html> accessed 8 Oct 2015

Sergie and Johnson 2014 <http://cfr.org>

Sergie MA and Johnson T 2014 *Boko Haram* <http://www.cfr.org/nigeria/boko-haram/p25739> accessed 21 Oct 2015

Sinirlioglu 2015 <http://mfa.gov.tr>

Sinirlioglu FH 2015 *Press release concerning Turkey-SU understanding and countering Deash* http://www.mfa.gov.tr/no_-212_-24-july-2015_-press-statement-concerning-turkey_us-understanding-on-countering-deash.en.mfa accessed 30 Sept 2015

Spark, Ford and Mullen 2015 <http://cnn.com>

Spark LS, Ford D and Mullen J 2015 *Charlie Hebdo attack* <http://edition.cnn.com/2015/01/07/europe/charlie-hebdo-attack-summary/index.html> accessed 29 Sept 2015

Stanford University 2014 <http://web.stanford.edu>

Stanford University 2014 *Jabhat Al-Nusra* <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/493> accessed 11 Oct 2015

SWI 2015 <http://swissinfo.cn>

SWI 2015 *Suspect may have planned German attacks* http://www.swissinfo.ch/eng/terror-suspect_suspect-may-have-planned-german-attacks/41447964 accessed 29 Sept 2015

Tawfeeq and Hanna 2015 <http://edition.cnn.com>

Tawfeeq M and Hanna J 2015 *Saudi mosque blast: 13 dead, ISIS claims responsibility* <http://edition.cnn.com/2015/08/06/middleeast/saudi-arabia-mosque-attack/index.html> accessed 28 Sept 2015

Terrorism Research date unknown <http://terrorism-research.com>

Terrorism Research date unknown *Difference between terrorism and insurgency* <http://www.terrorism-research.com/insurgency/> accessed 24 Oct 2015

Umana 2015 <http://e-ir.info>

Umana F 2015 *The Islamic State: more than a terrorist group?* http://www.e-ir.info/2015/04/03/the-islamic-state-more-than-a-terrorist-group/#_edn61 accessed 17 Oct 2015

UN date unknown <http://un.org>

UN date unknown *UN action to counter terrorism* <http://www.un.org/en/terrorism/index.shtml> accessed 07 Nov 2015

UN date unknown <http://research.un.org>

UN date unknown *Security Council-veto list* <http://research.un.org/en/docs/sc/quick> accessed 08 Jun 2016

UN 2000 <http://un.org>

UN 2000 *Military operations should not be deemed as humanitarian action*
<http://un.org/press/en/2000/20001120/sgsm7632.doc.html> accessed 17
August 2016

UN 2015 <http://un.org>

UN 2015 *In ISIL-controlled territory, 8 million civilians living in "state of fear"* <http://www.un.org/apps/news/story.asp?NewsID=51542#.WCNVfIVO>
LIU accessed 12 Nov 2015

UN Assistance Mission of Iraq and OHCHR 2015 <http://ohchr.org>

UN Assistance Mission of Iraq and OHCHR 2015 *Report on the protection of civilians in the armed conflict in Iraq: 1 May – 31 October 2015* <http://www.ohchr.org/Documents/Countries/IQ/UNAMIRreport1May31October2015.pdf> accessed 20 Apr 2016

UNDP 2015 <http://undp.org>

UNDP 2015 *UNDP administrator visits Syrian refugees in Turkey* <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/04/22/undp-administrator-visits-syrian-refugees-in-turkey.html> accessed 28
Sept 2015

UNESCO 2015 <http://en.unesco.org>

UNESCO 2015 *UNESCO brings together key partners to step up safeguarding of Iraqi and Syrian Cultural Heritage* <http://en.unesco.org/news/unesco-brings-together-key-partners-step-safeguarding-iraqi-and-syrian-cultural-heritage> accessed 28 Sept 2015

UNHCR 2015 <http://unhcr.org>

UNHCR 2015 *UN and partners seek almost \$500 million to avert humanitarian disaster in Iraq* <http://www.unhcr.org/5570632a6.html>
accessed 28 Sept 2015

UN High-Level Panel on Threats, Challenges and Change 2004 <http://un.org>

UN High-Level Panel on Threats, Challenges and Change 2004 *A more secure world: Our shared responsibility* http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf accessed 04 Jun 2016

UN Human Rights Council 2012 <http://ohchr.org>

UN Human Rights Council 2012 *Periodic update of the Independent International Commission of Inquiry on the Syrian Arab Republic* <http://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/CISyria/PeriodicUpdateCISyria.pdf> accessed 14 Oct 2016

UN News Centre 2012 <http://un.org>

UN News Centre 2012 *Security Council debates on situation in Syria* <http://www.un.org/apps/news/story.asp?NewsID=41090#.V1gWkJGLTIU>
accessed 08 Jun 2016

UN News Centre 2014 <http://un.org>

UN News Centre 2014 *Russia, China blocks SC referral of Syria to the ICC* <http://www.un.org/apps/news/story.asp?NewsID=47860#.VuvChY9OLIU>
accessed 17 Mar 2016

UNODC 2003 <http://unodc.org>

UNODC 2003 Legislative guide to the universal anti-terrorism conventions and protocols https://www.unodc.org/pdf/crime/terrorism/explanatory_english2.pdf accessed 14 Nov 2015

UN SC 2014 <http://un.org>

SC 2014 *SC, in statement, expressed deep outrage at ISIL, urging expanded support for new Iraqi government to defeat it* <http://www.un.org/press/en/2014/sc11571.doc.htm> accessed 15 Feb 2016

UN SC 2014 <http://un.org>

UN SC 2014 *Referral of Syria to ICC fails as negative votes prevent SC from adopting Draft Resolution* <http://www.un.org/press/en/2014/sc11407.doc.htm> accessed 14 Feb 2016

UN SC 2015 <http://un.org>

UN SC 2015 *Alarmed by continuing Syrian crisis, SC affirms its support for special envoy's approach in moving political solution forward* <http://www.un.org/press/en/2015/sc12008.doc.htm> accessed 10 Nov 2016

UNSCOM date unknown <http://un.org>

UNSCOM date unknown *United Nations Special Commission* <http://www.un.org/Depts/unscom/General/basicfacts.html> accessed 5 Oct 2015

US Department of Defence 2010 <http://dtic.mil>

US Department of Defence 2010 *Dictionary of military and associated terms* http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf accessed 24 Oct 2015

US Department of Defence 2015 <http://defence.gov>

US Department of Defence 2015 *Operation inherent resolve* http://www.defence.gov/News/Special-Reports/0814_Inherent-Resolve accessed 30 Sept 2015

US Department of State 2014 <http://defence.gov>

US Department of State 2014 *Global coalition to counter ISIL*
<http://www.state.gov/s/seci/> accessed 30 Sept 2015

US Department of State 2014 <http://state.gov>

US Department of State 2014 *Boko Haram and US counterterrorism assistance in Nigeria* <http://www.state.gov/r/pa/prs/ps/2014/05/226072.htm> accessed 26 Oct 2015

US Government 2012 <http://mccdc.marines.mil>

US Government 2012 *Guide to the analysis of an insurgency* <http://www.mccdc.marines.mil/Portals/172/Docs/SWCIWID/COIN/Doctrine/Guide%20to%20the%20Analysis%20of%20Counterinsurgency.pdf> accessed 17 Oct 2015

Van der Toorn 2011 <http://asil.org>

Van der Toorn D 2011 *September 11 inspired aviation counterterrorism Convention and Protocol adopted* <https://www.asil.org/insights/volume/15/issue/3/september-11-inspired-aviation-counter-terrorism-convention-and-protocol> accessed 10 Nov 2015

Van der Vyver 2015 <http://works.bepress.com>

Van der Vyver JD 2015 *The ISIS crisis and the development of IHL*
http://works.bepress.com/johan_vandervyver/1/ accessed 30 Jan 2016

Vitale and Keagle 2014 <http://ndupress.ndu.edu>

Vitale HM and Keagle JM 2014 *A time to tweet, as well as a time to kill: ISIS's projection of power in Iraq and Syria* <http://ndupress.ndu.edu/Portals/68/Documents/defensehorizon/DH-77.pdf> accessed 07 Oct 2015

Vité 2015 <http://iihl.org>

Vité S 2015 *Co-existing international and non-international armed conflicts in one country* <http://www.iihl.org/wp-content/uploads/2015/11/Vit%C3%A9.pdf> accessed 2 Mar 2016

Walter 2015 <http://polisci.ucla.edu>

Walter B 2015 *The logic of rebel strategies in civil war* http://polisci.ucla.edu/sites/default/files/u207/4-15-2015_international-relations-workshop-with-barbara-walter.pdf accessed 15 Oct 2015

Wang 2014 <http://repository.un.org>

Wang Min 2014 *Security Council meeting on the situation in the Middle East* http://repository.un.org/bitstream/handle/11176/32727/S_PV.7180-EN.pdf?sequence=3&isAllowed=y accessed 17 Mar 2016

Weaver MA 2006 <http://atlantic.com>

Weaver MA 2006 *The short, violent life of Zargawi* <http://www.theatlantic.com/magazine/archive/2006/07/the-short-violent-life-of-abu-musab-al-zarqawi/304983/> accessed 01 Oct 2015

Williams 2000 <http://samilitaryhistory.org>

Williams R 2000 *A brief historical overview of Umkhonto we Sizwe* <http://samilitaryhistory.org/vol115rw.html> accessed 20 Oct 2015

Zelin 2012 <http://jihadology.net>

Zelin AY 2012 *Clanging of the swords part I* <http://jihadology.net/2012/06/30/al-furqan-media-presents-a-new-video-message-from-the-islamic-state-of-iraq-clang-ing-of-the-swords-part-1/> accessed 09 Oct 2015

Zelin 2012 <http://jihadology.net>

Zelin AY 2012 *Clanging of the swords part II* <http://jihadology.net/2012/08/16/al-furqan-media-presents-a-new-video-message-from-the-islamic-state-of-iraq-clanging-of-the-swords-part-2%E2%80%B3/> accessed 09 Oct 2015

Zelin 2013 <http://jihadology.net>

Zelin AY 2013 *Clanging of the swords part III* <http://jihadology.net/2013/01/11/al-furqan-media-presents-a-new-video-message-from-the-islamic-state-of-iraq-clanging-of-the-swords-part-3/> accessed 09 Oct 2015

Zelin 2014 <http://jihadology.net>

Zelin AY 2014 *Clanging of the swords part IV* <http://jihadology.net/2014/05/17/al-furqan-media-presents-a-new-video-message-from-the-islamic-state-of-iraq-and-al-sham-clanging-of-the-swords-part-4/> accessed 09 Oct 2015

Zenko 2014 <http://foreignpolicy.com>

Zenko M 2014 *Responsibility to Protect* http://www.foreignpolicy.com/articles/2013/09/17/responsibility_to_protect accessed 08 Jun 2016

Zyberi 2012 <http://uio.no>

Zyberi G 2012 *The enforcement of IHL: Challenges and achievements* http://www.uio.no/studier/emner/jus/jus/JUS5730/h12/undervisningsmateriale/ihl_enforcement_uio_2012-3.pdf accessed 05 Feb 2016

Letter from language editor

TO WHOM IT MAY CONCERN

13 October 2016

I hereby certify that I have edited the language of a master's dissertation by Ms L Louw entitled "Humanitarian intervention in response to the attacks by ISIS."

I am Professor Alan Brimer, DLitt (UPE), Professor Emeritus of UKZN.

Yours faithfully,

Alan Brimer

A handwritten signature in blue ink, reading "A. Brimer". The signature is written in a cursive style, with the first letter of each name being capitalized and prominent.

Identity document

GEDREGISTREERDE WOON- EN POSADRES

1. Bewaar die bewys van u GEDREGISTREERDE WOON- EN POSADRES in hierdie gids.

2. Indien u van adres verander het, of indien besonderhede van u huidige adres, byvoorbeeld uwe nummer, eno, verander het, moet die vorm KENNISGEWING VAN ADRESVERANDERING, wat in die wette opgetreke is onder oortrefting 1, gebruik word om die verandering aan te meld en moet dit gesien word by die poskantoor of die nabye poskiosk. Stuur dit aan die DEPARTMENT VAN BINNELANDSE SAKE.

REGISTERED RESIDENTIAL AND POSTAL ADDRESS

1. Keep the proof of your REGISTERED RESIDENTIAL AND POSTAL ADDRESS in this pocket.

2. If you have changed your address, or if particulars of your present address, e.g. name of street and/or street number and, have been changed, the NOTICE OF CHANGE OF ADDRESS form in the pocket at the back of the identity document must be used to record the change and it must be handed in all or posted to the nearest regional office of the DEPARTMENT OF HOME AFFAIRS.

1
I.D.No. 911126 0024 08 4

S.A. BURGER/S.A. CITIZEN

WAGSURNAMIE

LOUW

VOORNAAM/FORENAME

LEE-ANN

GEBORTE/EDISTRIK OF JANLY
DISTRICT OR COUNTRY OF BIRTH

SUID-AFRIKA

GEBORTE/EDISTRIK
DATE OF BIRTH

1991-11-26

DAATUM UITGEREK
DATE ISSUED

2008-02-28

UTREKKE OF ONTNEEM DIE
DOCUMENT/RENAME
RENAME HERE

TOEGEVOEGTE FOTOGRAFIE VAN DIE
BURGER/GENERIC
NAME HERE

[illegible]

POLICE DEPARTMENT
 CRIME PREVENTION
 2004-03-24
 POLICE ROOM
 KAPITAN POLISI
 POLICE SERVICE