

## Master's Diploma Thesis Assessment Report

<b>University:</b>	Palacký University, Faculty of Law
<b>Thesis Title:</b>	<i>The Unwilling or Unable Doctrine" Extraterritorial Use of Force Against Non-State Armed Groups</i>
<b>Field of Study:</b>	International and European Law
<b>Author:</b>	Ayyoub Jamali
<b>Supervisor:</b>	JUDr. Martin Faix, PhD., MJI
<b>Reviewer:</b>	JUDr. Ondřej Svaček, PhD., LL.M.

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In my report, the following criteria will be evaluated (and the grade will be based on): (1) definition of research scope and goals, (2) command of the topic, (3) methods, conclusions, (4) contribution to knowledge and thesis structure, and (5) presentation and language.

### 1. Introduction

Already a brief look at the title of the thesis reveals complexity of the topic chosen, as it includes several important and/or heavily discussed issues under international law: prohibition of the use of force as peremptory norm of international law and one of cornerstones of international law; constantly raising involvement of non-state actors in international relations, challenging international law as a system; sovereignty; and creation of customary rules. All these aspects are complex, subject to heated debates, many of the connected questions are far from being answered satisfactorily. At the same time, the topic is of immense importance, last but not least simply because the prohibition of the use of force ensures the value, which is most important for the survival of the international community – the peace.

Consequently, I commend Mr. Jamali's choice of topic, but at the same time I would say it was a courageous decision, since the topic is not only complex, but also requires a good knowledge of international law as a system. Based on my previous experience with Mr. Jamali, knowing his deep interest in the field of international law, but also his legal skills, I supported his decision to write his Master's thesis on this topic.

### 2. Definition of research scope and goals

In my view, the goals and scope have been sufficiently defined in an appropriate manner, and the research questions contained in the scope of research and goals are evident from the thesis (especially its introduction) and sufficient to provide guidance for creating an appropriate

structure of the thesis. As a minor remark – subchapter 1.3 appears obsolete, since the research question has been stated clearly in the previous text.

### **3. Methods, conclusions, command of the topic**

The student demonstrated good command of the relevant literature, primary sources, jurisprudence and background material, and applied them appropriately. Nevertheless, academic sources (considering the quantity of existing sources on use of force in international law) could have been more extensive. Through the thesis Mr. Jamali demonstrated good understanding of the scope of the research and command of the topic.

The methods used in the thesis are in general adequate and justified, they also have been used largely correctly. Taking the thesis, the author demonstrated sufficiently the ability to choose justified methods for reaching the goals and apply the chosen methods. With regard to methodology, it would have been interesting to see whether the author would come to the same result when (or at least delineate the possible impact of) choosing other than inductive method of creation of customary international law.

### **4. Thesis structure and contribution to knowledge**

The present thesis structure reflects and is relevant to the set goals. In general, structure of the thesis appears logical and provides suitable pathway to find answers to issues raised in the introduction. Nevertheless, some of the (sub)chapters appear obsolete, e.g. the general information on the regulation of the use of force under international law. It is thus not clear what shall be the contribution of subchapter 2.2 on Article 39 UN-Charter. Here it would have been enough to shorten the text and if necessary simply refer to the vast amount of existing secondary sources on this topic.

As for the content of the thesis, I will offer the space for questions to the reviewer of the thesis, my colleague dr. Svaček. Nevertheless, I wish to make one remark, which at the same time I would like to discuss during the defence of the thesis: the main goal of the thesis is to explore the status of the “Unwilling and Unable Doctrine” under current international law. In the discussion, Mr. Jamali logically explores the status of the doctrine as an (existing or emerging) norm of international law. Consequently, the two constituting elements of international custom are being explored. However, I miss in this discussion one “qualifying” element. If the “Unwilling and Unable Doctrine” should constitute an exemption to the prohibition of the use force, which is a norm of *ius cogens* character, then it can be assumed that the potential

exemption from this rule should also have peremptory character. This aspect is however not reflected (neither in the structure, nor in the content) in the text of thesis.

Generally, however the thesis makes its contribution to knowledge in the field clearly identifiable and at the same time interesting for the academia.

#### **5. Presentation and language**

The overall appearance of the thesis is appropriate, the thesis contains no grave structural, grammatical or spelling errors that would complicate reading. The thesis is written in coherent, formal style. In general, satisfactory attention has been paid to the overall appearance of the thesis.

#### **6. Overall result:**

The present thesis is a structured and independently written master's thesis, thus being a good piece of work, which meets the general requirements for this type of academic works as required by the relevant provisions of the Palacky University Faculty of Law. Mr. Jamali deserves merits for the choice of the topic, which is both, practically relevant and demanding to analyse. I commend also the way he decided to approach the topic. Nevertheless, certain room for improvement was identified above.

Finally, as a supervisor of the thesis I can attest Mr. Jamali's willingness and efforts to produce a good piece of academic work. Mr. Jamali proved this approach during his whole studies at the Palacký University Faculty of Law.

**Based on the above arguments and depending on Mr. Jamali's performance during the defence of the thesis I suggest awarding the grade:**

**B**

16 June 2019

JUDr. Martin Faix, PhD., MJI