



Master's Diploma Thesis Assessment Report

University:	Palacký University, Faculty of Law
Thesis Title:	The Unwilling or Unable Doctrine: Extraterritorial Use of Force against Non-State Armed Groups
Field of Study:	International and European Law
Author:	Ayyoub Jamali
Supervisor:	JUDr. Martin Faix, Ph.D., MJI.
Reviewer:	JUDr. Ondřej Svaček, Ph.D., LL.M.

1. Choice of the topic

Author focuses on issue which attracts considerable attention both in theory and practice of international law (IL). This topic, which is recent and practical, has never been elaborated at the Dpt. of International and European Law in Olomouc. This issue is certainly rich with research potential. The choice of the topic must be evaluated only in positive.

2. Contents of the thesis

The structure of this thesis follows reasonable path. Firstly, it introduces general international legal framework concerning *ius ad bellum* (*ius contra bellum*), starting with reference to relevant Charter provisions (i.e. Art 2(4), Art. 42, Art. 51). It focuses specially on a well-established exception from the prohibition on the use of force (self-defence) and explores, whether self-defence might be invoked once an armed attack originates from the act of non-state actor. Then, it introduces concept of the unwilling or unable doctrine and identifies its position in current PIL.

The research question and aim of the thesis are formulated clearly at p. 11: *Does the current form of the unwilling or unable doctrine constitute a rule of*

customary international law? To answer this question, author uses traditional legal method of creation of customary IL, which is inductive. This method is supported by case-law of the ICJ, and codification practice of the ICL. Thus, to identify a new rule of customary international law, the author finds out examples of previous precedents (practice) in this area. He uses case-studies (and related pronouncements made by States) concerning usage of force against ISIS, PKK, Chechens, JeM and FARC. After their evaluation, author formulates negative conclusion, i.e. the unwilling or unable doctrine does not constitute a rule of customary IL. Author's approach is logical, the present reviewer does not contradict it in general. The author should be praised especially for in-depth evaluation of State practice relating to chosen examples.

Still, it is possible to propose some insights (hints and questions to consider):

- a) The thesis deals with controversial exception from the prohibition on the use of force that would be applicable against non-State armed groups (see examples of ISIS, PKK etc.) As pointed out by the author (p. 13), in some cases, these groups are *unofficially state-allied and receive government support to launch an attack against another state*. What exactly is meant by these criteria? Is it possible that this support turns non-State actor to be *de facto* State organ?
- b) Author builds his approach on inductive method of formation of customary IL. What about opposite deductive approach? Does it have any standing in current IL? See e.g. the article co-authored by Faix/Svaček quoted in the thesis.
- c) Author concludes that current law of self-defence is not applicable in case of armed attacks by non-State actors. This conclusion is valid, nevertheless it would be beneficial to draw this finding only after more extensive analysis; the same holds true with respect to doctrinal opinions on the unwilling or unable doctrine.
- d) Does the author of present thesis agree that international organizations can contribute to formation of customary IL? Is it a widely shared opinion?

- e) At p. 47, author formulates his opinion on relation between self-defence and the unwilling or unable doctrine: *„If the unwilling or unable doctrine is supposed to be a rule of customary international law, it should be understood as the expansion to the self-defence right provided by the Art. 51 of the UN Charter. Thus, states are required to invoke the doctrine based on the self-defence right, enshrined in Art. 51 of the UN Charter.”* Nevertheless, is it possible that the doctrine has completely nothing to do with the self-defence? Is it possible to treat this doctrine as entirely independent and discrete exception from the prohibition on the use of force?

3. Presentation and language, usage of sources and literature

The overall appearance of the thesis is appropriate, the thesis contains no grave structural, grammatical or spelling errors that would complicate reading. Author uses adequate number of sources (nevertheless, sufficient are rather primary sources, usage of secondary sources, i.e. scholarly literature, might have been more extensive) which are properly quoted (e.g. author uses simplified version of a repeated reference).

4. Overall result

The present thesis is a structured and independently written master's thesis, being a 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.

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

B

Questions:

1. What is meant by *deductive method* of formation of customary international law? Is it possible to employ this method even in relation to the unwilling or unable doctrine?
2. Is the unwilling or unable doctrine separate exception from the prohibition on the use of force, or is it an expansion of the self-defence?

16th June 2019

Ondřej Svaček