

Changes in International Law in response to Terrorist attacks. A comparative study of Israeli and the US state practice

Agnieszka Balicka (2013)

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*Changes in International Law in Response to Terrorist Attacks. A Comparative
Study of Israeli and the US State Practice*

Agnieszka Balicka

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ABSTRACT

The aim of this thesis is to contribute to the understanding of the nature, status and determinants of international law in the aftermath of September 11 terrorist attacks upon the US. More specifically, I am interested in the variation of legal responses of the United Nations Security Council (UNSC) to policies of counter-terrorism adopted by states, which have been victims of attacks launched by non-state actors. What does this variation imply are the nature, status and determination of international law? Thus, meetings of the UNSC and statements delivered by representatives of five states that are the permanent members of this international body constitute the main empirical focus of my study. Although there admittedly are limitations to such an approach, the study will suggest that the UNSC can usefully be treated as a proxy of international society as understood by Hedley Bull in that regard.

Although the reasons for undertaking military interventions in question were related to national security as well as the inherent right of self-defence, international society responded to these interventions in different ways. In relation to 1982 Israel's invasion of Lebanon in order to fight the PLO, international society condemning Israeli actions did not recognise its right to self-defence. In 2006, however, when Israel launched a military operation on Lebanese territory in order to fight Hezbollah, the response of international society was the opposite, in that Israel's right of self-defence was recognised. By looking at the subject from various International Relations theoretical perspectives my thesis analyses the possible reasons behind the decision of international society to treat these two Israeli operations in different way. In order to deliver coherent conclusions,

further analyses of the 9/11 attacks and the response of international society towards the US-led invasion of Afghanistan constitute the second case study.

This thesis contributes to the understanding of the status of international law through the lenses of different theoretical standpoints. A study of the interventions in question from the angle of international provision governing the use of force allows for a more in-depth and a comprehensive analysis of the role of international law in the contemporary world. It also enables a thorough scrutiny and critique of traditional IR perspectives and a greater appreciation of the comparative, explanatory merit of the English School theory of International Relations and Constructivism.

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INTRODUCTION

The aim of this thesis is to contribute to the understanding of the nature, status and determinants of international law in the aftermath of September 11 terrorist attacks upon the US. More specifically, I am interested in the variation of legal responses of the United Nations Security Council (UNSC) to policies of counter-terrorism adopted by states, which have been victims of attacks launched by non-state actors. What does this variation imply are the nature, status and determination of international law? Thus, meetings of the UNSC and statements delivered by representatives of five states that are the permanent members of this international body constitute the main empirical focus of my study. Although there admittedly are limitations to such an approach, the study will suggest that the UNSC can usefully be treated as a proxy of international society as understood by Hedley Bull in that regard.¹

This study looks at the ways in which the UNSC has responded towards instances where counter-terrorist policy has compelled states to invade another state. More specifically, I investigate three instances namely those concerning Israel's invasion of Lebanon in 1982 (*Peace for Galilee*), the USA's invasion of Afghanistan in 2001 (*Enduring Freedom*) and Israel's invasion of Lebanon in 2006 (*Change Direction*). What is significant in relation to these policies is the fact that international society treated them differently. Why was that the case, and what does this tell us about international law?

¹ Bull H, *The Anarchical Society. A Study of Order in World Politics* (3rd edn Basingstoke: Palgrave Macmillan, 2002), 13.

In other words, the thesis investigates what was the reason behind the decision of international society to treat the policies based on the same justification in different ways. Such variations can have a significant impact. It is widely recognised that the general prohibition of the use of force belongs to *ius cogens* and comprises a part of international customary law. It is conceived that rules derived from international customary law are not very flexible in that the practice from which custom develops take time and, therefore, it is seen as ‘too slow a means of adapting the law to fast-changing circumstances’.² However, it should also be noted that, in certain circumstances ‘customary rules can develop fairly rapidly’³ and, thus, a change that occurs in customary law does not necessarily have to be evolutionary but punctuated. According to Hay:

[i]n moments of crisis (...) the pace of change quicken as one consensus is overturned and attempts are made to establish a new one. Such crises tend to be characterised by a growing frustration with the governing paradigm (the ruling ideas) and by the perceived need for an alternative.⁴

My empirical research suggests that this has, indeed, been the case after 9/11. There has been a change in the approach of the UNSC and the international society towards the use of military force as a response to non-state actors responsible for terrorist attacks. Such change in approach has had an impact on the existing rules governing the use of force in international politics. More specifically, the threshold of what actions can constitute an armed attack and, therefore, the basis for exercising the right of self-defence in accordance with the Article 51 of the UN Charter has been lowered. Moreover, this

² Jennings R Watts A, *Oppenheim's International Law*, vol. 1 (9th edn London and New York: Longman, 1996), 30.

³ *ibid* 30.

⁴ Hay C, *Political Analysis. A Critical Introduction* (Basingstoke: Palgrave, 2002), 162-163.

change of approach has also had an impact on the rules governing the attribution of acts committed by non-state actors to a state. While prior to the 9/11, the UNSC had been reluctant to recognise the legality of the use of force against the territory of a state, which willingly or unwillingly allowed its territory to be used as a base for non-state actors, in the aftermath of 9/11 there has been growing acceptance of the lawfulness of such use of force.

This change of approach is evident when comparing the UNSC responses to the practices of the US and Israel in dealing with international terrorism. Both the US and Israel have had a long practice in dealing with terrorist attacks and undeniably they asserted the lawfulness of their responses towards these attacks. However, what had been lacking, especially in relation to Israel, was the recognition of such lawfulness by the UNSC and the international society. The recognition was forthcoming, however, when the US was attacked by al-Qaeda and the subsequent military intervention in Afghanistan was seen as a legitimate and lawful reaction. The evidence suggests that such a different response was not merely a one-step exception, and, in fact, it highlighted the change in the general international approach towards the use of force in relation to terrorist attack. Such a change of approach is evident when Israel's right to intervene in Lebanon was recognized by the UNSC in 2006, in marked contrast to 1982 and indeed instances before and after 1982.

As it will be demonstrated, the change in the approach towards the right to use force directed against non-state actors has been influenced by the change in distribution of power within international arena in the aftermath of the end of the Cold War. The international system based on the notion of balance of power, 'by which is understood such

a disposition of things, as that no one potentate be able absolutely to predominate, and prescribe laws to the others'⁵ was replaced by a unipolar world, where a position of a single state and its capabilities are too strong 'to be counter-balanced'.⁶ For over the last two decades, that position in the contemporary world has been occupied by the United States. According to Krauthammer, '[t]he center of world power is the unchallenged superpower, the United States, attended by its Western allies'.⁷ The special international position enjoyed by the US has had a great influence on world politics. It can be observed in that, although Israel has had a long practice in dealing with international terrorism, it was not able to convince the international society to change its approach and opt for the acceptance of wider definition of the right to self-defence. What needs to be pointed out is that, although the changed approach occurred in the aftermath of the 9/11 attacks, the UNSC did not merely provide a reply on a one-off basis to the US postulates but, in fact, it recognised the necessity of changing the rules governing the use of force in relation to acts of terrorism, and states that willingly or unwillingly permit the non-state actors to operate within their territories. Thus, the 9/11 attacks should be seen as setting a new precedence.

On the other hand, the fact that it was the US which was able to influence such change needs to be emphasised and should not be disregarded. As was already mentioned, the US has been occupying a very distinctive place within the international arena since the end of the Cold War. The international status of the US has been variously characterised. While some referred to it as 'empire', others characterised the US as a 'hegemon'. Such a position, however, not only gives the US an ability to force through its standpoints

⁵ Vattel E de, *Le Droit Des Gens. Ou Pricipes De La Loi Naturelle, Apliqués À La Conduite & Aux Affaires Des Nations & Des Souverains (the Law of Nations, or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns)*. Edited and with an Introduction by B Kapossy and R Whatmore (Indianapolis: Liberty Fund Inc., 1758, 2008), bk. III, ch. ii, section 47, 496.

⁶ Wohlforth WC, "The Stability of a Unipolar World," *International Security* 24, no. 1 (1999): 9.

⁷ Krauthammer C, "The Unipolar Moment," *Foreign affairs* 70, no. 1 (1991): 23.

internationally, but it also imposes on it international responsibility. The impact or the role that the most powerful states play in world politics is not a novelty. Throughout the centuries such positions were occupied by various states, usually referred to as the great powers, either collectively or unilaterally. According to Bull, the role of great powers is to promote international order 'by pursuing policies that work for it rather than against it'.⁸ This can be achievable 'by managing their relations with one another; and by exploiting their preponderance in such a way as to impart a degree of central direction to the affairs of international society as a whole'.⁹ Thus, he called them "great responsables" or "great indispensables".¹⁰ Bull had in mind world affairs where a certain number of states possessed similar power and status. However, taking into consideration the current international environment, it may be assumed that such responsibility, although not limited to, lies on the US to a great extent.

Although the US possesses great advantage over other powerful states, it nevertheless needs, as the war on terror exemplified, the cooperation between itself and other members of the international society. Neo-realists, such as Gilpin and Mearsheimer¹¹ suggest that such a situation gives the dominant state a possibility to project its power and pursue their own interests. It will be demonstrated, however, that even though the US is capable of forcing through its views and policies, international society still needs proof that policies, which aim is to change existing rules, are indeed essential for maintaining international order. For rules, especially those identified as *ius cogens*, to be changed international society needs to recognise them as, in fact, being altered. States regard

⁸ Bull (n 1) 200.

⁹ *ibid* 200.

¹⁰ *ibid* 49.

¹¹ See for example: Gilpin R, *War and Change in World Politics* (Cambridge: CUP, 1981). -- "The Theory of Hegemonic War," *Journal of Interdisciplinary History* 18, no. 4 (1988): 591-613. Mearsheimer JJ, *The Tragedy of Great Power Politics* (New York: W. W. Norton & Company, 2001).

themselves as comprising international society and for the change of existing rules to occur the members of such an international society need to accept and acknowledge such change. The US, although it possesses indisputable influence on world politics, is not in a position of imposing the policy with which other members of international society do not agree or are not willing to adhere. This, undoubtedly, was the case with the response towards the 9/11 attacks and Operation *Enduring Freedom*.

The support for the US was delivered at various international forums such as the United Nations, North Atlantic Treaty Organization, and the European Union as well as even organisations, which were traditionally reluctant to the policy of the US, such the Organization of African Unity and the Arab League. Importantly NGOs, such as Amnesty International, also condemned the attacks and called ‘in the strongest terms for those responsible to be brought to justice’.¹² This, as it will be shown, suggest that international society accepted the rationale underlying the justification of the US and that the existing rules governing the use of force needed to be changed. Further evidence suggesting the widespread acceptance and recognition of the necessity of altering the existing rules governing the use of force can be observed by looking at the 2006 Operation *Change Direction* instigated by Israel within the territory of Lebanon. As it will be demonstrated, Israeli right of self-defence was recognised for the first time since 1968, when the Israeli armed forces launched their first military campaign in Lebanon. This, in turn, suggests that 9/11 did not constitute an exception from existing rules but in fact set up the precedence, which created grounds for the alternation of existing principles governing the use of force.

¹² Amnesty International, “Amnesty International: Human Rights Backlash” (4 October 2001) in <http://www.globalissues.org/article/263/amnesty-international-human-rights-backlash> (accessed 1 December 2012).

The fact that international rules can change does not mean that international law is weakened and its role reduced. Instead, it suggests that international law does not remain passive and adapts to new circumstances. Although the rules change seldom, the possibility of change does exist. What is necessary for such an alternation to take place is recognition and acceptance of it by members of the international society. The importance of international law can be observed in that even the US, as the most powerful state, implements international rules and norms. It can be seen in that the US after the 9/11 attacks relied on legal provisions governing the use of force. Its military response was based on the right of self-defence and the perception of an imminent terrorist threat. The response of international society clearly supports the assumption that states in their actions take into account international norms and rules. This is in agreement with Dunne, who argues that '[t]he fact that the wider society of states accepted the legality of the US position suggests that at this point the hyperpower was acting within the boundaries of international society'.¹³ It is argued then that, although the US acted in accordance to what was perceived as necessary and in the national interest, at the same time the US acknowledged the importance of international law. Furthermore, the events following the 9/11 demonstrated the importance of international cooperation in facing international threats such as international terrorism. The US favoured multilateral response to a terrorist threat rather than just simply using its military power to suppress such threat.

This thesis is placed within the theoretical debate on the role that both international society and international law play in world politics. It provides an analysis of different theoretical traditions and their perspectives on whether or to what degree the aforementioned concepts actually influence states' actions. The thesis begins by looking at

¹³ Dunne T, "Society and Hierarchy in International Relations," *International Relations* 17, no. 3 (2003): 311.

realist tradition, which either negates the very existence of international society and thus it minimises its power or underestimates its influential role even if it accepts that to a certain degree an entity such as international society may exist.

This is followed by an analysis of the Liberal Theory of International Relations and its utilitarian offshoot. Both traditions recognise the role that both international society and international law play in world politics and thus their standpoints contribute significantly to this thesis. At the same time, however, both have their downsides and provide a limited portrait of both international law and international society. While the former puts too much emphasis on the domestic systems of governments, which although playing an important role in determining foreign policies does not provide sufficiently complex answers to the questions raised in the thesis, the latter whilst acknowledging the importance of both international law and institutions, though its emphasis on their utilitarian character diminishes or underestimates their actual role.

It will be demonstrated that the most important contribution to the study of the status of international law can be found in the writings of scholars associated with the English School of International Relations. This theoretical perspective does not negate the insights of the aforementioned theories. What it does, however, is use some of their core assumptions to formulate a more comprehensive understanding of international law through its thorough study of the notion of international society. The scrutiny of the status of international law will be further enriched by reference to the constructivist scholarship, which provides an insightful contribution to the study of international norms. The chosen theoretical approach does not negate the fact that states create norms out of their own interest. What this perspective emphasises is that norms not only reflect the interest of

individual states but also of a society states belong to. It will be shown, that the changed international approach towards the use of force in general evident since the end of the Cold War as well as the change approach towards the use of force in relation to acts of terrorism noticeable since 9/11 signalise the development of the meaning of the very notion of international society. It will be shown that as states' interests reflect the interest of international society, once the latter is altered so are the interests of the former.

Moreover, the case studies will demonstrate, that the normative and authoritative character of international law cannot be underestimated. This is not to say that international law does not have a utilitarian nature. It certainly does.¹⁴ However, as Bull, the leading representative of the English School, observed '[t]he importance of international law does not rest on the willingness of states to abide by its principles to the detriment of their interests, but in the fact that they so often judge it in their interests to conform to it'.¹⁵ States acknowledge the importance of norms and rules that influence international coexistence and cooperation, which, in turn, enable the preservation of international order.

Both Constructivists and theorists associated with the English School emphasise the importance of norms and rules that influence states' actions. Rules and norms possess two prominent roles, namely the role of constraining and the role of enabling. The former is 'designed to constrain choices and/or as parameters within which individual agents pursue their own preferences'.¹⁶ The latter refers to the assumption that rules and norms

¹⁴ See a short discussion of Bull's approach towards the international law in Simmons BA, "Compliance with International Agreements," *Annual Review of Political Science* 1 (1998): 75-93.

¹⁵ Bull (n 1) 134.

¹⁶ Hurrell A, "'There Are No Rules'" (George W. Bush): International Order after September 11," *International Relations* 16, no. 2 (2002): 186.

also are created in order to 'enable and empower action'.¹⁷ What follows is that '[n]orms are therefore central to understanding the power to mobilize, to justify and to legitimize action'.¹⁸ This is the case in the post-9/11 picture of international politics. Moreover, this also supports the assumption that international norms are not stiffly fixed and embedded but may possibly evolve and adjust to new circumstances. The 9/11 attacks and the US response influenced the notion of what is now understood as the right of self-defence. For the first time since the establishment of the UN Charter legal order, the right of self-defence has been credited to the state responding to terrorist attack. Moreover, taking into consideration that the military intervention in Afghanistan was justified, it will be shown that there has been a growing support for the relaxation of rules governing the responsibility of states for the acts of non-state actors. According to one scholar, law and policy 'have shifted dramatically in the post-9/11 era – ushering in new, enhanced acceptance of the use of military force to counter terrorism'.¹⁹ The thesis offers empirical support to this assessment.

My thesis makes an original contribution to the understanding of the status of international law through its analysis of the ways international society responded towards the Israeli and the US policies of counter-terrorism. Although various authors focus on the policies of these two countries they do not provide a comparative analysis and the subsequent response of international society towards them. Such contribution is conducted here through empirical structured-comparative research. The conducted research is interdisciplinary, in that it explores the topic from the angle of both international law and international relations. This, in turn, allows for comprehensive and thorough investigation

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ Lietzau WK, "Old Laws, New Wars: Jus Ad Bellum in an Age of Terrorism," *Max Planck Yearbook of United Nations* 8 (2004): 386.

and analysis. In other words, the originality of this thesis resides in that it approaches international norms towards the use of force through the comparative analysis of three military interventions. This delivers evidence of the change in international approach towards the actions, which can be regarded as lawful exercise of the right to self-defence. Although some authors highlight such change they do not look at its origin and its consequences on the existing international system. They either emphasise the hegemonic status of the US, which is in the position of dictating its will and policy upon the rest of international society or they claim that it can break international law whenever it suits its national interest.²⁰ These authors also point to the lack of the effectiveness of international law but, at the same time, they fail to acknowledge the role of international society in emphasising the illegality of particular policies through various forums, most importantly the UN Security Council. As the international legal system differs from domestic systems, the role of international law does not lie only in whether or not it is executed. Its role also lies in that it enables states to co-exist in the anarchical system of world politics. International law provides a set of rules and norms, which allows for and prohibits certain actions. Its strengths lie in overall states' recognition and acceptance of such legal system. As states are aware of the limitations and boundaries for their actions, the international spectrum can be described as becoming, to a certain extent, less conflictual. The end of the Cold War has brought new light onto the international system, in that there is bigger potential for international cooperation, which was evident in the way in which international society responded to 9/11. As it will be demonstrated, such cooperation and solidarity

²⁰ See, for example: Herz JH, "The Security Dilemma in International Relations: Background and Present Problems," *International Relations* 17, no. 4 (2003): 411-416. Jervis R, "Realism, Neoliberalism, and Cooperation: Understanding the Debate," *International Security* 24, no. 1 (1999): 42-63. Mearsheimer JJ, *The Tragedy of Great Power Politics*. -- "Hearts and Minds," *National Interest* 69 (2002): 13-16. Solomon H, "In Defence of Realism: Confessions of a Fallen Idealist," *African Security Review* 5, no. 2 (1996). Waltz KN, "Structural Realism after the Cold War," *International Security* 25, no. 1 (2000): 5-41.

delivers further evidence that an international society does exist. States acknowledge that they comprise the international society and that they are bound by certain rules and norms.

In pursuit of this argument, the dissertation is organised as follows. Chapter One provides a scene-setting exercise for the following assessment of the status of international law in the aftermath of 9/11. This is conducted through an analysis of Natural and Positivist Schools of International Law. An inclusion of a scrutiny of main international legal doctrines is essential as it allows for a thorough investigation of the development of the role and scope of international law throughout the centuries. The chapter further aims to introduce the reader to the most important points of history that contributed to the development of modern international law. Such an overview is narrowed to those events and developments that influenced the proliferation of provisions governing the use of force as observed in contemporary international law. It involves looking not only at those provisions regarding the prohibition of the use of force but also, most importantly, at the right of self-defence. Here, it is also essential to evaluate the notion of international society, its origins and evolution, which constitutes an integral part of this chapter. Assuming, *arguend*, that the existence of international law is ‘the most essential proof of the very existence of international society’²¹ analyses of both are, indeed, essential and inseparable for this study.

Moreover, the fact that this thesis aims to contribute to the understanding of the status of international law through an analysis of the response of international society towards counterterrorist policy of Israel and the US and therefore, it constitutes means through which this research is undertaken, the evolution of international society itself is

²¹ Souza EM de, "Re-Evaluating the Contribution and Legacy of Hedley Bull," *Brazilian Political Science Review* 2, no. 1 (2008): 97.

indispensible for this thesis. Finally, this chapter also looks at the provisions of international law regarding the lawful exercise of the right to self-defence. It involves an analysis of whether or when a terrorist attack can constitute an armed attack, and when a state can be held responsible for such an act. This, in turn, is followed by identifying the place that non-state actors occupy within the international arena. It investigates the developments that occurred throughout the second part of the twentieth century that led to a shift in treatment of non-state actors from marginal groups with limited scope to actors which are capable of obtaining essential resources that threaten the national security of states.

The aim of Chapter Two is to provide an overview of the key concepts and hypotheses of the chosen theories of International Relations. It begins with looking at the mainstreams of IR theories, broadly associated with liberal and realist traditions and their perspectives on the role of international law. An outline of their broad scholarship will provide an essential foundation for the subsequent analysis of case studies. Importantly it also allows for an appreciation of richness of the English School Theory of International Relations. As this theory of International Relations values insightfulness of both realist and liberal traditions it can, therefore, be viewed as a synthesis of these theoretical approaches. It will be demonstrated that the English School's understanding of the role of international law through its broad scholarship on the notion of international society can be further enriched by reference to scholars associated with Constructivism. The aim of an adoption of such symbiotic approach is to contribute to the study of both theories on international society through a sustained analysis of international law as an institution and medium.

In addition, Bull with his significant contribution to the study of both the international society and international law is chosen as a leading theorist, whose writings are treated as a point of departure for the analysis. Although his studies are devoted to the period of world politics prior to the end of the Cold War, they acknowledged the possibility of change. Such deduction can be derived from the fact that Bull had been investigating the evolution and various shifts associated with notions such as order, system, society and law within the international arena.

An important contribution and supplement to the writing of Bull is delivered by Clark. His analysis of the notion of hegemony and positioning of the US as the world's superpower is crucial for this study. Moreover, as Clark focuses on the current and recent world affairs his analysis can significantly contribute to the scrutiny of the international approach towards the use of force since the end of the Cold War. The analysis is further enriched by the writings of Constructivists, who emphasise the pivotal role of norms, which influence states' actions. As this thesis argues that these theoretical perspectives deliver the most comprehensive account of both international law and international society it is important to provide a comprehensive foundation for the subsequent analysis. To this end separate subsections are dedicated solely to understanding of international law and international society. Apart from looking at various theories of International Relations and their possible approaches to the topic in question, this chapter also delivers reasoning behind choosing the UN Security Council as a proxy of international society. An overview of the research methods chosen for this research is provided in the final section of this chapter. This section delivers an explanation behind a choice of qualitative methods as the most appropriate methodology, a selection of three case studies and the notion of change in international customary law.

Chapter Three sets out the first case study of this research, which investigates the 1982 Operation *Peace for Galilee*, launched by Israeli forces within Lebanese territory and the subsequent response of international society towards this intervention. The choice of this operation for comprising the case study was dictated by its scope and international agreement to regard it as the unlawful use of force. In addition, this military operation can be seen as constituting the biggest Israeli intervention within Lebanese territory when compared with other operations carried out by Israel since 1968 until 1996. Although the target of the military operations differed during that period, all of them were based on the same justification and international society treated them in particular way. Therefore, most of other interventions can be seen as constituting a background through which Operation *Peace for Galilee* can be analysed.

The general pattern observed in the way international society responded to these operations was condemnation and non-recognition of Israeli right to self-defence. Here, an analysis of the responses of the members of the United Nations Security Council is provided. In order to scrutinise the reasons behind the decision of the UNSC to condemn Israeli military actions, this chapter needs to include an analysis of whether the initial attack that triggered Israeli justification constituted an armed attack and whether Lebanon could have been held responsible for actions of insurgent groups operating from its territory. It also looks at the Israeli policy and approach towards the actions of non-state actors and whether it had a right to undertake military actions in order to invoke international law provisions regarding the right of self-defence.

Chapter Four presents the second case study, namely the response of international society towards the US-led military Operation *Enduring Freedom* in Afghanistan in 2001.

It begins by providing an overview of the justification of the US government to launch this military intervention. This overview includes scrutiny of the foundations to treat the 9/11 attacks that were instigated by al-Qaeda on American soil as triggering the right to self-defence. This is followed by the way in which international society responded to both the attacks and the subsequent military intervention in Afghanistan.

Although the main focus is towards the reaction of United Nations Security Council, the responses of other UN bodies and international organisations is brought up in order to emphasise the gravity of solidarism and support for the US action. Taking into consideration the fact that for the first time explicitly the right of self-defence was recognised in relation to a terrorist attack, which, in turn, suggests that a change occurred in states perception of instances when a force can be used. In order to investigate this change, a comparison between the ways in which international society responded to Operations *Peace for Galilee* and *Enduring Freedom* is undertaken. This, in turn, leads to scrutiny of whether the 2001 intervention in Afghanistan met the international legal requirements as had been known prior to 9/11. This part involves comparison between the attacks that led those two countries to launch military operations and whether 9/11 constituted an armed attack in accordance with international law. This is followed by a comparative analysis of the relationships between two hosting states, namely Lebanon and Afghanistan and non-states actors. It involves looking at whether the relationship of al-Qaeda with the Taliban regime was of such a level as to imply a responsibility to Afghanistan for these attacks, which in turn would give a basis for a lawful exercise of the US right to self-defence. The significance of this case study can be seen explicitly in that it provides evidence of change in states' approaches towards both non-state actors and states, which allow willingly or unwillingly their territories to be used as bases for these actors.

Chapter Five analyses the two case studies through a reference to different IR theories. It provides a comparative analysis of the possible theoretical explanations for the change that occurred since 2001 in the international approach towards the use of force. It will be demonstrated that in fact some of theoretical perspectives referred to throughout this thesis point to the hegemonic status of the United States and its ability to influence world politics. It will be shown that a position the hegemon holds on international arena was an underlying factor behind the changed international approach towards the use of force since the 9/11 attacks. What will be established, however, is that the theories referred to throughout the thesis comprises of different understanding of the notion of hegemony. It will be argued that the ES analysis of the international society delivers a significant contribution to realist and neo-liberal perceptions of the current position of the US. As such conclusion is reached, an inclusion of the third case study and its theoretical analysis is crucial for the presentation of a comprehensive and coherent account of the change and the status of contemporary international law.

Chapter Six sets out the final case study, namely the response of international society towards the 2006 Israeli Operation *Change Direction* instigated in Lebanon. In a similar manner to preceding chapters, it begins with the presentation of the Israeli justification to launch a military intervention in a neighbouring country and the subsequent response of the international society. The investigation is undertaken from the angle of the preceding two case studies. It provides a comparative analysis of international response with a central aim to emphasise the change that occurred in a way international society treated Operations *Peace for Galilee* and *Change Direction*, when for the first time Israeli right to self-defence achieved international recognition. This change is also analysed from

the angle of 9/11 and the growing acceptance of a wider definition of the right to self-defence.

Chapter Seven provides an analysis of the 2006 Operation *Change Direction* from different IR theoretical perspectives. It sets the aforementioned operation within the international environment surrounding both the end of the Cold War and new developments regarding the use of force that occurred since the 2001 Operation *Enduring Freedom*. It will be demonstrated that although the hegemonic status of United States was a crucial factor underlying the change in international approach towards the use of force in the aftermath of 9/11, it was not the sole reason. In addition, it will be shown that this change can be viewed through the angle of a broader spectrum, i.e. the change within the notion of international society itself. An analysis of a broad scholarship of both the English School of IR and Constructivism will allow the present author to formulate the claim that the current international society cannot be easily positioned either within *pluralist* or *solidarist* conceptions of international society. What will be argued instead is that international society is in a transitional phase, somewhere between these two conceptions.

The Conclusion is structured in the following way. Firstly, it delivers a summary of findings relied upon throughout this thesis. This involves firstly merging of the problématique of this thesis, namely the variation of international responses towards three case studies in question. This is followed by a provision of the synopsis of the main arguments presented throughout this study. The second part of the conclusion looks at implications of findings of this thesis on international law. By outlining main assumptions delivered by theoretical perspectives referred to throughout this study it provides an analysis of the status of international law in the aftermath of 9/11 attacks. Lastly, it

specifies a terrain for further research exploring the role and power of the hegemon. *Prima facie* evidence suggests that both international law and international society do possess constraining powers over the hegemon. And for its sustainability, hegemony as a potential institution of international society needs recognition and legitimacy, which can only be maintained if the hegemon acts in accordance with an accepted rules and norms.

CHAPTER ONE

DEVELOPMENT OF INTERNATIONAL LAW

Introduction

The September 11 attacks upon the United States of America have had an impact upon the existing legal order governing the use of force. Although the decade following the end of the Cold War had already put into question notions such as the principle of sovereignty and non-intervention in domestic affairs by bringing back an idea of intervention on humanitarian grounds, the events following 9/11 deepened the alternations even further by broadening the scope of the right of self-defence in instances of terrorist attacks. Although the rules dealing with international terrorism existed prior to 9/11, the significance of this event can be observed in that for the first time the right of self-defence in relation to terrorism was recognised. This recognition coupled together with the overwhelming support for the US-led Operation *Enduring Freedom* launched in Afghanistan indeed suggest that the approach of international society towards the traditional principles and provisions treating the use of force has been altered.

It will be argued throughout this thesis that 9/11 constitutes a momentous event affecting the modern international legal system. Firstly it needs to be noted that not only the right of self-defence was recognised in relation to terrorist attack but also a terrorist attack was identified as constituting a threat to international peace and security.¹ By recognising the right of self-defence, international society acknowledged that a victim state has a right to use force in order to protect itself. Moreover, it also meant that a terrorist

¹ See UNSC Res 1368 (12 September 2001) UN Doc S/RES/1368 and UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373.

attack was of such gravity as amounting to an armed attack in accordance with Article 51 of the UN Charter. The recognition of the right to self-defence in relation to a terrorist attack has also signified that the use of force could be used against the territory of a hosting state. This, treated together with the recognition of the constitution of the threat to international peace and security, which implied the possibility of implementation of the provisions embodied within the Chapter VII of the UN Charter, has indeed challenged the typical international approach towards the hosting states. Such development has had consequences upon the existing international legal order governed by the principles such as respect for states' sovereignty and non-intervention.

In addition, various interventions taking place during the 1990s had already put the traditional approach towards the above principles into question. International responses to the first Gulf War and internal crises exemplified in cases such as Somalia and Former Yugoslavia suggested a wider recognition of the provisions listed within Chapter VII of the UN Charter. Such recognition in turn may imply that international society reflects and expresses greater solidarity² between its members than it was possible during the Cold War. The changed approach of international society towards the use of force suggests the rebirth of thinking associated with the Natural School of International Law. This school of thought postulated the existence of general principles and rights that derive from human reason. The set of these principles constitutes the law of nature, which governs internal and external affairs of a state alike. One of the most important assumptions of this school was the distinction between just and unjust wars. Importantly for this thesis, the use of force in

² It is a characteristic of an international society 'with a relatively high degree of shared norms, rules and institutions among states, where the focus is not only on ordering coexistence and competition, but also on cooperation over a wider range of issues, whether in pursuit of joint gains (e.g. trade), or realisation of shared values (e.g. human rights)' (Buzan B, *From International to World Society? English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2004), xviii.)

self-defence was treated by representatives of this school as one of the just causes to wage war. Moreover, they also advocated a possibility of using force for humanitarian reasons.

Such alternation in international approach has had various consequences. Firstly, it has challenged the international system established in the aftermath of the Peace of Westphalia. This system, also referred to as the modern states system, was based on the notions of sovereignty and non-interference within domestic affairs of independent states. As a state was treated as possessing an absolute power over its territories and no higher authority was recognised, the internal situation was the concern only of the state in question and no other state could interfere within affairs of that state.³

Secondly, it has put into question international legal order based on the prohibition of the use of force established after the Second World War and embodied within the UN Charter. The general prohibition of the use of force, unless in instances governed by the Chapter VII of the UN Charter, has been rightfully seen as one of the major achievements of international society. When the international legal system governed by the prohibition of the use of force embodied within the UN Charter is looked upon, its origins lie in the desire of international society to minimise conflicts and endorse peaceful resolution of disputes between states. The comparison of this legal system with the system governing the relations between states during the earlier century when war was an acceptable means to achieve a state's goals further supports an argument that international society, since the adoption of the UN Charter and mindful of the destruction caused by two World Wars, wanted to create an international system where states could resolve their disputes peacefully. This can be further supported by the growing international support for the

³ See, for example: Gross L, "The Peace of Westphalia, 1648-1948," *American Journal of International Law* 42, no. 1 (1948): 27-29.

narrow scope of the right to self-defence, as will be exemplified by the first case study of this thesis. The creation of such a legal system with the UN as its guardian, gave evidence that international society recognised the restrictive character of international law. However, when the world politics since the end of the Cold War are scrutinised it can be seen that the international society has stopped being explicitly reluctant towards the use of force.

As the use of force always constituted the most important aspect of world politics, the evolution of international law can be seen as mirroring the developments of legal provisions treating the use of force. Throughout the period of the last four centuries world politics has always influenced and had a significant impact on international law. As international law always reflected the changes and was affected by the events occurring within the international sphere so did the writings of theorists who devoted their time to the analysis of the status of law in international relations. There have been two main schools of thought, namely the Natural and Positivist Schools, which focused on the merits of international law. Both schools, although differently, tried to establish and scrutinise the role of international law in world politics with special emphasis on the use of force. While the first one emphasised more the bonds that existed between states comprising an international society and therefore highlighted the notion of justness even in relation to war, the latter stressed the regulatory nature of international law providing the guidelines for the conduct in the time of peace and in the time of war alike. As war became a legitimised instrument of states, which meant that states could use it whenever it was in

their national interest, the *jus in bello*, instead of the *jus ad bellum*,⁴ prominent within natural law tradition, was emphasised.

The purpose of this chapter is to provide a scene-setting for the assessment of the status of international law in the aftermath of 9/11. To that end, the chapter is divided into three main parts. Part One provides a scrutiny of two main schools of international legal thought. The scrutiny of both Natural and Positivist Schools of International Law is essential as it delivers foundation for the analysis of the ways in which international law was portrayed throughout the centuries and the extent to which these theories remain relevant in the twenty-first century and whether they can still adequately interpret the role of international law. Moreover, these schools of legal thought offer theoretical underpinning for the two conceptions of international society developed by scholars associated with the English School of International Relations. As will be demonstrated, while *pluralist* conception of international society reflects positive principles, *solidarist* one echoes those advocated by thinkers associated with Natural Law tradition. Part Two scrutinises the developments of international law that occurred throughout the twentieth century in regards to the use of force in international relations. The main objective of this part is to discuss the attempts of international society to limit the war and the use of force in general through the creation first of the League of Nations and then the United Nations. Further, it introduces the reader to the legal setting established in the aftermath of the Second World War relevant to the discussion about the right to self-defence in relation to terrorism. Part Three presents initial inquiries into the status of the contemporary international law.

⁴ For detailed definitions and differences between the two concepts, see for example: Kolb R Hyde R, *An Introduction to the International Law of Armed Conflicts* (Portland: Hart Publishing, 2008).

Part One: Schools of International Legal Thought

a) The Natural School of International Law and the Just War

According to writers associated with this school of thought, relations between humans as between states are governed by a certain higher law, which is called the law of nature. As opposed to the positive law which is based on the free will of sovereign, which can be altered, the natural law is unchangeable and remain constant.⁵ It consists of certain general principles, which can be deduced by reason. Due to the fact that individuals and similarly states are seen as rational entities they can deduce from their rational nature which behaviour and actions are right or wrong. In addition, the ability to distinguish between good and evil enables human beings to recognise what actions can be seen as just or unjust. Grotius, the leading representative of this school, defines natural right as

the dictate of right reason, shewing the moral turpitude, or moral necessity, of any act from its agreement or disagreement with a rational nature, and consequently that such an act is either forbidden or commanded by God, the author of nature.⁶

⁵ For general information about natural law, see for example: Elbe J von, "The Evolution of the Concept of the Just War in International Law," *American Journal of International Law* 33, no. 4 (1939): 665-688. George RP, "Natural Law," *Harvard Journal of Law & Public Policy* 31, no. 1 (2008): 171-196. Hall S, "The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism," *European Journal of International Law* 12, no. 1 (2001): 267-307. Kunz JL, "Natural-Law Thinking in the Modern Science of International Law," *American Journal of International Law* 55, no. 4 (1961): 951-958. O'Brien WV, "Natural Law and International Law in the American Tradition," *World Affairs* 141, no. 2 (1978): 104-117. Remec PP, *The Position of the Individual in International Law According to Grotius and Vattel* (The Hague Martinus Nijhoff, 1960).

⁶ Grotius H, *The Rights of War and Peace. Including the Law of Nature and of Nations* (Transl. By Ac Campbell) (Washington & London: Elibron Classics, 1901, 2005), bk. I, ch. i, section X, 21. This definition of natural right in a different edition reads: 'the Rule and Dictate of Right Reason, shewing the Moral Deformity or Moral Necessity there is in any Act, according to its Suitableness or Unsuitableness to a reasonable Nature, and consequently, that such an Act is either forbid or commanded by GOD, the Author of Nature' (emphasis in original) Grotius H, *The Rights of War and Peace* (Ed. By R Tuck) (Indianapolis: Liberty Fund, Inc., 2005), bk. I, section X.1., 150-151.

In other words, human beings are capable to deduce from their right reason to recognise which actions are or are not in accordance with the law of nature. Although all human beings show an inclination for self-preservation, which derives from their instincts common to all animals, the principles which are in agreement with reason, 'which is the basis of propriety, should have more weight than the impulse of appetite; because the principles of nature recommend right reason as a rule that ought to be of higher value than bare instinct'.⁷

A very distinctive place in the classic school of natural law is indeed reserved for Hugo Grotius, whose original contribution was seen in that he delivered a comprehensive legal framework for international relations.⁸ Because of his unique contribution he is usually referred to as 'the father of international law'.⁹ According to him the law of nature should govern the relations between states as it governs relations between individuals. Although he recognizes the value and importance of positive law, which he referred to as volitional law (*ius voluntarium*),¹⁰ its role is subordinate to that of natural law, which is

⁷ Grotius (n 6 [1901, 2005]) bk. I, ch. ii, section I, 31.

⁸ For further information on Grotius and his writing, see for example: Anonymous, *International Law and the Grotian Heritage. A Commemorative Colloquium Held at the Hague on 8 April 1983* (Hague: TMC Asser Instituut, 1985). Brown Scott J, "'Grotius' De Jure Belli Ac Pacis Libri Tres: The Work of a Lawyer, Statesman and Theologian," *American Journal of International Law* 19, no. 3 (1925): 461-468. Edwards CS, *Hugo Grotius. The Miracle of Holland. A Study in Political and Legal Thought* (Chicago: Nelson-Hall Inc., 1981). Higgins R, "Grotius and the United Nations," *International Social Sciences Journal* 1 (1985): 119-127. Lauterpacht H, "The Grotian Tradition in International Law," *British Yearbook of International Law* 23 (1946): 1-53. Midgley EBF, *The Natural Law Tradition and the Theory of International Relations* (London: Elek Books Ltd, 1975). Murphy C, "The Grotian Vision of World Order," *American Journal of International Law* 76 (1982): 477-498. Pound R, "Grotius in the Science of Law," *American Journal of International Law* 19, no. 4 (1925): 685-688. Reeves JS, "The First Edition of Grotius' De Jure Belli Ac Pacis, 1625," *American Journal of International Law* 19, no. 1 (1925): 12-22. Vollenhoven C van, "Grotius and the Study of Law," *American Journal of International Law* 19, no. 1 (1925): 1-11. --- *Grotius and Geneva* (Bibliotheca Visseriana, 1926). Vreeland H Jr, "Hugo Grotius, Diplomatist" *American Journal of International Law* 11, no. 3 (1917): 580-606. Yasuaki O ed., *A Normative Approach to War. Peace, War, and Justice in Hugo Grotius* (New York: Oxford University Press, 1993).

⁹ Shaw MN, *International Law* (5th edn Cambridge: Cambridge University Press, 2003), 23-24.

¹⁰ According to Remec, the volitional law is the best translation of the Latin term used by Grotius as it refers to law that it 'originates in the will of a lawgiver while the addresses of that law are in no way free to decide whether they will or will not follow a given, particular rule. They are obliged to obey as the particular rule is

superior and unchangeable. The superiority of the law of nature can be seen in its immutability. The positive law based on the free will of states is inclined for changes. The law of nature, on the other hand, is characterised by constancy and therefore it cannot be changed.

The immortality and importance of the writings of Grotius can be observed in that even during the twentieth century, three centuries after his death, his ideas are still very influential although his emphasis on morality and justness in international relations constitutes an ultimate and ideal conception of world affairs. The continuing interest in his writing is not only reserved to his understanding of the law of nations with special concern dedicated to the notion of war. His idea of international society has led writers associated with the English School of International Relations to create a conception of a *solidarist* international society based primarily on the writings of Grotius. This idea of international society implies that members of such a society show an inclination for belonging to such a society and their commitment to it and its institutions' sustainability and maintenance.¹¹ The *solidarist* factor can be observed in that members of such a society express 'solidarity, or potential solidarity (...) with respect to the enforcement the law'.¹² Although in his treatise, Grotius did not explicitly refer to international society as a *solidarist* one,¹³ the

binding regardless of their express consent to it' ((n 5) note 6, 69). The term voluntary on the other hand 'has a connotation of arbitrariness and refers primarily to those who are supposed to follow the law voluntarily, i.e. out of their own will' (ibid.).

¹¹ Kingsbury B Roberts A, "Introduction: Grotian Thought in International Relations," in *Hugo Grotius and International Relations*, ed. Bull H *et al.* (Oxford: Oxford University Press, 1990), 8.

¹² Bull H, "The Grotian Conception of International Society (1966)," in *Hedley Bull on International Society*, ed. Alderson K Hurrell A (Basingstoke and London: Macmillan Press Ltd, 2000), 97.

¹³ Indeed the very definition of how the term international society was understood by him is not provided. In fact his usage of such term may be quite confusing as he referred to it as 'great society of states' (Grotius H, *Prolegomena to the De Jure Belli ac Pacis*, reprinted in Wilson GG, "Grotius: Law of War and Peace," *American Journal of International Law* 35, no. 2 (1941): section 17, 212.) Or on the other time as an 'association which binds together the human race, or binds many nations together' (ibid, section 23, 214) which in turn suggests that for him these concepts were synonymous (Remec (n 5) 78). It may, nevertheless, be assumed that whereas ultimately he had in mind a wider concept which signified a society of mankind, the concept of society of states was a tool, which he used while treating the issues accustomed the law of nations and the notion of war.

principles comprising the basis of such a society are explicit in his writings. In addition, he argued that states on an international scale, similarly to individuals on a local scale, show an inclination for living in a society. In a similar manner, as nations are seen as ‘larger aggregations of individuals’, which show inclination for good and justice, so is the society of nations, which similarly ‘needs the recognition of rights as much as mere local communities’.¹⁴ Moreover, Grotius claimed that the existence of the law of nations could be proved by the fact that nations accept that some rules constitute rules of the law of nations.¹⁵ Further, he advocated the idea that a state, which in its domestic affairs complies with the law, should behave in the same way at the international arena.¹⁶

As at a municipal level states possessed rights, which are solely reserved for them, similarly on an international level, the actions of states and not individuals are governed by the law of nations. In his treatment of the law of nations, Grotius advocated an idea that legal rules should be extended and applicable to ‘all nations and tribes of the earth’ without any discrimination.¹⁷ His universal application of the law of nations is clear already in the Prolegomena to the *De Jure Belli ac Pacis*, where he stated that,

[b]ut just as the laws of each state have in view the advantage of that state, so by mutual consent it has become possible that certain laws should originate as between all states, or a great many states; and it is apparent that the laws thus originating had in view the advantage, not of particular states, but of the great society of states.¹⁸

¹⁴ Hill DJ, ‘Introduction’ to *H Grotius, the Rights of War and Peace. Including the Law of Nature and of Nations* (Washington & London Elibron Classics, 1901, 2005), 9.

¹⁵ Remec (n 5) 77.

¹⁶ Vollenhoven (n 8 [1926]) 13.

¹⁷ *ibid* 14.

¹⁸ Grotius (n 13) section 17, 212.

As the title of his famous treatise reads *The Rights of War and Peace*, Grotius devoted a substantial part of his study to the concept of war and its possible legality and justness. Although he was of an opinion that war in its essence is not in accordance with the law of nature, he noted that in some instances the use of force could be permitted.

For the preservation of our lives and persons, which is the end of war, and the possession or acquirement of things necessary and useful to life is most suitable to those principles of nature, and to use force, if necessary, for those occasions, is no way dissonant to the principles of nature, since all animals are endowed with natural strength, sufficient to assist and defend themselves.¹⁹

In addition, not all forms of force are forbidden but only those which are ‘repugnant to society, by depriving another of his right’.²⁰ Grotius, indeed, considered war as a useful and adequate tool by the authority and hence he acknowledged its utilitarian character when he asked: ‘what can be opposed to force, but force?’.²¹ The evidence for that, according to him, can be found in that war was not outlawed by the volitional law of nations.²² In addition, the force used in order to enforce rights is not ‘in a conflict with the nature of society’²³ and is permitted and in accordance with the law of nature. Here the just and moral elements of Grotius’s perception of the just war are clearly observable. The word *just* should be understood as *morally just*. If the war is waged in order to execute justice and is kept within the ‘bounds of law and good faith’²⁴ than such a just war is ‘the

¹⁹ Grotius (n 6) bk. I ch. ii, section I, 32.

²⁰ *ibid* 33.

²¹ *ibid* 34.

²² *ibid* 36.

²³ Remec (n 5) 93.

²⁴ Grotius (n 13) section 25, 215.

ultimate outward sanction of the law of nature'.²⁵ According to him there are three reasons for waging a just war in accordance with the law of nature, namely: defence, recovery of property and punishment.²⁶ A right of sovereign power was not only limited to the instances when it had to defend itself once it had been attacked or when it is under an on-going attack. Sovereign power as opposed to individuals has the right to prevent and punish the wrong doers. Although in instances where there is an immediate threat ('the suspicion of hostile intentions') a potential victim cannot justifiably wage 'actual war' it can nevertheless resort to preventive measures including defence.²⁷

For Grotius, war should be used as a tool to achieve the preservation of society. Thus when a society is in danger then 'moral leaders' of universal human society could wage war in order to serve the justice. In addition, states are 'morally and legally obliged' to consider not only the rights and interests of their own people but also those of the whole mankind.²⁸ This should also be governed and limited by the law of nature.²⁹ By giving the moral representatives of international society the power to wage war in order to serve justice, Grotius advocated the possibility of defending other nations. According to him 'kings who measure up to the rule of wisdom make account not only of the nation which has been committed to them, but of the whole human race'.³⁰ From his writings it can be observed that Grotius admitted the possibility of humanitarian intervention as long as it is governed by morality and justness and is in accordance with the law of nature.³¹ The *solidarist* conception of international society, which vests the power to its members to

²⁵ Remec (n 5) 93.

²⁶ *ibid* 93-94.

²⁷ Grotius (n 6) bk. II, ch. i, section 16, 83.

²⁸ Vollenhoven (n 8 [1926]) 28.

²⁹ Edwards (n 8) 121.

³⁰ Grotius (n 13) section 24, 215.

³¹ For a discussion on the notion of humanitarian intervention in Grotius's writing see: Edwards (n 8) 136.

judge when the use of force can be used, as will be further explained later in this chapter, has been very influential during the period following the end of the Cold War.

Such a conception of international society, which postulated the possibility of intervention on humanitarian grounds, was not a unified concept among writers associated with the Natural Law School. Before elaborating on that it is necessary to stress that even this school of thought was not unified. According to Remec, there are two distinctive schools of natural law, namely the classic and the modern.³² The classic school, with Grotius as its representative, postulated the notion of the law of nature described above. The modern, egalitarian school of natural law, on the other hand, provided a different conception of natural law. Writers within this circle claimed that ‘the moral principles of good and evil could not really be conceived with absolute certainty by our reason, or (...) wisdom and justice thus conceived could never be realized in life at all’.³³ For them, human beings are selfish and do not show in the state of nature an inclination for life in society, which was the main dogma of the classic school.

Emer de Vattel (1714-67), the leading representative of the modern school argued that states, similarly to individuals, show an inclination for self-preservation. This in turn implies that a state’s foremost obligation is towards its nation and its prosperity and safety. In addition, ‘a nation owns herself in the first instance, and in preference to all other nations, to do every thing she can to promote her own happiness and perfection’.³⁴ The obligation that states possess towards themselves is internal and immutable and derives

³² Remec (n 5) 45.

³³ Remec (n 5) 50.

³⁴ Vattel E de, *Le Droit Des Gens. Ou Pricipes De La Loi Naturelle, Apliqués À La Conduite & Aux Affaires Des Nations & Des Souverains (the Law of Nations, or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns)*. Edited and with an Introduction by B Kapossy and R Whatmore, Preliminaries, 73.

from the law of nature. Such duty does not, however, exclude an existence of other duties that states possess towards each other. According to him, an ‘individual nation is bound to contribute every thing in her power to the happiness and perfection of all the others’.³⁵ For instance, an obligation to assist other states in their achievement of preservation and happiness is external and inferior to an obligation a state would have towards its nation.

Such a distinction between the internal and external duties and the obligations of states influenced Vattel’s conception of international society. His ‘universal society of human race’ is defined as ‘an institution of nature itself, that is to say, a necessary consequence of the nature of man, - all men, in whatever stations they are placed, are bound to cultivate it’.³⁶ Such society, however, differs from the one observed at the domestic level. According to him, ‘[n]othing of this kind can be conceived or supposed to subsist between nations’.³⁷ States, at the international level, are capable only of conceding ‘to each other very limited but perfect rights’ based on ‘a certain implied or presumed consent’.³⁸ The most fundamental perfect rights are those of equality and liberty.³⁹ These rights are fundamental as without them a society of nations could not prosper as nations would not have an equal chance to fulfil their fundamental duties, namely the duty of self-preservation and self-perfection.⁴⁰ Due to the fact that states agree that they are all equal and independent, each of them can decide which actions suits best their obligation to self-preservation and self-perfection. What follows is that the decisions of a state when its needs are taken into consideration are always right and just and cannot be condemned by

³⁵ *ibid.*

³⁶ *ibid* 72.

³⁷ *ibid* 14.

³⁸ Remec (n 5) 144.

³⁹ ‘[t]he law of nature (...) declares every nation free and independent of all the others’ (Vattel (n 34) Preliminaries, 71) ‘nations (...) are naturally equal (...) power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant, a small republic is no less a sovereign state than the most powerful kingdom’ (*ibid* 75).

⁴⁰ Remec (n 5) 145.

other members of the society.⁴¹ Vattel's perception of international society was so influential that writers within the English School of International Relations distinguished it from the *solidarist* conception of international society based on the teaching of Grotius. Indeed such a description of international society, as it will be treated later in this chapter, was seen as the most coherent and was adopted by writers associated with positivism.

A significant part of Vattel's treatise is devoted to the notion of war. As the fundamental duty of self-preservation and self-perfection places on a state an obligation to do everything in its power of such state to secure its nation 'against every thing that threatens its safety and its happiness',⁴² a state, expectedly, may use force when it is necessary to protect its nation. As states are independent and equal and therefore enjoy the freedom of actions, the judgement of whether the use of force is just or not lies within the conscience of the state. Nevertheless, similarly to Grotius, he distinguished three just causes of war, namely, self-defence, reparation of an injury, and punishment. In addition, a state may lawfully resort to force in order to, firstly, 'recover what belongs or is due to [it]'; secondly, 'provide for [its] future safety by punishing the aggressor or offender' and lastly, 'defend [itself], or (...) protect [itself] from injury, by repelling unjust violence'.⁴³

Vattel's international society lacks the powers and authority as existing within the *solidarist* conception of international society. For him, the most important principles are those of sovereignty and liberty, therefore neither one nor a group of members of such society can vest upon themselves a right to breach these principles. Indeed in his treatise, Vattel explicitly disagreed with Grotius in terms of the possibility of intervention within domestic affairs even on humanitarian grounds. In his own words:

⁴¹ *ibid* 146.

⁴² Vattel (n 34) bk. I, ch. iv, section 42, 99.

⁴³ *ibid* bk. III, ch. iii, section 28, 484.

[i]t is strange to hear the learned and judicious Grotius assert, that a sovereign may justly take up arms to chastise nations, which are guilty of enormous transgressions of the law of nature, which treat their parents with inhumanity.⁴⁴

Such an emphasis on the respect of states' sovereignty and liberty places Vattel more within the circle of writers associated with positivism, the current dominating throughout eighteenth and nineteenth centuries. In addition, the law of nations based on natural law was gradually replaced by law based on the will of states, which was 'predominately positivist and consensual'.⁴⁵ This, in turn, is said to give the law of nations 'a new and totally different significance'.⁴⁶

b) The Positivist School and the Regulatory Nature of International Law⁴⁷

The eighteenth and nineteenth centuries have marked a change not only in the international environment but also in the teaching of and writing about the law of nations. This period was described as 'the heyday of unlimited state sovereignty'⁴⁸ and was characterised by the rise in significance of the rights of self-preservation and self-help. As

⁴⁴ *ibid* bk. II, ch. i, section 7, 265.

⁴⁵ Gross (n 3) 37.

⁴⁶ Weightman MA, "Self-Defense in International Law," *Virginia Law Review* 37, no. 8 (1951): 1099.

⁴⁷ For more information on positivism, see, for example: Ago R, "Positive Law and International Law," *American Journal of International Law* 51, no. 4 (1957): 691-733. Fiss OM, "The Varieties of Positivism," *Yale Law Journal* 90, no. 5 (1981): 1007-1016. Jong HM de Werner WG, "Continuity and Change in Legal Positivism," *Law and Philosophy* 17, no. 3 (1998): 233-250. Kingsbury B, "Legal Positivism as Normative Politics: International Society, Balance of Power and Lassa Oppenheim's Positive International Law," *European Journal of International Relations* 13, no. 2 (2002): 401-436. Kunz (n 5). Morgenthau HJ, "Positivism, Functionalism, and International Law," *American Journal of International Law* 34, no. 2 (1940): 260-284. Sebok AJ, "Misunderstanding Positivism," *Michigan Law Review* 93, no. 7 (1995): 2054-2132. Simmonds NE, "Between Positivism and Idealism," *Cambridge Law Journal* 50, no. 2 (1991): 308-329.

⁴⁸ Weightman (n 46) 1114.

states were sovereign and equal as well as not recognising a higher authority above them it was their responsibility to protect and advance their own national interests rather than the interests of international society. An international society based on the notion of solidarism and unity characterised by the existence of special bonds between its members was replaced by an international society explicit in the writings of Vattel and theorists associated with positivism. Such a conception of an international society, later named the *pluralist* one, was based on the recognition of principles such as sovereignty, equality, self-preservation and self-help. Relations between states until the First World War can be characterised as seeking to maintain an international order via the sustainability of balance of power, recognition of spheres of influence and *realpolitik*. Within such an international realm states, apart from obligations they imposed upon themselves, were free to do whatever seemed to be in their interest. As their actions were not constrained by any higher authority the notions of justice and righteousness disappeared from international affairs. To this end, the role of the law of nations was to provide a framework of rules that would make the co-existence of members of such a society possible.⁴⁹

The advocates of this notion of international society negated the existence of the *solidarist* conception as according to them, ‘states do not exhibit solidarity of this kind, but are capable of agreeing only for certain minimum purposes which fall short of that of the enforcement of the law’.⁵⁰ As the relations between states did not resemble the notion of unity and solidarity postulated by the representatives of the Natural Law School, which implied the possibility of existence of an international legal order based on the notions of justice and righteousness, the role of international law was to provide an environment suitable for states’ co-existence. As states did not recognise a higher authority above

⁴⁹ Alderson K Hurrell A, ed., *Hedley Bull on International Society* (Basingstoke and London: Macmillan Press Ltd, 2000), 7.

⁵⁰ Bull (n 12) 97.

themselves international obligations were imposed by states themselves. What follows was that obligations based on the free will of states became ‘the fundamental cornerstone – or even the central dogma – of international law’.⁵¹ Apart from being obliged to respect contracts, customs and conventions, states actions were considered free from any external power. As Fenwick puts it:

[n]o obligations can be imposed upon them, by whatever majority of the international community, against their individual wills. Each remains the guardian of its own interests and the ultimate arbiter of its own claims. Sovereignty is here seen in its purest form, as a theoretical position of legal isolation from which the state can be brought to emerge only by its voluntary acts.⁵²

The regulatory nature of international law was the most evident in the treatment of war. As war was perceived as unavoidable and a certain characteristic of international relations at the time, as ‘friction was an inevitable and permanent feature of a mechanical system’,⁵³ the role of international law was to provide a body of rules when it occurred. And as war was ‘a fact of life’ there was no place in international law for deliberation on

⁵¹ Neff SC, "A Short History of International Law," in *International Law*, ed. Evans MD (Oxford: OUP, 2003), 42.

⁵² Fenwick CG, *International Law* (1924) cited in Weightman (n 46) 1102-1103. See also: Brown PM, "The Theory of the Independence and Equality of States," *American Journal of International Law* 9, no. 2 (1915): 305-335. Grewe WG, *The Epochs of International Law* (Berlin and New York: Walter de Gruyter, 2000). Hershey AS, "History of International Law since the Peace of Westphalia," *American Journal of International Law* 6, no. 1 (1912): 30-69. Kocourek A, "Some Reflections on the Problem of a Society of Nations," *American Journal of International Law* 12, no. 3 (1918): 498-518. Olney R, "The Development of International Law," *American Journal of International Law* 1, no. 2 (1907): 418-430. Schwarzenberger G, "The Rule of Law and the Disintegration of the International Society," *American Journal of International Law* 33, no. 1 (1939): 56-77.

⁵³ Neff (n 51) 43.

whether such a war was just or unjust.⁵⁴ Similarly those writers, who saw war as ‘the legal remedy of self-help’ for one state to seek redress, which was unachievable through other means for the wrong suffered from another state, were criticised.⁵⁵ Although, this example of a purpose of war was not negated, what was emphasised was the fact that many other wars were fought in order to overpower another state and thus international law should regulate ‘all wars, whether just or unjust’.⁵⁶ As war was seen as an international reality, which cannot disappear from international politics, the role of international law was to regulate the inevitable rather than to question its justness. Therefore, the right of self-defence did not play any significant role.

As war was generally accepted as a means to achieve a state’s goals and was not outlawed by international law the justness or unjustness behind waging war was of little relevance. As opposed to the Natural Law School, the Positivist School did not pay much attention to *when* but *how* the use of force can be used. Such international situation made the notion of the right to self-defence ‘swallowed up by’⁵⁷ by the right of self-preservation and self-help and thus played ‘only a shadowy and peripheral role in international law’.⁵⁸ What followed was that ‘[t]he tribute paid to self-defence was in the nature of lip-service, and little legal significance can be attached to it’.⁵⁹

Nevertheless, there was one event, namely the 1837 *Caroline* incident, also referred to as the *Caroline* case, which is noteworthy. Although at the time of its occurrence this

⁵⁴ Oppenheim L, "The Science of International Law: Its Task and Method," *American Journal of International Law* 2, no. 2 (1908): 354-355.

⁵⁵ *ibid* 354.

⁵⁶ *ibid* 354.

⁵⁷ Weightman (n 46) 1114.

⁵⁸ Neff SC, *War and the Law of Nations. A General History* (Cambridge: Cambridge University Press, 2005), 241.

⁵⁹ Weightman (n 46) 1114.

incident was not perceived as greatly significant and did not resemble the general practice of states in the nineteenth century⁶⁰ its importance and value has been appreciated during the twentieth century.⁶¹ Indeed it can be argued that this incident was ahead of its time. Its significance lies in that it imposed certain limitations on a state exercising its right to self-defence. In short, this case refers to correspondence notes between the representatives of the US and Great Britain, in which the latter claimed that it had been exercising its right to self-defence.⁶² In addition, the letters were exchanged in response to a pre-emptive strike by the British troops in Canada against a ship named *Caroline* controlled by Canadian rebels organising an attack from the US territory.

This event showed that a state which acts in self-defence must show ‘necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation’.⁶³ Not only there must be ‘an imminent threat’, leaving a state ‘no choice of means and no moment for deliberation’ but also the force used by a victim state had to be proportionate to the actual threat.⁶⁴ Accordingly, the action undertaken by a victim state must involve ‘nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by the necessity, and kept clearly within it’.⁶⁵ It is argued that the *Caroline* case ‘has attained a mythical authority’.⁶⁶ Significantly this incident occurred during the nineteenth century dominated by the positivist understanding of international

⁶⁰ See for example: McCormack TLH, *Self-Defence in International Law. The Israeli Raid on the Iraqi Nuclear Reactor* (Jerusalem: The Magnes Press, 1996), 247.

⁶¹ Gray C, *International Law and the Use of Force* (Oxford: OUP, 2000), 105.

⁶² US secretary of State Daniel Webster (successor of Mr Forsyth) and the British Minister at Washington, Mr Fox (later replaced by Lord Ashburton)

⁶³ *Caroline* Case (1837) in http://avalon.law.yale.edu/19th_century/br-1842d.asp [accessed 1 December 2012]. See also: Jennings RY, "The Caroline and McLeod Cases," *American Journal of International Law* 32, no. 1 (1938): 82-99.

⁶⁴ *Caroline* case (n 63). On the notion of proportionality, see, for example: Franck TM, "On Proportionality of Countermeasures in International Law," *American Journal of International Law* 102, no. 4 (2008): 715-767. Gardam JG, "Proportionality and Force in International Law," *American Journal of International Law* 87, no. 3 (1993): 391-413.

⁶⁵ Brownlie I, *International Law and the Use of Force by States* (London: OUP, 1963), 261.

⁶⁶ Gray (n 61) 105.

law, which did not pay much attention to the *jus ad bellum* so emphasised by the Natural Law School. What should be pointed, however, is that at the time of its occurrence this incident did not resemble actual state practice, as the right to self-defence was not of relevance. However, the principles of necessity and proportionality have been widely recognised during the twentieth century as principles imposing limitation on the use of force.

The authoritative character of these principles was accepted by the International Court of Justice during the last century in a number of cases, *inter alia* in the *Nicaragua* case,⁶⁷ in an advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*⁶⁸ and in the *Congo* case,⁶⁹ in which the Court sustained the opinion that these principles constitute a limitation on the use of self-defence. This, in turn, points to their longevity and universal recognition within international legal spectrum. It is also agreed that these principles are not controversial and what follows is that ‘necessity and proportionality mean that self-defence must not be retaliatory or punitive; the aim should be to halt and repel an attack’.⁷⁰ McCormack while writing on the importance of these principles argues that ‘without these limitations, individual states could rely on a spurious claim to be acting in self-defence to justify any use of force that was in their own political interests’.⁷¹ What follows is that the recognition of these principles imposed certain restrictions on states acting in self-defence. States had to show that they are under an on-going attack or threat and therefore the use of force is necessary in order to protect themselves. This, as the first

⁶⁷ *Case Concerning military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)* (Merits) [1986] ICJ Rep. section 194, 103.

⁶⁸ In its advisory opinion, the Court states that ‘[t]he submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law’ (*Legality of the Threat or Use of Nuclear Weapons* (An Advisory Opinion) [1996] ICJ Rep. section 41, 245).

⁶⁹ *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* [2005] ICJ Rep. section 147, 223.

⁷⁰ Gray (n 61) 106.

⁷¹ McCormack (n 60) 240.

case study will demonstrate, has been very controversial in relation to acts of terrorism, when it was difficult for Israel to prove that it was in fact under an on-going threat from non-state actors. The principle of proportionality, on the other hand, imposes upon states a limitation as to the amount of force used in self-defence.⁷² In short, states acting in self-defence are obliged to act proportionally to an actual threat. If the use of force is overwhelming and indeed exceeds the threat then military action in self-defence is deemed to be condemned and loses its lawfulness.

Part Two: The Twentieth Century and the Use of Force

The general prohibition of the use of force can be seen as one of the biggest achievements of international society in the twentieth century. It took, however, two very destructive World Wars for international society to impose limitations on the use of force. The restrictions regarding the use of force were codified in the aftermath of the Second World War. The creation of the United Nations and the adoption of the UN Charter became a legal framework for the relations between states. Although during the first half of the twentieth century there had been attempts to restrict the resort to force, such as the adoption of the Kellogg-Briand Pact⁷³ and the creation of the League of Nations,⁷⁴ the

⁷² According to ICRC, '[l]aunching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited' (Rule 14 of the *Customary International Humanitarian Law* in <http://www.icrc.org/customary-ihl/eng/docs/v1> [accessed 19 August 2013]).

⁷³ The significance and indeed a novelty of this document can be seen in that the use of force was only allowed in the instances when a state had to defend itself. This in turn means that the war, according to the treaty, was condemned as a solution to international disputes. In addition, an Article 1 of the Pact states that: 'The High Contracting Parties solemnly declare (...) that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another' (The Kellogg-Briand Pact (1928) art 1, in <http://www.yale.edu/lawweb/avalon/imt/kbpact.htm> [accessed 1 December 2012]. See also: Brownlie, (n 65)). Another achievement of the Pact can be seen in the number of signatories, suggesting the general even though not universal acceptance of the principles embodied within the Pact. The weakness of the Kellogg-Briand Pact, as in the case of the League of Nations, was seen in that it did not prevent the eruption of the Second World War and other disputes between the world wars.

eruption of the Second World War proved that they were not effective mechanisms. On the other hand, it needs to be emphasised that the Pact together with the Covenant of the League of Nations expressed the trend and desire of international society, even if ultimately not very successful, to create a legal order based on the limitation of the use of force. Compared with general acceptance of war and the use of force in the nineteenth century as the legitimate method of self-help, both the 1928 Pact and the Covenant of the League of Nations can be regarded as a considerable success for international society.⁷⁵

The most significant development in relation to the use of force and international legal system at large was the establishment of the United Nations in aftermath of the Second World War. The organisation, which became the only truly universal international body,⁷⁶ came into existence on October 24, 1945 when the UN Charter was ratified.⁷⁷ The

⁷⁴ The League of Nations, although did not outlaw war completely, did impose some restrictions upon its members in terms of use of force. In addition, the Covenant of the League, which was the main legal document binding members of the League and therefore by no means cannot be seen as possessing universal scope, imposed the duty on a state to 'refrain from resort to war without good cause, without due deliberation, and without first attempting to settle the difference by designated amicable methods' (Hindmarsh AE, "Self-Help in Time of Peace," *American Journal of International Law* 26, no. 2 (1932): 325.) In addition, aggressive wars or wars of conquest were outlawed (The Covenant of the League of Nations (1919) art. 10 reprinted in Evans MD, ed., *Blackstone's International Law Documents*, 6th ed. (Oxford: Oxford University Press, 2003).) The respect for territorial integrity and independence of member states was seen as one of the most important principles. Moreover, the Covenant also imposed on member states an obligation to refrain from the use of force for three months during which a chance was given to resolve a dispute in question peacefully (ibid Art 12; see also: Kopelmanas L, "The Problem of Aggression and the Prevention of War," *American Journal of International Law* 31, no. 2 (1937): 244-257. McCormack, (n 60). Wright Q, "The Concept of Aggression in International Law," *American Journal of International Law* 29, no. 3 (1935): 373-395. For more information on the League of Nations, see, for example: Briggs HW, "Power Politics and International Organization," *American Journal of International Law* 39, no. 4 (1945): 664-679. Henig RB, ed., *The League of Nations* (Edinburgh: Oliver & Boyd, 1973). Kunz JL, "The Law of Nations, Static and Dynamic," *American Journal of International Law* 27, no. 4 (1933): 630-650. Northedge FS, *The League of Nations. Its Life and Times 1920-1946* (New York: Leicester University Press, 1986). Roxburgh RF, "The Sanction of International Law," *American Journal of International Law* 14, no. 1 (1920): 26-37. Schwarzenberger G, "The Rule of Law and the Disintegration of the International Society," 56-77. Scott G, *The Rise and Fall of the League of Nations* (London: Hutchinson & CO. Ltd., 1973). Walters FP, *A History of the League of Nations* (London: Oxford University Press, 1952). Williams B, "Perspective Development of International Law," *Virginia Law Review* 11, no. 3 (1925): 169-182. Williams JF, "The Place of Law in International Affairs," *Journal of the Royal Institute of International Affairs* 7, no. 2 (1928): 94-120.

⁷⁵ See, however: Piscatori JP, "The Contribution of International Law to International Relations," *International Affairs (Royal Institute of International Affairs 1944-)* 53, no. 2 (1977): 217-231.

⁷⁶ Currently there are 193 members (the latest admitted state was South Sudan in 2011).

United Nations succeeded the League of Nations and absorbed its responsibilities. The scrutiny of the broad system of United Nations is beyond the scope of this study.⁷⁸ One aspect which is crucial and needs to be briefly elaborated, however, was the creation of the United Nations Security Council.⁷⁹ The primary responsibility of the Council is maintenance of international peace and security.⁸⁰ In addition, the UNSC is mandated, *inter alia*, to investigate any dispute or situation which might lead to international friction,⁸¹ to recommend methods of adjudicating such disputes,⁸² to determine the

⁷⁷ Charter of the United Nations (adopted on 26 June 1945, entered into force on 24 October 1945) 892 UNTS 119 (hereinafter: UN Charter).

⁷⁸ For general information on the UN, see for example: Evans G, *Cooperating for Peace. The Global Agenda for the 1990s and Beyond* (St Leonards: Allen & Unwin Pty Ltd, 1993). Franck TM, "What Happens Now? The United Nations after Iraq," *American Journal of International Law* 97, no. 3 (2003): 607-620. Gross L, "Progress Towards Universality of Membership in the United Nations," *American Journal of International Law* 50, no. 4 (1956): 791-827. Joyner CC, ed., *The United Nations and the International Law* (Cambridge: Cambridge University Press, 1997). Krasno JE, ed., *The United Nations. Confronting the Challenges of a Global Society* (Boulder and London: Lynne Rienner Publishers, Inc., 2004). Moore JA Pubantz J, *The New United Nations. International Organization in the Twenty-First Century* (New Jersey: Pearson Education, Inc., 2006). Roberts A Kingsbury B, ed., *United Nations, Divided World. The UN's Roles in International Relations* (2nd edn Oxford: Oxford University Press, 1993). Schindlmayr T, "Obstructing the Security Council: The Use of the Veto in the Twentieth Century," *Journal of the History of International Law* 3 (2001): 218-234. Simons G, *United Nations. A Chronology of Conflict* (Basingstoke and London: Macmillan Press Ltd, 1994). United Nations, *Basic Facts About the United Nations* (New York: United Nations Department of Public Information, 2003). Varma L, ed., *United Nations in the Changing World* (London: Sangam Books Ltd, 1997). Weiss TG et al., *The United Nations and Changing World Politics* (5th edn Boulder: Westview Press, 2007). Weiss TG Daws S, ed., *The Oxford Handbook on the United Nations* (Oxford: Oxford University Press, 2007). White ND, *The United Nations System. Toward International Justice* (Boulder and London: Lynne Rienner Publishers, Inc., 2002). Whittaker DJ, *United Nations in Action* (London: UCL Press Ltd., 1995).

⁷⁹ For general information about the UN Security Council, see for example: Brichambaut MP de, "The Role of the United Nations Security Council in the International Legal System," in *The Role of Law in International Politics. Essays in International Relations and International Law*, ed. Byers M (Oxford: Oxford University Press, 2000), 269-276. Fenton N, *Understanding the UN Security Council. Coercion or Consent?* (Aldershot and Burlington: Ashgate Publishing Ltd., 2004). Gowlland-Debbas V, "The Functions of the United Nations Security Council in the International Legal System," in *The Role of Law in International Politics. Essays in International Relations and International Law*, ed. Byers M (Oxford: Oxford University Press, 2000), 277- 314. Hurd I, "Myths of Membership: The Politics of Legitimation in UN Security Council Reform," *Global Governance* 14 (2008): 199-217. Lowe V et al., ed., *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945* (Oxford: Oxford University Press, 2008). Malone DM, ed., *The UN Security Council. From the Cold War to the 21st Century* (Boulder and London: Lynne Rienner Publishers, Inc., 2004). Nolte G, "The Limits of the Security Council's Powers and Its Functions in the International Legal System: Some Reflections," in *The Role of Law in International Politics. Essays in International Relations and International Law*, ed. Byers M (Oxford: Oxford University Press, 2000), 315-326. White ND, "Self-Defence, Security Council Authority and Iraq," in *International Conflict and Security Law. Essays in Memory of Hilaire McCoubrey*, ed. Burchill R et al. (Cambridge: Cambridge University Press, 2005), 235-264.

⁸⁰ UN Charter (n 77) art. 24.

⁸¹ *ibid* art. 34.

⁸² *ibid* art. 38.

existence of a threat to the peace or act of aggression,⁸³ to call on member states to apply economic sanctions and other measures not involving the use of force,⁸⁴ and finally, to instigate military action in order to restore international peace and security.⁸⁵ By vesting the function to maintain international peace and security to the UNSC, the founding member states recognised that the powers of individual states to use force would be limited. Such acceptance was not surprising taking into the consideration the horrors of the Second World War and a desire to prevent the reoccurrence of the conflict on such a scale in the future.

According to the UN Charter states have an obligation to refrain from the use of force,⁸⁶ unless in an instance when a state has to defend itself⁸⁷ or when the UN Security Council decides that a situation is threatening international peace and security. Thus, the war and in fact any use of force by individual states became outlawed⁸⁸ and the only situation in which states could lawfully use force was in an instance of self-defence. The

⁸³ *ibid* art. 39.

⁸⁴ *ibid* art. 41.

⁸⁵ *ibid* art. 42.

⁸⁶ Art 2(4) reads: 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state' (UN Charter (n 77)). See for example: Falk RA, "The Adequacy of Contemporary Theories of International Law. Gaps in Legal Thinking," *Virginia Law Review* 50, no. 2 (1964): 231-265. Greenwood C, "The Concept of War in Modern International Law," *International & Comparative Law Quarterly* 36, no. 2 (1987): 283-306. Gross L, "Progress Towards Universality of Membership in the United Nations," 791-827. Korovin EA, "The Second World War and International Law," *American Journal of International Law* 40, no. 4 (1946): 742-755. Wilk K, "International Law and Global Ideological Conflict: Reflections on the Universality of International Law," *American Journal of International Law* 45, no. 4 (1951): 648-670.

⁸⁷ Art 51 reads: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Members of the United Nations (...)' (UN Charter (n 77)).

⁸⁸ See, for example: Barsotti R, "Armed Reprisals," in *The Current Legal Regulation of the Use of Force*, ed. Cassese A (Dordrecht: Martinus Nijhoff Publishers, 1986), 79-111. Bowett DW, "Reprisals Involving Recourse to Armed Force," *American Journal of International Law* 66, no. 1 (1972): 1-36. Brownie (n 65). Detter I, *The Law of War* (2nd edn Cambridge: Cambridge University Press, 2000). Falk RA, "The Beirut Raid and the International Law of Retaliation," *American Journal of International Law* 63, no. 3 (1969): 415-443. Higgins R, "The Legal Limits to the Use of Force by Sovereign States. United Nations Practice," *British Yearbook of International Law* 37 (1961): 269-319. Maogoto JN, "Walking an International Tightrope: Use of Military Force to Counter Terrorism," *Brooklyn Journal of International Law* 31, no. 2 (2006): 1-58. Speyer Colbert E, *Retaliation in International Law* (New York: King's Crown Press, 1948).

principle of sovereignty was still sustained and respected and indeed remained a central feature characterising international order. Although the power to use force or to employ other measures, if necessary for the maintenance of peace and security, was vested in the UNSC, members of this international body expressed restraint and therefore respect for states' sovereignty was seen of greater importance. Such an approach was influenced by international rivalry between two blocs. Moreover, as it is the UNSC which has the power to authorise the implementation of Chapter VII of the UN Charter, the actual usage of these provisions was significantly restricted due to the veto powers exercised by the Permanent Members of this founding body. By the same token, the Permanent Members tended to use their veto power in situations relating to their spheres of influence.

The restriction of the use of force only to instances when a state has to defend itself suggests the return of the notion of just cause, so central to the writers within the Natural Law School's circle. However, as opposed to the heyday of natural law a few centuries before, the notion of just cause is now embodied within an international treaty, inevitably a positive endorsement. Apart from the right to self-defence, the Charter also includes a possibility to use force collectively in instances when international peace and security is threatened, thus giving an international society a chance to be both a judge and an agent. Indeed, Chapter VII of the UN Charter - by giving the power to the UN Security Council to decide which dispute can constitute a threat to international peace and security and therefore giving basis for the implementation of various actions or sanctions - delivers evidence that that the Council acts as a judge and an agent. A creation of such a legal framework gives an explicit power to members of international society for an active involvement. This in turn suggests the relevance of the assumptions found in the *solidarist* conception of international society. Although the UN Charter gave a possibility for

international society to become more active, it was not until the end of the Cold War when the provision embodied within Chapter VII was implemented on such a scale. Such reluctance of international society can be explained by the existence of the conflict between the two superpowers and their desire to sustain the balance of power and the status quo. Therefore it can be argued that during the second half of the twentieth century although the *solidarist* assumptions were embodied within the UN Charter, the existing international environment was not suitable for the *solidarist* conception of international society. This in turn suggests that international society during that period can be viewed as resembling the characteristics of the *pluralist* conception of international society. That society, although governed by the existing rules and legal obligations, did not express a great level of solidarity uniting its members.

The role of international society as a judge can be also observed in relation to the states' military actions undertaken in self-defence. As the first case study will demonstrate, the UNSC held meetings after each Israeli intervention in Lebanon. These meetings involved presentations of various states' statements and were usually ended with an adoption of resolutions, which demanded Israeli withdrawal from the territory of the neighbouring country. This case study and the following paragraphs also demonstrate that the notion of the right to self-defence was treated narrowly in that a state, which was implementing this right, had to fulfil certain restrictive criteria.

a) The Right of Self-defence in the Post-Second World War International Legal Order

As mentioned, according to international law a state that has been attacked can exercise its right to self-defence. The right to self-defence *per se* is not questioned. What is problematic, however, is the meaning of the term “an armed attack”. What action can and cannot constitute an armed attack is subject to major controversy. As the UN Charter was created at the time when the disputes were usually between states, an armed attack was logically treated as launched by and against a state. As this thesis concentrates on states responses to attacks undertaken by non-state actors, such attacks will constitute the main focus of this part. The case studies analysed in this thesis involve attacks launched by non-state actors. In relation to the case study concerning Israel they were Hezbollah and PLO operating from Lebanon. In relation to the case study regarding the US military action in Afghanistan it was al-Qaeda. Both victim states claimed that the fact that non-state actors launched attacks did not deprive them from exercising their right to self-defence. Moreover, both states also blamed the governments of the states from whose territory those groups operated.

The assumed guilt and blame of both Lebanon and Afghanistan, either *de facto* or *de jure*, point to the well-established rule that an attack by a non-state actor had to be linked to a state in order for the victim state to lawfully exercise its right to self-defence. Although the UN Charter does not refer to an attack launched by non-state actors, other legal documents constitute useful points of departure.⁸⁹ For example, Article 3(g) of the

⁸⁹ See, for example: Declaration on Measures to Eliminate International Terrorism, UNGA Res 49/60 (17 February 1995) A/RES/49/60. ILC, *Articles on Responsibility of States for International Wrongful Acts* (2001) Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10).

1974 Definition of Aggression, which has been recognised by the International Court of Justice as constituting part of customary law, reads:

[t]he sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above [such as invasion, occupation, annexation, bombardment, blockade, attack] or its involvement therein

constitutes an indirect aggression.⁹⁰ In addition, armed bands can fall within these provisions once their actions are of such gravity that can be compared with action of regular forces.⁹¹ What needs to be emphasised is the relationship between a state and a non-state actor. Although during the second half of the twentieth century attacks by non-state actors were not uncommon, the majority of scholars held the view that such attacks should be dealt with in accordance with more traditional ways, including municipal criminal law and other international legal instruments.⁹²

For these attacks to fall within the scope of the provisions treating the right to self-defence, the gravity of an attack has to be on scale comparable with an attack launched

⁹⁰ Definition of Aggression, UNGA Res 3314 (XXIX) (14 December 1974).

⁹¹ Cassin V *et al.*, "The Definition of Aggression," *Harvard International Law Journal* 16, no. 3 (1975): 597.

⁹² Rogers APV, "Terrorism and the Laws of War: September 11 and Its Aftermath" (2001) in www.crimesofwar.org/expert/attack-apv.html [accessed 1 December 2012]. For example, Schmitt argues that 'actions by non-State actors (...) might be criminal in nature and/or represent threats to the peace, breaches of the peace or acts of aggression, but not be of a scale sufficient to implicate the international law right of self-defence' (Schmitt MN, "Counter-Terrorism and the Use of Force in International Law " *The Marshall Center Papers* 5 (2002): 18-19.). Others suggest the possibility of organising a short police action, which would involve apprehending of terrorists from a particular state (O'Connell ME, "Lawful Responses to Terrorism" (2001) in www.jurist.law.pitt.edu/forum/forumnew30.html [accessed 1 December 2012]).

traditionally by regular forces⁹³ and the relationship between the state and non-state actors has to be proved. Both requirements were analysed by the International Court of Justice in the *Nicaragua* case, when the Court decided that according to customary international law for the action of non-state actors to be treated as an armed attack, they must be of ‘such gravity’ as if they were ‘conducted by regular forces’.⁹⁴ The term “armed attack” will be a subject of further, detailed analysis in chapter three, however certain issues need to be highlighted at this point. It is generally argued that acts of revolutionary or armed groups of small gravity and on small scale cannot be classified as an armed attack.⁹⁵ Nevertheless, as Brownlie argues ‘it is conceivable that a co-ordinated and general campaign by powerful bands of irregulars, with obvious or easily proven complicity of the government of a state from which they operate, would constitute an “armed attack”’.⁹⁶ In terms of their relationship, what needs to be proved is not only that non-state actors are connected to the state but that in fact their relationship was so close as to be characterised as dependent.

Such a view is supported by international case law. In the *Nicaragua* case, the ICJ adopted a narrow approach deciding that ‘even the general control by [a state] over a force with a high degree of dependency on it’⁹⁷ would not mean that such a state is responsible for non-state actors’ actions. In addition, for that to be the case, ‘it would in principle have

⁹³ According to Brownlie it should be understood as ‘some grave breach of the peace, or invasion by a large organised force acting on the orders of a government’ (Brownlie I, “International Law and the Activities of Armed Bands,” *International & Comparative Law Quarterly* 7, no. 4 (1958): 731.)

⁹⁴ *Nicaragua case* (n 67) section 195, 103.

⁹⁵ Brownlie (n 65) 278-279. See also Wright Q, “Intervention, 1956,” *American Journal of International Law* 51, no. 2 (1957): 257-276.

⁹⁶ Brownlie (n 65) 278-279.

⁹⁷ *Nicaragua Case* (n 67) section 115, 64. The ICJ further decided that state’s ‘participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the *contras*, the selection of its military or paramilitary targets, and planning of the whole of its operation, is still insufficient in itself’ for that state to be held responsible for the actions of non-state actors (ibid [115] 64.)

to be proved that [such] a State had *effective control* of the military or paramilitary operations'.⁹⁸

The attacks launched by non-state actors constituted very difficult cases for a victim state to exercise its right to self-defence.⁹⁹ As was mentioned above, there is a necessity of a proof of existence of a relationship between non-state actors and a state.¹⁰⁰ Nevertheless, even if such a relationship had been established it remained unclear whether it might trigger a lawful exercise of the right to self-defence. Moreover, the very meaning of the term "relationship" constituted a subject of a debate. Although as mentioned above, the ICJ decided that a state had to possess an effective control, some authors and states, as will be shown in the case study devoted to Israeli policy of counter-terrorism in Lebanon,¹⁰¹ claimed that a state, which allows its territory to be used by non-state actors bears responsibility for the actions of such actors. The general opinion together with the ICJ, however, did not agree with such a view and although in principle accepted that such a state should exercise *due diligence* and not allow its territory to be used by non-state actors, which aim was to commit a wrongful act against another state, did not share an

⁹⁸ *ibid* (emphasis added). The ICJ judgment in this case was met with a substantial criticism (See, for example: Dissenting Opinion of Judge Jennings, Judge Schwebel and a Separate Opinion of Judge Ago). According to Judge Jennings, '[i]t may readily be agreed that the mere provision of arms cannot be said to amount to an armed attack. But the provision of arms may, nevertheless, be a very important element in what might be thought to amount to armed attack, where it is coupled with other kinds of involvement. Accordingly, it seems to me that to say that the provision of arms, coupled with "logistical or other support" is not armed attack is going much too far' (Dissenting Opinion of Judge Sir Jennings (1986) 543 in <http://www.icj-cij.org/docket/files/70/6525.pdf> [accessed 1 December 2012]). Taking into consideration both the ICJ judgment and the above criticism as to the too narrow approach of the court it still seems adequate to presume that the allowance of a territory to be used as a base for a non-state actors or mere inability of a state to suppress the activities of non-state actors were not sufficient for such a state to be held responsible (See: Gray C, *International Law and the Use of Force* (3rd edn Oxford: OUP, 2008), 132-133.)

⁹⁹ See, for example: Kammerhofer J, "Uncertainties of the Law in Self-defense in the UN Charter" *Netherlands Yearbook of International Law* 35 (2004): 143-204.

¹⁰⁰ See, for example: Ruys T Verhoeven S, "Attacks by Private Actors and the Right of Self-Defence," *Journal of Conflict and Security Law* 10 (2005): 289-320.

¹⁰¹ See, chapter three, part one.

opinion that such a situation gives a victim state a right to use force.¹⁰² Moreover, some authors also emphasised the principle of necessity and that it was difficult to see how the threat in the case of an act of terrorism was imminent, especially when the attack already had taken place.¹⁰³

b) The Use of Force in the Post-Cold War Era

The two decades following the end of the Cold War give evidence of a more active involvement of international society. Indeed, as already mentioned, various interventions, including those on humanitarian grounds, that took place during this period suggest that the end of the Cold War not only ended the rivalry between the two superpowers but provided also a more suitable international environment for a greater cooperation between states and greater involvement. Examples such as the first Gulf War, as well as interventions in Somalia and later in Kosovo suggest that the international environment in the aftermath of the Cold War was in favour of a changed approach towards the use of force.

International society, since then, paid more attention to the possibility of an implementation of provisions embodied within Chapter VII of the UN Charter and the possibility of intervention on humanitarian grounds.¹⁰⁴ Although the latter is not explicitly

¹⁰² See, for example: Cassese A, "The International Community's "Legal" Response to Terrorism," *International & Comparative Law Quarterly* 38, no. 3 (1989): 615-668. Condorelli L, "The Imputability to States of Acts of International Terrorism," *Israel Yearbook on Human Rights* 19 (1989): 233-246. Friedmann W, "Some Impacts of Social Organisation on International Law," *American Journal of International Law* 50, no. 3 (1956): 475-513. Gray (n 61) 84-119. Green LC, "Rescue at Entebbe - Legal Aspects," *Israel Yearbook on Human Rights* 6 (1976): 312-329. Proulx VJ, "Babysitting Terrorists: Should States Be Strictly Liable for Failing to Prevent Transborder Attacks?," *Berkeley Journal of International Law* 23, no. 3: 615-668.

¹⁰³ See, for example: Gray (n 61) 84-119 and Brownlie (n 93) 712-35.

¹⁰⁴ See, for example: Bellamy AJ Pape RA, "Correspondence. Reconsidering the Cases of Humanitarian Intervention," *International Security* 38, no. 2 (2013): 200-202. Brems Knudsen T, "Humanitarian Intervention Revisited: Post-Cold War Responses to Classical Problems," in Pugh M, ed., *The UN, Peace*

included within the framework of the Charter, advocates of humanitarian intervention emphasise the provisions listed in Articles 41¹⁰⁵ and 42.¹⁰⁶ The authorisation of the UNSC has, nevertheless, always been essential and interventions without such an explicit authorisation, as the example of Kosovo demonstrated, were controversial.¹⁰⁷ The gradual acceptance of the notion of humanitarian intervention, that international society should not remain silent about atrocities committed by states against their own population, gives evidence of the revival of the natural law thinking and the concept of just wars. This, in turn, suggests that the passive role of international society limited to acting as a judge

and Force (London: Frank Cass and Company Ltd., 1997) pp. 147-165. Chesterman S, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: OUP, 2001). Dingott Alkopher T, "The Role of Rights in the Social Construction of Wars: From the Crusades to Humanitarian Interventions " *Millennium – Journal of International Studies* 36 (2007): 1-27. Erickson MJ, "The United States and the Case for Humanitarian Intervention," *Student Scholarship. Paper 339* (2013): 1-26. Evans G *et al*, "Correspondence. Humanitarian Intervention and the Responsibility to Protect," *International Security* 37, no. 4 (2013): 199-214. Farer TJ *et al*, "Roundtable: Humanitarian Intervention after 9/11," *International Relations* 19, no. 2 (2005): 211-250. Franck TM NS Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67, no. 2 (1973): 275-305. Franck TM, *Recourse to Force. State Action against Threats and Armed Attacks* (Cambridge: Cambridge University Press, 2002). Hehir A Murray R, ed., *Libya. The Responsibility to Protect and the Future of Humanitarian Intervention* (Basingstoke and New York: Palgrave Macmillan, 2013). Holzgrefe JL Keohane RO, ed., *Humanitarian Intervention. Ethical, Legal and Political Dilemmas* (Cambridge: CUP, 2003). Janzekovic J, *The Use of Force in Humanitarian Intervention. Morality and Practicalities* (Aldershot: Ashgate, 2006). Kuperman AJ, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign," *International Security* 38, no. 1 (2013): 105-136. Lillich RB, ed., *Humanitarian Intervention and the United Nations* (Charlottesville: University Press of Virginia, 1973). Nardin T, "From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention," *European Journal of International Law* 24, no. 1 (2013). Pape RA, "When Duty Calls: A Pragmatic Standard of Humanitarian Intervention," *International Security* 37, no. 1 (2012): 141-180. Schmitt MN, "The Syrian Intervention: Assessing the Possible International Law Justifications," *International Law Studies* 89 (2013): 744-756. Stahn C, "Between Law-Breaking and Law-Making: Syria, Humanitarian Intervention and 'What the Law Ought to Be,'" *Journal of Conflict and Security Law* 19, no. 1 (2014): 25-48. Tesón FR, *Humanitarian Intervention: An Inquiry into Law and Morality* (2nd edn Transnational Publishers Inc . 1997). Terry F, *The Paradox of Humanitarian Intervention. Condemned to Repeat?* (New York: Cornell University Press, 2002). Welsh JM, ed., *Humanitarian Intervention and International Relations* (Oxford: OUP, 2004).

¹⁰⁵ Article 41 reads: 'The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures (...)' UN Charter (n 77).

¹⁰⁶ Article 42 reads: 'Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary (...)' UN Charter (n 77).

¹⁰⁷ See, for example: Boyle A, "Kosovo: House of Commons Foreign Affairs Committee 4th Report, June 2000," *International & Comparative Law Quarterly* 49, no. 4 (2000): 876-905. Brownlie I Apperley CJ, "Kosovo Crisis Inquiry: Memorandum on the International Law Aspects," *International & Comparative Law Quarterly* 49, no. 4 (2000): 878-905. Chinkin C, "The Legality of NATO's Action in the Former Republic of Yugoslavia (FRY) under International Law," *International & Comparative Law Quarterly*, Vol. 49, No. 4 (2000), pp. 910-925. Greenwood C, "International Law and the NATO Intervention in Kosovo," *International & Comparative Law Quarterly*, Vol. 49, No. 4 (2000), pp. 926-934. Lowe V, "International Legal Issues Arising in the Kosovo Crisis," *International & Comparative Law Quarterly* 49, no. 4 (2000): 934-943.

derived from the notion of unlimited states' sovereignty during the Cold War was replaced by a more active role as an agent. Such alternation suggests that the approach of international society towards the use of force changed in comparison with the Cold War. It may be argued that by accepting the rationale behind intervention on humanitarian grounds, international society acknowledges the existence of certain bonds between its members.

The existence of such bonds demonstrates a certain level of unity between states, which in turn creates the rationale for an active approach of international society. Although the use of force on humanitarian grounds became widely recognised and accepted, during the same period the use of force in self-defence in relation to terrorist attacks, as the first case study will show, was still restricted and the requirements analysed in the preceding section had to be fulfilled.¹⁰⁸ It took the 9/11 attacks upon the US for international society to change its approach towards these restrictions. As will be demonstrated in the subsequent chapters such an alternation was possible because of the international environment surrounding the end of the Cold War.

Moreover, the end of the Cold War, as will be shown in more detail in the proceeding chapter as well as in the case study devoted to the US policy of counter-terrorism in Afghanistan,¹⁰⁹ has led to the rise both in power and number of non-state actors using terrorist tactics within international arena, which has influenced a shift in general opinion regarding the use of force in response to terrorist attacks. As non-state actors have become more self-sufficient and not dependent on a state to such degree as in the past, more forceful measures to deal with their activities became more acceptable. The

¹⁰⁸ See, chapter three.

¹⁰⁹ See, chapter four.

culmination of such a shift has been exemplified by the reaction of international society toward the US intervention in Afghanistan as a response to the terrorist attacks that occurred on September 11, 2001. The overwhelming acceptance of military intervention and the recognition of the right to self-defence in relation to a terrorist attack for the first time have marked a significant change to the existing practice of states in dealing with terrorism.

Part Three: Introductory Notes on the Status of International Law

International law, with special emphasis on the provisions treating the use of force, as this chapter has shown, has undergone many alternations throughout the centuries. Although it was not until the twentieth century when the use of force was generally prohibited, thinkers even during the preceding centuries had focused primarily on the ways in which the use of force might have been limited. The Natural School of International Law, which emphasised the existence of a special relationship between states, claimed that there are certain bonds that unite states, which in turn give evidence of the existence of international society. In such a society, according to representatives of this School, the use of force should be limited only to the instances associated with the notion of just war. Writers, belonging to the Positivist School of International Law, on the other hand, emphasised the lack of these special bonds between the members of international society and as war was unavoidable and a constant feature of international affairs the role of international law should be to provide regulations of how the war should be conducted. Therefore, instead of focusing on when a war may be waged, they concentrated on rules that should govern states, which were already engaged in combat with each other. This conception of international law, which would regulate the unavoidable, was present among

both the practitioners and writers until the second decade of the twentieth century.¹¹⁰ The destructive nature of two World Wars delivered a reason of returning to the thinking of the Natural Law School and the notion of just war. International society during the twentieth century through the creation of the United Nations and the adoption of the UN Charter had limited the use of force to two instances, namely in self-defence and after the authorisation from the UN Security Council.

The scrutiny of development of international law throughout the centuries gives evidence that states recognise the importance of rules governing their relations. The fact that states acknowledge that they are bound by certain rules in their relations with each other indicates the significance of international law and its special place within international arena. This in turn suggests the adequacy of the group of writers, who advocate the idea that international law, although different from the municipal law, is still the law properly so-called.¹¹¹ Such an approach is criticised by another group of writers, for whom international law should not be treated as law *per se*. These authors claim further that international law in fact does not play a significant role in international affairs.¹¹² Authors, who share this very approach towards the status of international law, are numerous. Indeed, writers such as Hobbes, Pufendorf and Austin can be considered as belonging to this circle.¹¹³ For Austin, '[t]he so-called law of nations consists of opinions or sentiments current among nations generally. It, therefore, is not law properly so-

¹¹⁰ See, for example: Neff (n 58) 160-172.

¹¹¹ See, for example: Koskenniemi M, "Lauterpacht: The Victorian Tradition in International Law," *European Journal of International Law* 2 (1997): 215-263. Nys E, "The Development and Formation of International Law," *American Journal of International Law* 6, no. 1 (1912): 1-29. Reeves JS, "International Society and International Law," *American Journal of International Law* 15, no. 3 (1921): 361-374.

¹¹² See, for example: Borchard E, "The Place of Law and Courts in International Relations," *American Journal of International Law* 37, no. 1 (1943): 46-57. Willoughby WW, "The Legal Nature of International Law," *American Journal of International Law* 2, no. 2 (1908): 357-365.

¹¹³ Watts A, *Oppenheim's International Law*, 8.

called'.¹¹⁴ What can be observed in the writings of Austin is that for him, international law possesses ethical rather than legal character. The central argument of representatives of this circle is that international law lacks sanctions and enforcement measures. The reason for such a weakness can be found in the structure of international affairs, namely international anarchy. As states are sovereign and do not recognise any higher authority but their own and because those states, which possess great power and capabilities can always use force in order to protect their interests and because no other authority can impose on them refrainment 'international law cannot be considered true law'.¹¹⁵

Others point out also the weakness or lack of an imperative character as observed within municipal systems. According to Brierly:

the weakness of international law lies deeper than any mere question of sanctions. It is not the existence of a police force that makes a system of law strong and respected, but the strength of the law that makes it possible for a police force to be effectively organized.¹¹⁶

On a national level, the imperative nature of law can be easily observed and its obedience became habitual. And due to that, its enforcement evolved without obstacles and

¹¹⁴ Austin J, *The Province of Jurisprudence Determined* (vol. i) cited in Brown Scott J, "The Legal Nature of International Law," *American Journal of International Law* 1, no. 4 (1907): 835.

¹¹⁵ Armstrong D et al., *International Law and International Relations* (Cambridge: CUP, 2007), 9. According to Morgenthau although in general the international rules are observed by states due to the fact that it is in their interest to 'honor their obligations under international law', '[t]he problem of enforcement becomes acute (...) in (...) minority of important and generally spectacular cases (...) in which compliance with international law and its enforcement have a direct bearing upon the relative power of the nations concerned. In those cases (...) considerations of power rather than of law determine compliance and enforcement' (Morgenthau HJ, *Politics among Nations* (6th edn New York: McGraw-Hill, Inc., 1985), 312-313.)

¹¹⁶ Brierly JL, *The Law of Nations* (1963) reprinted in Harris D, *Cases and Materials on International Law* (7th edn London: Thomson Reuters Ltd, 2010), 2.

its effectiveness can be seen in that it ‘generally works smoothly’.¹¹⁷ Similarly, on international level, if the nature of international law became imperative then ‘the institution of definite international sanctions would easily follow’.¹¹⁸ What needs to be noted however, is that although Brierly points to the weakness of international law, he does not negate its very existence. In his view, ‘[t]he best evidence for the existence of international law is that every actual state recognises that it does exist and that it is itself under obligation to observe it’.¹¹⁹ In similar fashion, Jessup observed that overall international law is obeyed even under difficult and inconvenient circumstances.¹²⁰

Those, who claim that international law is correctly referred to as “true law” argue further, that it does not lack enforcement measures as it provides sanctions. According to Kelsen, these sanctions include reprisals, war and generally the use of force.¹²¹ Supporters of this view disagree with those for whom the existence of war in international affairs proves that international law is not “true law”. These authors emphasise that the existence of ‘the institutions of reprisals and war’ is in itself evidentiary to the very existence of international law.¹²² According to Kunz, ‘[f]or every juridical order must in the last analysis be backed by the employment of physical force; this is the point which distinguishes a juridical from an ethical norm, law from morals’.¹²³ Indeed as the period since the end of the Cold War has demonstrated, the notion of sovereignty is no longer an absolute one and states may be subject to the use of force if the international society decides to do so.

¹¹⁷ *ibid* 2.

¹¹⁸ *ibid* 2.

¹¹⁹ Brierly JL, *The Outlook for International Law* (1944) cited in Brierly (n 116) 2 (note 5).

¹²⁰ Jessup, *A Modern Law of Nations* (1948) reprinted in Harris (n 116) 5.

¹²¹ Kelsen H, *Principles of International Law* (Clark: Lawbook Exchange, 1952, 2003), 18-39. See also: Kunz (n 74) 633.

¹²² Kunz (n 74) 633.

¹²³ *Ibid* 633. See also: Roxburgh (n 74) 26-37. Snow AH, "International Law and Political Science," *American Journal of International Law* 7, no. 2 (1913): 315-328. For an opposite view, see: Borchard (n 112).

Although, as the first study will demonstrate, a state may continue to use force even if it faces condemnation by international society, it does not mean that international law is irrelevant. It will be shown that even in such instances, a state, in this case Israel, justified its actions as in accordance with international law. During every intervention in Lebanon, Israel invoked principles relating to the lawful use of force and claimed it was acting in self-defence and therefore in accordance with international law.

Although Israel for decades advocated the idea of a broader conception of self-defence, it was not able to persuade other members of international society. As will be demonstrated, the notion of power is an important factor underlying the possibility of change. However, as the second case study will show, for rules of international law to be changed, international society must recognise the rationale behind such a change. The overwhelming support firstly for the recognition of the right to self-defence in relation to terrorism, secondly for the 2001 Operation *Enduring Freedom* and finally an international recognition of Israeli right to defend itself in 2006 suggest that a wider conception of self-defence is now being internationally accepted.

Conclusion

The aim of this chapter was to provide an overview of the development of international law with special reference to the notion of war and the use of force in general. As was observed although there is a disagreement as to the status of international law, this chapter has given evidence to the adequacy of the statement that international law is an important feature of world politics. Its gradual development from the time when war and the use of force were perceived by states as methods of self-help to the establishment of an

international legal order based on the general prohibition of the use of force indicates that international society needed and accepts limitations on their freedom of actions.

This chapter also provided a scrutiny of the main schools of thought, which emphasise the significance of international law and the limitation of the use of force between states. The importance of the analysis of these two schools can be observed in that even contemporarily they occupy a principal place within academia and are still the subject of debates and controversies. The rationale of an inclusion of this chapter in this thesis is that it firstly introduces a reader to some of the crucial notions and legal principles treating the use of force and secondly it gives an essential foundation for further analysis of the status of international law. A detailed scrutiny of its development from both theoretical and historical perspectives gives a basis for an accurate analysis of the place that international law occupies in contemporary world politics. It also provides an essential insight into legal theories and scholars' perceptions on international law, which will be further explored in the proceeding chapter, which aims to critically investigate different theoretical perspectives that dominated the scholarship of International Relations and their standpoints on the role of international law in international affairs. It will involve looking at mainstream theories, which dominated the IR scholarship throughout the twentieth century and delivered very different perspectives on both international law and international society. The scrutiny of these traditions will be treated as a foundation for counter-arguments and formulation of further hypotheses.

CHAPTER TWO

THEORETICAL FRAMEWORK

Introduction

This chapter sets the theoretical foundation of this study. It aims to provide an overview of core assumptions of mainstream theories of International Relations and contrast them with arguments postulated by theorists affiliated with the English School Theory and Constructivism. The comparison will be conducted by firstly presenting some of the key concepts associated with each tradition, which, in turn, will be followed by their standpoints regarding the notion of international society, the role of international law in world politics and the notion of change.

The chapter begins with an analysis of Realism that contests the very existence of international society by emphasising the egoistic, interest-oriented nature of international relations. In a similar manner, theorists affiliated with this theory question an argument that international law plays any significant role in world politics. This, as will be demonstrated is in sharp contrast with liberal postulates. Scholars associated with Liberal Theory of International Relations emphasise an importance of international rules and admit their constraining nature at least among states with democratic systems of government. Neo-liberals, on the other hand, although agreeing with certain basic assumptions of Realists, do not portray the international arena as the Hobbesian state of nature and point to the explicit international cooperation which can be observed, for example, by looking at the proliferation of international institutions and regimes throughout the second half of the twentieth century. Even though Neo-

liberals acknowledge the existence of international society and impact of international law on international politics, for them both notions embrace only a utilitarian and functional character.

This thesis will argue that the most comprehensive understanding of the shift in international approach towards the use of force as well as the status of international law can be found in the writings of scholars associated with the English School of International Relations¹ and Constructivism. The importance of the former can be observed in that it conceptualises and contextualises notions of both international law and international society. But most importantly it brings about the strongest points of the aforementioned theories of IR and by relying on them and exploring them theorists affiliated with the ES create a comprehensive and complete portrait of international politics. On the other hand, the significance of the latter can be observed in that it begins by appreciating the independent and influential role of international norms and rules in international politics. Their emphasis of the norm-generating aspect of rules and law is influential and significantly enriches the study of international law. It will be shown that such a symbiotic approach can deliver an important contribution to study of the status of international law.

Part One: The Realist Traditions of International Relations

Theorists affiliated with the realist tradition of IR appraise themselves for portraying world politics in a realistic, rational way; in essence, they argue that they show and see the world as it really is and separate themselves from idealistic dogmas.

¹ Hereinafter - the ES.

The pedigree of this tradition can be traced back to the writings of authors such as Thucydides, Thomas Hobbes and Niccolò Machiavelli. In applying their postulates on an international level, realist theorists argue that the international arena is characterised as the state of war. In the words of Waltz, '[a]mong states, the state of nature is a state of war'.² This, however, does not mean that 'warfare is constant, but only that it is always a possibility and that actors understand this'.³

By comparing international and domestic perspectives, they claim that states as individuals behave egoistically and are guided only by their own interest and wellbeing.⁴ According to Morgenthau, 'it is not only a political necessity but also a moral duty for a nation to follow in its dealings with other nations but one guiding star, one standard of thought, one rule of action: THE NATIONAL INTEREST'.⁵ Every decision is taken rationally and calculated in terms of gains and costs. According to Realists, relations between states should be characterised as 'conflictual and competitive' in nature.⁶ This is due to the fact that as the ultimate objective of states is power⁷ and securing their own international position, such conditions create a platform for interest clashes as each state pursues and seeks its goals. Although at the domestic level individuals behave similarly, the existing law enforcement machinery constrain their behaviour in an effective way. On an international level, on the other hand, there

² Waltz KN, *Theory of International Politics* (Boston: McGraw-Hill, 1979), 102.

³ Jervis R, "Realism and the Study of World Politics," *International organization* 52, no. 4 (1998): 986.

⁴ Allison G Zelikow P, *Essence of Decision. Explaining the Cuban Missile Crisis* (2nd edn Harlow: Longman, 1999), 32.

⁵ Morgenthau HJ, *In Defence of the National Interest* (New York: Alfred A. Knopf, 1952), 242 cited in Crabb CV Jr Savoy J, "Hans J. Morgenthau's Version of Realpolitik," *The Political Science Reviewer* 5 (1975): 210.

⁶ Hay C, *Political Analysis. A Critical Introduction* (Basingstoke: Palgrave, 2002), 17. See also: Miller B, "Competing Realist Perspectives on Great Power Crisis Behaviour," in *Realism: Restatements and Renewal*, ed. Frankel B (Abingdon: Frank Cass, 1996), 318.

⁷ In words of Guzzini: 'international actors are bound to look for power, indeed to maximize their power position' ("The Enduring Dilemmas of Realism in International Relations," *European Journal of International Relations* 10, no. 4 (2004): 537.)

is no such machinery and therefore it is up to states to protect and secure their interests. Such a condition is characterised as international anarchy and entails that 'above the level of states there is no supreme law-maker or law-enforcer to keep order, as a government is supposed to do within states'.⁸ According to Waltz, 'the absence of an authority above states to prevent and adjust the conflicts inevitably arising from particular wills means that war is inevitable'.⁹ For him and other authors associated with Neo-realism such international structure is even more pivotal as they argue that the ultimate goal of states in such self-help¹⁰ environment is not so much power *per se* but survival and security.¹¹ It is argued that states 'have to rely on themselves to ensure their survival, because other states are potential threats and because there is no higher authority they can turn to if they are attacked'; and therefore state must 'put itself in a position to be able to take care of itself since no one else can be counted to so'.¹² Accordingly, 'the conflictual and competitive nature of inter-state relations is the product of the pursuit of national interest under the conditions of anarchy'.¹³ Due to the condition of international anarchy, the security of all states at the same time cannot be accomplished, as the possibility of recourse to force is constantly present. What 'endangers others' is exactly the fact that states can implement various measures necessary for maintenance of their security.¹⁴

⁸ Booth K, "Security in Anarchy: Utopian Realism in Theory and Practice," *International Affairs (Royal Institute of International Affairs 1944-)* 67, no. 3 (1991): 529.

⁹ Waltz KN, *Man, the State and War. A Theoretical Analysis* (New York: Columbia University Press, 1954), 182.

¹⁰ Self-help from realist perspective is seen as the 'guiding principle' of states (Abbott KW, "International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts," *American Journal of International Law* 93, no. 2 (1999): 364.).

¹¹ Neo-realists argue that a situation may arise in which 'a further increase in power ((...) understood as mere capabilities) does not imply an increase in security' (Guzzini (n 7) 539).

¹² Waltz (n 2) 107.

¹³ Hay (n 6) 17. Booth further argues that '[f]rom this perspective, wars occur because there is nothing to stop them when a state believes it must defend or further a "vital interest" by force' (Booth (n 8) 533). Waltz goes on and claims that 'a state will use force to attain its goals if, after assessing the prospects for success, it values those goals more than it values the pleasure of peace' (Waltz (n 9) 160).

¹⁴ Kocs SA, "Explaining the Strategic Behavior of States: International Law as System Structure," *International Studies Quarterly* 38, no. 4 (1994): 536.

Theorists of yet another version of Realism, namely Offensive Realism argue even further, that the existence of anarchy creates opportunities for states to seek and increase power 'at the expense of rivals, and take advantage of those situations when the benefits outweigh the costs'.¹⁵ According to Mearsheimer, 'survival mandates aggressive behaviour' of states and it is the maximization of 'their odds of survival' rather than willingness or desire to achieve domination over other states which pushes them to act aggressively.¹⁶ Moreover, Offensive Realism also argues that states embodied within a self-help environment 'almost always' act having in mind their own interests; interests, which are not subordinated to 'the interests of other states, or to the interests of the so-called international community. The reason is simple: it pays to be selfish in a self-help world'.¹⁷

As the actual state of international relations is characterised as comprising conflict and competition one cannot assume the existence of international society. This is further supported by the claim that states are not constrained in their conduct by any moral legal principles. This is because at the international level there do not exist bounds which can be observed in the context of a society therefore any moral or legal principles that can be abided within the society do not really apply at the international level. The fact that a state pursues moral or legal goals implies only that these goals are to be seen as the goals of that state itself. This, on the other hand, does not mean that states cannot enter into agreements with other states but it does imply that these agreements can be broken when they are not seen as in the interest of the state.¹⁸

¹⁵ Mearsheimer JJ, *The Tragedy of Great Power Politics* (New York: W. W. Norton & Company, 2001), 21.

¹⁶ *ibid.*

¹⁷ *ibid* 33.

¹⁸ Bull H, *The Anarchical Society. A Study of Order in World Politics* (3rd edn Basingstoke: Palgrave Macmillan, 2002), 23-24.

According to Mearsheimer, 'alliances are only temporary marriages of convenience: today's alliance partner might be tomorrow's enemy, and today's enemy might be tomorrow's alliance partner'.¹⁹ The entering into agreements or alliances by states with other states is seen as a means to achieve states' aims. In a situation when these arrangements do not fulfil its role, which is cultivating power²⁰ of their parties, they can be dissolved or broken.²¹ International law is therefore not seen as the real law observed nationally due to the fact that there is no authority above states, which could enforce that law. And thus, 'international law that did not enjoy compliance was not law-like'.²² As international law is created by and for states, the same states, when it is in their interest, can decide when such law ceases to bind them.

In national societies individuals must abide by the law. Even if the law is broken, there is enforcement machinery that enforces obedience or imposes repercussions. Such machinery does not exist internationally as states enter into agreements voluntarily. As states can decide whether to abide by legal rules or norms or not, it is usually up to them 'to impose self-restraint upon themselves'.²³ The lack of authority above a state entails that "law" in domestic understanding has 'no place in this world. The only relevant laws [are] the "laws of politics", and politics [is] "a struggle for power"'.²⁴

¹⁹ Mearsheimer (n 15) 33.

²⁰ Morgenthau HJ, *Politics among Nations. The Struggle for Power and Peace* (Boston: McGraw-Hill, 1993), 5.

²¹ Bull (n 18) 23-24.

²² Steinberg RH Zasloff JM, "Power and International Law," *American Journal of International Law* 100, no. 1 (2006): 71.

²³ Kocs (n 14) 541.

²⁴ Slaughter Burley A, "International Law and International Relations Theory: A Dual Agenda," *American Journal of International Law* 87, no. 2 (1993): 207.

Thus, international law is looked upon by Realists through the angle of power relations, i.e. for them 'international law is considered a tool at the disposal of the most powerful'.²⁵ Hence, it is regarded merely as 'an epiphenomenon of underlying power'²⁶ and 'have little, if any, independent effect on state behaviour'.²⁷ Both Realists and Neo-realists seldom pay any attention to international law and international institutions²⁸ as both of them are not seen as contributing to the maintenance of international order. According to them, the international order is best accomplished by the sustainability of the balance of power. For Morgenthau, the balance of power is 'the perennial element of international politics' and 'the fundamental law of international politics'.²⁹ Waltz, even further argues that '[i]f there is any distinctively political theory of international politics, balance of power theory is it'.³⁰ Indeed, for Neo-realists, the equilibrium, accomplished by the balance of power between the superpowers, which existed during the Cold War, was the most important factor underling the peacefulness, understood as the absence of war between the two blocs, of that period. As will be explored further in the subsequent chapter the international reaction towards the 1982 Israeli intervention in Lebanon was influenced greatly by the existing international order based on sustainability of the balance of power between the East and the West.

Exploring further the realist position on the role of international law, representatives of this tradition go on and argue that even if states comply with international law it does not change much in the characteristic of world politics. As it is

²⁵ Scott SV, "International Law as Ideology: Theorizing the Relationship between International Law and International Politics," *European Journal of International Relations* 5 (1994): 314. See also: Abbott (n 10) 365.

²⁶ Steinberg, Zasloff (n 22) 74.

²⁷ Abbott (n 10) 365

²⁸ Kocs (n 14) 537.

²⁹ Morgenthau (n 20).

³⁰ Waltz (n 2) 117.

power that defines international affairs states must prioritise ‘the struggle for relative capability’.³¹ Realists, therefore, stress the importance of diplomacy as it is regarded as more useful machinery in resolution of conflictual issues. This is caused by the fact ‘law is too abstract, too inflexible, too hard to adjust to the demands of the unpredictable and the unexpected’.³²

Thus, for Realists the conflictual and competitive nature of international relations precludes the possibility of the creation of a international society let alone the possibility that such a entity already existed. Hence, their answer to the question of “‘What is international society’, is ‘nothing’”.³³ According to representatives of this theory, there are no preconditions at the international level as observed at the local one, which could give a basis for assuming the existence of society between states. As society is created by a social contract, which cannot be observed internationally, ‘to speak of a society of nations is contradictory’.³⁴ Morgenthau explored it further, by pointing to the fact that while societies on a national level can identify the main principles and norms, such as the notions of justice and equality, which governs the relations between their members; a society, which would be integrated to that scope, does not exist beyond national societies.³⁵ Another interesting insight of realist theory puts into question the notion of morality or ethics in international politics. They question the very existence of universal values that other theorists emphasise. For instance, Morgenthau argued that the international arena ‘is far from one world in terms of the moral values which actually move men to political action on the international

³¹ Kocs (n 14) 541.

³² Kennan G, *American Diplomacy, 1900-1950* (1951) 95 cited in Slaughter Burley (n 24) 208.

³³ Wight M, "Theory of International Society," in *International Theory. The Three Traditions*. Martin Wight, ed. Wight G Porter B (Leicester: Leicester University Press, 1991), 31.

³⁴ *ibid* 31.

³⁵ Morgenthau HJ, *In Defence of the National Interest* (1951) cited in Wight (n 33) 31.

scene'.³⁶ As maximisation of power and fulfilment of interest are the main objectives of a state, Realists negate the possibility of states' genuine pursuit of the universal wellbeing of states, let alone the possibility of one state acting in such capacity. According to the same author, the 'moral aspirations of a particular nation' cannot be identified with 'the moral laws that govern the universe'.³⁷ He supports his claim by stressing that various states were 'tempted (...) to clothe their own particular aspirations and actions in the moral purposes of the universe'.³⁸

Realists put emphasis on the continuity in world politics³⁹ and therefore the question of change rarely constitutes focus of their enquiries. As was already pointed out politics is seen as being a struggle for power and such a struggle is characterised by its endlessness i.e. it is 'perpetual, recurrent, and integral to life itself'.⁴⁰ Therefore, even if change does occur in relation to some aspect of political life at some point, it does not have much of an impact on the very nature of international politics in itself. Thus, Realists do not accept and recognise a likelihood of any "epochal" change'.⁴¹ In addition, new developments such as the establishment of the United Nations or the general prohibition of the use of force are not seen as possessing any influence on international politics in general or on the actions of individual states in particular as both international law and international institutions are seen as constituting tools for the pursuit of national interests and neither of them is of any real significance. For them, 'international rules and institutions have little, if any, independent effect on state behaviour: they are mere ("epiphenomenal") artifacts of the underlying interest and

³⁶ Morgenthau HJ 'A Reassessment of the United States Foreign Policy' (1958) cited in Crabb, Savoy (n 5) note 50, 199.

³⁷ Morgenthau (n 20) 13.

³⁸ *ibid* 13.

³⁹ Jervis (n 3) 984.

⁴⁰ Crabb, Savoy (n 5) 190.

⁴¹ Jervis (n 3) 984.

power relationships, and will be changed or disregarded (...) if those relationships change'.⁴²

It is plausible to argue that for Realists the fact that, in the light of international law since the adoption of the UN Charter, the only lawful situation for individual states to use force is in self-defence has not had much impact on international politics. The right to self-defence is, thus, seen as yet another possibility for the protection of states' vital interests. Exploring this reasoning further, states will use this right whenever they deem it necessary and the reaction of states towards the implementation of this right will be influenced in a similar manner, i.e. it will be judged in terms of the relationship between the so-called "victim state" and others and through a neo-realist lens it will be influenced by its possible consequences on international order and the sustainability of balance of power.

In the light of the above portrait of international politics from a realist perspective, the following can be viewed as a plausible realist hypothesis in relation to the topic in question. As will be shown in chapter five the changed approach towards the use of force in relation to acts of terrorism can be explained by a change in international system, i.e. a bipolar system was replaced by an unipolar one. The fact that Israeli right to self-defence was not recognised was dictated by the necessity of sustaining the balance of power between the East and the West and maintenance of the status quo. The fact that the US intervention was recognised, on the other hand, was understandable as in the current international environment it is likely to expect a cooperation with hegemon. The fact that, states, especially Russia and China, joined

⁴² Abbott (n 10) 365.

other states and expressed their solidarity with the US in the aftermath of 9/11 was expected as it was in their interest to do so. Although, as will be demonstrated, the US position as the most powerful state was influential behind the change of international approach towards the US intervention in Afghanistan, it cannot explain why the aforementioned states recognised the Israeli right to self-defence in relation to the 2006 Operation *Change Direction*, especially taking into consideration the fact that the 1982 intervention was not accepted as lawful use of force.

Part Two: The Liberal Traditions of International Relations

This section provides an analysis of the writings of scholars associated with the Liberal Theory of International Relations. Contrary to Realists, Liberals adopt a “bottom-up” perspective of politics ‘in which the demands of individuals and societal groups are treated as analytically prior to politics’⁴³ and therefore the main actors in the international arena are individuals and private groups.⁴⁴ They stress the importance of municipal factors such as ‘the type of government and constitutional order that states have, as well as other factors such as domestic politics, civil society, and individual beliefs’, which are ‘the primary determinant of state behaviour’.⁴⁵ They claim that states ‘*represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposively in world politics*’.⁴⁶ Due to the fact that internal factors have an influence on the foreign policy of states, ‘states are not

⁴³ Moravcsik A, "Taking Preferences Seriously: A Liberal Theory of International Politics," *International organization* 51, no. 4 (1997): 517.

⁴⁴ *ibid* 516.

⁴⁵ Adamson FB Sriram CL, "Perspectives on International Law in International Relations," in *International Law for International Relations*, ed. Çali B (Oxford Oxford University Press, 2010), 30. See also: Slaughter A *et al.*, "International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship," *American Journal of International Law* 92, no. 3 (1998): 367-397. Doyle MW, "Liberalism and World Politics," *The American Political Science Review* 80, no. 4 (1986): 1151-1169.

⁴⁶ Moravcsik (n 43) 518 (emphasis in original).

rational actors but rather a vehicle for preference advancement by domestic constituencies'.⁴⁷ However, although individuals are the fundamental actors in international politics, a state, in the view of some Liberals, is 'the primary *agent* of international action'.⁴⁸ The following paragraphs will look at three main premises of this theory, namely economic interdependence, the promotion of a democratic system of government and the peaceful and cooperative relationship between democratic states.

Liberals claim that growing communication and cooperation observable on various levels *inter alia* economic, political, and cultural 'are revolutionizing the texture of global politics'.⁴⁹ The main argument is that states decide to enter into and sustain trading relationships with each other because it is highly beneficial for them. This in turn leads to a creation of 'a system of interconnected dependent countries, which if based on competitive, free-trade, free-market principles results in maximal global output'.⁵⁰

What Liberals also notice is that such interdependent relationships not only profit states' economies but in fact have a pacifying impact on interstate relations.

According to Polachek:

⁴⁷ Armstrong D et al., *International Law and International Relations* (Cambridge: CUP, 2007), 87.

⁴⁸ See, for example: Slaughter Burley (n 24) 227 (emphasis in original).

⁴⁹ Barnett MN, "Bringing in the New World Order. Liberalism, Legitimacy, and the United Nations," *World Politics* 49 (1997): 534. The author's writing lies within a long tradition: Deutsch K, *The Analysis of International Relations* (Prentice-Hall, 1968). Kant I, *Perpetual Peace* (San Diego: Book Tree, 2009). Rosecrance R, *The Rise of the Trading State. Commerce and Conquest in the Modern World* (New York: Basic Books, 1986). --, *The Rise of the Virtual State. Wealth and Power in the Coming Century* (New York: Basic Books, 1999). Smith A, *The Wealth of Nations* (Blacksburg: Thrifty Books, 2009). Straffa P, ed., *The Works and Correspondence of David Ricardo* (Indianapolis: Liberty Fund, 2005).

⁵⁰ Polachek SW et al., "Liberalism and Interdependence: Extending the Trade-Conflict Model," *Journal of Peace Research* 36, no. 4 (1999): 406.

The logic is simple. If conflict leads to a cessation or at least a diminution of trade (...) then countries with the greatest gains from trade face the highest costs of potentially lost trade and hence engage in the least conflict and the most cooperation.⁵¹

What this means is that a system of interdependent relationships mitigates an occurrence of conflicts due to the fact that states fear to lose ‘the welfare gains associated with the trading relationship’.⁵² In other words, the ‘economic interdependence lowers the likelihood of war by increasing the value of trading over the alternative of aggression: interdependent states would rather trade than invade’.⁵³ In short and in adopting an economic terminology a ‘high interdependence fosters peace by making trading more profitable than invading’.⁵⁴ What should be noted, however, is that an

interdependence is seen to operate as a restraint on aggressive tendencies arising from the domestic or individual levels. If interdependence becomes low, this restraint is taken away, allowing the aggressive tendencies to dominate.⁵⁵

Liberals also argue that a system of interdependent relationships should not be seen as limited only to the economic sphere. In fact it is argued that it enables an

⁵¹ *ibid* 405.

⁵² Barbieri K Schneider G, "Globalization and Peace: Assessing New Directions in the Study of Trade and Conflict," *Journal of Peace Research* 36, no. 4 (1999): 389.

⁵³ Copeland DC, "Economic Interdependence and War. A Theory of Trade Expectations," *International Security* 20, no. 4 (1996): 5. See also: Mansfield ED Pollins BM, ed., *Economic Interdependence and International Conflict. New Perspectives on an Enduring Debate* (Ann Arbor: University of Michigan Press, 2003).

⁵⁴ Copeland (n 53) 9.

⁵⁵ *ibid* 13.

emergence and ‘the development of a “sense of community”, which makes the resort to violent forms of conflict increasingly unlikely’.⁵⁶ Although as will be shown such a sense of community is deeper embedded within a system of democratic states, a democracy is not an *a priori* precondition for a pacifying impact of an economic interdependence upon interstate relations. As Oneal *et al.* argue, ‘expanded trade was advocated as a remedy for war before democracy was a realistic possibility in most countries’.⁵⁷ What this means is that interdependency observable when interstate relations are looked upon mitigates conflictual situations by itself. Although trade and economic interdependence have in themselves independent impact, some Liberals also point to the influential role of democratic system of governments. They argue that the aforementioned sense of community derived from economic interstate relations is more deeply embedded within democratic states. Oneal and Russett agree that ‘[e]conomic interdependence and joint democracy are generally associated with a reduction in interstate violence’.⁵⁸ As the former ‘reinforces constitutional constraints and liberal norms by creating transnational ties that encourage accommodation rather than conflict’⁵⁹ innately states with a stronger attachment to and emphasis on the rule of law are more likely to respect international rules.

In a liberal view democracies are more reliable and more likely to adhere their actions to international rules and principles. Considering the fact that for them ‘the global rule of law depends on the domestic rules of law’, states with democratic systems of government tend to respect the principle that their actions are constrained by

⁵⁶ Barbieri, Schneider (n 52) 389.

⁵⁷ Oneal JR *et al.*, "The Liberal Peace: Interdependence, Democracy, and International Conflict, 1950-85," *Journal of Peace Research* 33, no. 1 (1996): 11.

⁵⁸ Oneal JR Russett B, "Assessing the Liberal Peace with Alternative Specifications: Trade Still Reduces Conflict," *Journal of Peace Research* 36, no. 4 (1999): 439.

⁵⁹ Oneal (n 57) 12.

international law and international obligations.⁶⁰ In short, for Liberals, a domestic sphere expresses the ways states behave internationally.

According to Liberals, democratic states are more likely to comply with international law 'at least among themselves'⁶¹ with representatives of this theoretical perspective proclaiming that such a system of government is a superior one and thus they actively advocate its promotion across the international sphere. They argue that 'the rule of law and transparency of democratic processes make it easier to sustain international cooperation, especially when these practices are enshrined in international institutions'.⁶² The on-going cooperation between democracies has been evident since the Second World War and is linked to the establishment of international institutions, which created 'a framework for order that helps to establish credible commitments'.⁶³ In addition, '[n]egotiation, compromise, and consensus-building came naturally to statesmen stepped in the uses of such practices at home'.⁶⁴ The aforementioned international order existing among democratic states, which is defined 'thick and robust', is based

on identity, institutions and interdependence. Identity means common Western support for the values of political and civil liberties, and a liberal market economy. Institutions mean that cooperative relationships

⁶⁰ Slaughter A, "A Liberal Theory of International Law," *ASIL Proceedings* 94 (2000): 246.

⁶¹ Guzman AT, "A Compliance Based Theory of International Law," *California Law Review* 90 (2002). 17.

⁶² Snyder J, "One World, Rival Theories" *Foreign Policy* 145 (2004): 56.

⁶³ Ikenberry GJ, "Power and Liberal Order: America's Postwar World Order in Transition," *International Relations of the Asia-Pacific* 5 (2005): 140. See also: Richmond OP, "Understanding the Liberal Peace," in http://www.st-andrews.ac.uk/intrel/media/Richmond_understanding_the_liberal_peace.pdf [accessed 1 December 2012]. Cederman LE Penubarti Rao M, "Exploring the Dynamics of the Democratic Peace," *Journal of Conflict Resolution* 45, no. 6 (2001): 818-833. Chernoff F, "The Study of Democratic Peace and Progress in International Relations," *International Studies Review* 6 (2004): 49-77.

⁶⁴ Gaddis J, *We Now Know: Rethinking Cold War History* (New York: OUP, 1997), 50.

are heavily institutionalised. And interdependence means social and economic interaction that is seen to be for mutual benefit.⁶⁵

Such a liberal international order is said to provide a platform for very close cooperation based on the idea that democracies share the same vision of international affairs based on combined 'values and collective identities'⁶⁶ and that there exist 'political bonds of liberal rights and interests', which in turn indicate that '[a] separate peace exists among liberal states'.⁶⁷

This idea of "separate peace" is crucial when considering the problématique of this thesis. In addition, there is a common agreement among liberal scholars that democratic states 'are far less likely to go to war with one another than they are to go to war with non-liberal States'.⁶⁸ This does not, however, mean that liberal states are more peaceful but rather that 'a variety of factors converge to reduce the likelihood of military conflict between them'.⁶⁹ Although a general absence of war between liberal states is noticeable, the following case studies, namely the 1982 Operation *Peace for Galilee* as well as the 2006 Operation *Change Direction* will demonstrate that such a war remains a possibility.

The aforementioned superiority of a democratic system of government is further supported by developments of the last decade of the twentieth century, namely the

⁶⁵ Sørensen G, "Liberalism of Restraints and Liberalism of Imposition: Liberal Values and World Order in the New Millennium," *International Relations* 20, no. 3 (2006): 257.

⁶⁶ Ikenberry GJ, "Liberalism and Empire: Logic of Order in the American Unipolar Age," *Review of International Studies* 30 (2004): 617.

⁶⁷ Doyle M, "Peace, Liberty, and Democracy: Realists and Liberals Contest a Legacy" in Ikenberry GJ *et al.*, ed., *American Democracy Promotion. Impulses, Strategies, and Impacts* (Oxford: OUP, 2000), 31.

⁶⁸ Slaughter A, "International Law in a World of Liberal States," *European Journal of International Relations* 6 (1995): 509.

⁶⁹ *ibid.*

collapse of communism and the democratisation of ex-communist states. Such an argument is presented by various liberal theorists, most particularly Francis Fukuyama. For him, the end of the Cold War should be portrayed as a triumph of economic and political Liberalism, which is evident in 'the total exhaustion of viable systematic alternatives'.⁷⁰ According to this scholar, '[w]hat we may be witnessing is not just the end of the Cold War, or the passing of a particular period of postwar history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government'.⁷¹

For Liberals, the collapse of communism and the end of the Cold War have also given the US a predominant position as well as created a special role reserved for the sole superpower. In addition, when the US emerged from the Cold War as the most powerful state Liberals appreciated this moment as not only a triumph of Liberalism but also as the initiation of the new world order based on liberal values and peaceful relations between states. The US, as the champion of the premises of Liberalism and the most active advocate of its values and norms was seen as the state 'bound to lead'.⁷² Such reliance on Liberalism has made the US hegemony more benevolent through its 'unusual capacities to make commitments and restrain power' and thus should be regarded by other states as less threatening or intimidating.⁷³

⁷⁰ Fukuyama F, "The End of History? (1989), " *The National Interest* in <http://wesjones.com/eoh.htm> [accessed 1 December 2012].

⁷¹ *ibid.* See also: Fukuyama F, "Liberal Democracy as a Global Phenomenon," *PS: Political Science and Politics* 24, no. 4 (1991): 659-664.

⁷² Nye JS, *Bound to Lead. The Changing Nature of American Power* (New York Basic Books, 1990), 110. See also: Nye JS, *The Paradox of American Power. Why the World's Only Superpower Can't Go It Alone* (Oxford: Oxford University Press, 2002). For a discussion about Nye's book see Cohen WI, *America's Failing Empire. Us Foreign Relations since the Cold War* (Oxford: Blackwell Publishing Ltd, 2005).

⁷³ Ikenberry GJ, "American Power and the Empire of Capitalist Democracy," *Review of International Studies* 27 (2007): 194.

Moreover, even though the US is the most powerful state its actions are still constrained by 'the *preferences*' of other states.⁷⁴ According to Liberals, the actions of the US are further restricted by the democratic system of conducting foreign policy based on liberal values as well as international institutions.⁷⁵ And therefore, '[t]he result has been the most stable and prosperous international system in world history'.⁷⁶ Thus, contrary to a realist perspective, the US should not be perceived as pursuing only its own interests and objectives but, in fact, as 'a producer of world order'.⁷⁷

In the light of the above discussion it is possible to draw the following hypothesis from the liberal perspective. As will be demonstrated in chapter five, three main aspects need to be taken into account when explaining the change in the reaction of international society towards the use of force in relation to acts of terrorism. First of all, the growing interdependence and interconnectedness in the contemporary world politics. Secondly, the embedded cooperation among liberal states. And lastly, the notion of democracy promotion. In relation to the first point, the reason behind a different approach towards the Israeli and the US interventions can be found in that states such as China and Russia became more liberal in outlook than they used to be during the Cold War. Thus, the recognition of the US right to self-defence was understandable as the end of the Cold War created a much more favourable foundation for international cooperation. As for the second point, the response of other liberal states was indeed to be expected due to the fact that the cooperation between liberal states is more deeply embedded within international spectrum. This cooperation is argued to be so embedded that in fact these states do not fight each other. The last

⁷⁴ Moravcsik A, "The New Liberalism," in *The Oxford Handbook of International Relations*, ed. Reus-Smit C Snidal D (Oxford: OUP, 2008), 248. (emphasis in original)

⁷⁵ Ikenberry (n 73) 203.

⁷⁶ Ikenberry GJ, "America's Imperial Ambition," *Foreign affairs* 81, no. 5 (2002): 49.

⁷⁷ Ikenberry (n 66) 609.

aspect derives from the liberal emphasis on the protection of human rights and the superiority of democratic over the other systems of government. This thesis will challenge this hypothesis in the following way. Although the end of the Cold War has created a more suitable platform for international cooperation, the growing interdependence cannot explain in depth why states, such as China and Russia, supported the US in the aftermath of 9/11 but condemned Israel in relation to its two interventions in Lebanon during the 1990s. As will be demonstrated, the notion of the greater cooperation between liberal states can also be challenged. Firstly, it does not explain why the US, despite their close relationship, as well as other liberal states did not recognise Israeli right to self-defence in 1982. Secondly, as both Lebanon and Israel have been considered as democracies the claim that democracies do not fight each other can also be discredited as the 1982 and the 2006 operations demonstrate. The last point, namely the democracy promotion, although influential in relation to the 2001 Operation *Enduring Freedom* cannot, however, be viewed as the basis underlying the comparison as the government of Lebanon, as opposed to the Taliban, was internationally recognised as democratic and legitimate.

Part Three: The Neo-liberal Traditions of International Relations

One offshoot of the Liberal Theory of International Relations that can highly contribute to this study is Neo-liberalism also referred to as Liberal or Neo-liberal Institutionalism. Although, as will be demonstrated, it treats the notion of international law through its reference to international regimes it still constitutes an important insight into world politics. This theoretical approach grew out of regime theory and based its analysis on the merits of game theory. By incorporating economic methods of analysis

they try to show the possibility and conditionality of international cooperation and the place of international institutions in the process of forming such cooperation.⁷⁸ In fact they focus their analysis on explaining why states create international institutions in first place.⁷⁹ Indeed their concentration and emphasis on the role of international institutions in world politics has generated the perception of Neo-liberalism as 'the mainstream approach to analysing international institutions'.⁸⁰

Neo-liberals begin by accepting and admitting coherence of certain basic neo-realist assumptions. In addition, like Realists they see states as key international actors. In a similar manner, they portray states as rational actors oriented at the maximisation of their own interests. Although they admit that states are self-interested and utility-seekers, as oppose to Neo-realists, they claim that states seek absolute rather than relative gains.⁸¹ Neo-liberals further admit that international anarchy has important consequences on the relations between states.⁸² However, the creation of various international institutions mitigates the conflictual nature of international relations and stimulates international cooperation.⁸³ Moreover, unlike Realists, Neo-liberals point out that international anarchy is not an active cause of war. For them, the fact that states

⁷⁸ Setear JK, "An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law," (1996) in <http://faculty.virginia.edu/setear/cv/hilj.pdf> [accessed 1 December 2012].

⁷⁹ Keohane RO, "International Institutions: Two Approaches," *International Studies Quarterly* 32, no. 4 (1988): 381.

⁸⁰ Hesselecker A *et al.*, "Interests, Power, Knowledge: The Study of International Regimes," *Mershon International Studies Review* 40 (1996): 183.

⁸¹ Cerny PG, "Embedding Neoliberalism: The Evolution of a Hegemonic Paradigm," *The Journal of International Trade and Diplomacy* 2, no. 1 (2008): 8. The term self-interest in a neo-liberal view means 'the desire to maximise one's own utility function where that function does not include the utility of another party (...) In contrast, pure power seekers are interested in maximizing the difference between their power capabilities and those of their opponent' (Krasner SD, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," *International Organisation* 36, no. 2 (1982): 195.)

⁸² Hesselecker (n 80) 184. For further information on similarities and differences between Neo-realism and Neo-liberalism see, for example: Smith S, "The Discipline of International Relations: Still an American Social Science?," *British Journal of Politics and International Relations* 2, no. 3 (2000): 374-402.

⁸³ Slaughter A, "Liberal International Relations Theory and International Economic Law," *American University Journal of International Law and Policy* 10, no. 2 (1995): 726.

are more likely to seek absolute rather than relative gains which can be achieved through international cooperation under the umbrella of international regime, can limit an occurrence of wars.

The similarity between Neo-realism and Neo-liberalism can be further observed by looking at the treatment of international cooperation by the latter. It is, indeed, seen by Neo-liberals in pure calculative and rationalist terms. In addition, while international cooperation is perceived as facilitator needed in order to obtain states interests, international institutions are portrayed as tools essential in meeting these goals. According to one of the leading theorists affiliated with this theoretical approach, Keohane:

[i]nternational cooperation does not necessarily depend on altruism, idealism, personal honor, common purposes, internalized norms, or shared belief in a set of values embedded in a culture (...) cooperation can be understood without reference to any of them.⁸⁴

Neo-liberals analyse international cooperation by referring to game theory, most commonly to the Prisoner's Dilemma. This game is indeed useful in analysing the origins and benefits of cooperation between players. In addition, if the game is played only once players shows a high incentive to cheat because of the likelihood that another player may choose deception as well. However, if the game involves more than one iteration then such an incentive may be minimalized and players may cooperate. This way of reasoning has been incorporated by Neo-liberals in their analysis of

⁸⁴ Keohane (n 79) 380.

international cooperation through international institutions and regimes.⁸⁵ By adopting the game theory reasoning they argue that it allows seeing how the incentive to cheat can be minimalized and cooperation even between ‘resolutely self-interested’ states can be possible. Similar point can be made in relation to war: although at the first instance the use of force might be profitable, in the long term this might not be the case especially taking into consideration the likelihood of the future cooperation. Thus from a neo-liberal standpoint it is always more profitable to look at the particular case or conflictual issue from the angle of the future. According to Setear, ‘[i]nternational “institutions” or “regimes” may increase the likelihood or depth of (...) cooperation [among states] by lowering “information costs” or “transactions costs”’.⁸⁶

Before proceeding to the presentation of Neo-liberals’ arguments supporting their claim on the role of international regimes, institutions and organisations it is important to define these concepts, as they are not straightforward and disagreements regarding their definitions and scope exists even among neo-liberal scholarship. The most famous definition of international regime was delivered by Krasner. According to him, international regime should be understood as ‘sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations’.⁸⁷ In a similar manner, Haas defines regimes as ‘*norms, procedures, and rules agreed to in order to regulate an issue-area*. Norms tell us *why* states collaborate; rules tell us *what*, (...), the collaboration is about; procedures answer the question of *how* the collaboration is to be

⁸⁵ Hesenclever (n 80) 185. See, for example: Brams SJ, *Game Theory and Politics* (New York: The Free Press, 1975).

⁸⁶ Seater (n 78).

⁸⁷ Krasner (n 81) 185. Keohane, on the other hand defines regimes as ‘institutions with explicit rules, agreed upon by governments, that pertain to particular sets of issues in international relations’ cited in Hesenclever (n 80) 180).

carried out'.⁸⁸ International regimes are seen as a 'special case of international institutions'⁸⁹ or 'specific institutions'.⁹⁰ According to Levy *et al.*, they are

social institutions that influence the behaviour of states and their subjects (...) The term is explicitly broad and captures the unwritten understandings and relationships, as well as the formal legal agreements, that influence how states and individuals behave in any given issue-area.⁹¹

Most critics of the neo-liberal approach point out that the term "international regime" is yet another way of labelling "international organization". According to Neo-liberals, however, the terms "international regime" and "international organization" should not be seen as analogous, although some of regimes possess organizational structures. According to Keohane, the term "international institution" should be identified as 'related complexes of rules and norms, identifiable in space and time'⁹² and be seen more as 'sets of practices and expectations rather than in terms of formal organizations with imposing headquarters buildings'.⁹³ Hesenclever *et al.*, goes further and argues that

⁸⁸ Haas EB, "Why Collaborate?: Issue-Linkage and International Regimes," *World Politics* 32, no. 3 (1980): 397.

⁸⁹ Hesenclever (n 80) 179.

⁹⁰ Onuf N, "Institutions, Intentions and International Relations," *Review of International Studies* 28 (2002): 225.

⁹¹ Levy JS *et al.*, *The Study of International Regimes. Working Paper* (Laxenburg: IIASA, 1994), Preface.

⁹² He continues saying that '[t]his conception of the scope of my analytic enterprise deliberately omits institutions that are merely categories of activity, as well as general norms that can be attached to any of a number of rule complexes' cited in Onuf (n 90) 223.

⁹³ Keohane RO, *After Hegemony. Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984), 246.

regimes –being sets of principles, norms, rules, and procedures- do not possess the capacity to act. By the same token, the sphere of activity of an organization need not be restricted to any one issue-area of international politics, as exemplified by the United Nations.⁹⁴

The importance of international regimes, according to Neo-liberals, can be observed in their wide-ranging proliferation since the Second World War.⁹⁵ Numerous studies treating the notion of international regimes have been conducted in areas such as international trade and finance, national security, energy, human rights and international environment.⁹⁶

As already mentioned, international regimes are portrayed as tools available to egoist states in order to enable international cooperation in the condition of international anarchy.⁹⁷ The rationale behind the establishment of an international regime can be seen in that ‘actors in world politics believe that with such arrangements they will be able to make mutually beneficial agreements that would otherwise be difficult or impossible to attain’.⁹⁸ Therefore states anticipate joining a particular regime when it is in their self-interest, i.e. ‘they expect the benefits of membership to outweigh the costs’.⁹⁹ In sum, as Keohane famously argued, ‘institutions can help

⁹⁴ Hesenclever (n 80) 179.

⁹⁵ Cerny (n 81) 8.

⁹⁶ Setear (n 78).

⁹⁷ Tallberg Jonsson C, "Institutional Theory in International Relations," in <https://lup.lub.lu.se/luur/download?func=downloadFile&recordOid=534142&fileOid=625444> [accessed 1 December 2012]. According to Keohane, ‘a major function of international regimes is to facilitate the making of mutually beneficial agreements among governments, so that the structural condition of anarchy does not lead to a complete “war of all against all”’ (Keohane RO, "The Demand for International Regimes," *International organization* 36, no. 2 (1982): 332.)

⁹⁸ Keohane (n 97) 334.

⁹⁹ *ibid* 331-332. Exploring this reasoning further, Keohane argues that Neo-liberals ‘view institutions as affecting patterns of costs. Specifically, institutions reduce certain forms of uncertainty and alter transaction costs (...) Even in the absence of hierarchical authority, institutions provide information

states work together'.¹⁰⁰ He bases his argument on an assumption that 'concern about the future helps to promote cooperation' and the role of international institutions is significant 'since institutions embody, and affect actors expectations'.¹⁰¹ Neo-liberals further argue that international regimes have an impact on the behaviour of states because by joining a particular regime a state itself accepts certain constraints on its behaviour. Moreover, they maintain that this constraining aspect of international regimes is crucial as it allows 'states to restrain themselves and others from pursuing short-term interests at the expense of shared long-term goals',¹⁰² where the latter rather than the former is seen as more desired and valued by states. In sum, the influential role of international institutions is seen in 'encouraging cooperative habits, monitoring compliance and sanctioning defectors'.¹⁰³ Furthermore, international regimes 'enhance trust, continuity and stability in a world of ungoverned anarchy'.¹⁰⁴

The utilitarian and functional nature of international regimes can be observed when one attempts to look at the origins of their establishment. According to Neo-liberals, international regimes usually develop when the most powerful state in the international arena, for instance the US in the aftermath of the Second World War, endeavour to adjust the international order to its own interests. From this it can be

(through monitoring) and stabilize expectations. They may also make decentralized enforcement feasible, for example by creating conditions under which reciprocity can operate' (Keohane (n 79) 386).

¹⁰⁰ Grieco JM, "Anarchy and the Limits of Cooperation," in *Neorealism and Neoliberalism, the Contemporary Debate*, ed. Baldwin DA (New York and Chichester: Columbia University Press, 1993), 122.

¹⁰¹ Axelrod R Keohane RO, "Achieving Cooperation under Anarchy: Strategies and Institutions," in *Neorealism and Neoliberalism: The Contemporary Debate*, ed. Baldwin DA (New York and Chichester: Columbia University Press, 1993), 91-94.

¹⁰² Hathaway OA, "Between Power and Principle: An Integrated Theory of International Law," *University of Chicago Law Review* 72 (2005): 479. In fact 'the divergence between short and long-term interests' is seen as the main source of '[c]onflicts between state interests and international regimes' (Katzenstein PJ, "Analyzing Change in International Politics: The New Institutionalism and the Interpretive Approach," *MPIFG Discussion Paper Guest Lecture 90/10* (1990): 15.)

¹⁰³ Burchill S *et al.*, *Theories of International Relations* (3rd edn Basingstoke: Palgrave Macmillan, 2005), 65.

¹⁰⁴ *ibid.*

deduced that if a particular regime encompasses the goals and interests of the hegemonic power within an international system then such a regime is likely to be stable and successful. Although the role of the hegemonic state in the regimes' creation is unquestioned by Neo-liberals, they argue that once the regimes are embedded within the system, they 'acquire their own dynamic' and subsequently 'express only incompletely the interests and purposes of the hegemonic state'.¹⁰⁵ The significance and influential role of international regimes can be further observed in that even if the decline of the hegemonic power occurs, international regimes 'are strong enough to make sustained cooperation possible, though not inevitable'.¹⁰⁶

Neo-liberals position international law 'under the banner of regime theory'.¹⁰⁷

Reus-Smit argues that the reason for that may be found in the fact that they were oriented more at 'economic theory rather than law' and because in 'the Realist-dominated field of cold war international relations it was less provocative to speak the language of international regimes and institutions than that of international law'.¹⁰⁸ Despite the difference in language being used the subject of the discussion in essence remains the same. Indeed, as discussed earlier, many international regimes are created out of formal international agreements,¹⁰⁹ embodying certain rules and principles, which can be seen as the common characteristic of international law. Even though international regimes might be viewed as encompassing a broader institutionalisation

¹⁰⁵ Katzenstein (n 102) 15.

¹⁰⁶ Keohane (n 93) 43.

¹⁰⁷ Raustiala K Slaughter A, "International Law, International Relations and Compliance," in *Handbook of International Relations* ed. Carlnaes W *et al.* (Thousand Oaks: Sage Publications, 2001), 540.

¹⁰⁸ Reus-Smit C, "International Law, " in *The Globalization of World Politics. An Introduction to International Relations* ed. Baylis J *et al.* (4th edn Oxford: Oxford University Press, 2008), 290.

¹⁰⁹ However, some of international regimes, namely tacit regimes come into existence only with informal rules.

than international law¹¹⁰ for the purpose of this study the scholarship treating the former will be used as the neo-liberal standpoint on the role of international law.

Neo-liberals 'recognize that legal rules do, in fact, foster compliance with regime norms by providing channels for dispute-settlement, signalling and triggering retaliatory actions, and requiring states to furnish information regarding compliance'.¹¹¹ And thus from a neo-liberal perspective, international law does matter. Therefore, it can contribute to international cooperation in a significant way. As states are seen as rational actors oriented more at long-term objectives, compliance with international law seems to be rational and reasonable. However, as states are utility-seekers having in mind their absolute gains, international law should be seen as a tool helping to reach these objectives. In other words, the role of international law is seen through the lenses of functionality and usefulness.

The functional character of international law as argued by Neo-liberals can be observed also in that it enabled a cooperation between states, even those who belong to different cultures or differing domestic political systems so clearly exemplified during the Cold War.¹¹² Although Neo-liberals are greatly committed to the study of international cooperation, they do not focus much on the understanding of the notion of international society. Nevertheless, certain neo-liberal assumptions on the idea of

¹¹⁰ As already highlighted Krasner's definition of international regime entails decision-making procedures referring for instance to the system of voting, which in turn suggests a high level of institutionalization, which may not exist in the case of international law. Moreover, at some level signatories of some of international regimes do in fact establish organisations to foster the objectives of the regime.

¹¹¹ Koh HH, "Why Do Nations Obey International Law?," *The Yale Law Journal* 106 (1997): 2625.

¹¹² This includes for example various economic as well as security regimes. The most famous of the former is the GATT (the General Agreement on Tariffs and Trade) established in 1947 which aimed to liberalize world trade through various negotiations and agreements. See for example: Souza EM de, "Re-Evaluating the Contribution and Legacy of Hedley Bull," *Brazilian Political Science Review* 2, no. 1 (2008): 110.

international society can be deduced from their treatment of the notion of cooperation between states. Firstly, unlike Realists they do not question the very existence of international society. Secondly, Neo-liberals would not doubt liberal arguments that closer and deeply rooted relationships could be found between liberal democracies. However, they would also appreciate the fact that an international society can be comprised of states with various domestic systems of government. Thirdly, their understanding of international society entails that it possess a functional rather normative character. And its role is to facilitate and provide grounds for cooperation among international actors. Therefore, it is very likely that they would agree with the following argument that the possibility of the existence of international society despite ethnical or cultural diversities and observable differences in terms of 'goals and values' between the members of international society is substantiated by the recognition that states are nonetheless 'bound by a common code of co-existence'.¹¹³ And the role of international institutions was not intended 'to provide a stable and universal peace, but only to mitigate the inevitable conflicts that arise from the existence of a multiplicity of sovereignties'.¹¹⁴

In the final part of the analysis of the merits of Neo-liberalism it is important for this thesis to include a neo-liberal perspective on the notion of change. In opposition to realist and neo-realist scepticism in relation to the possibility of change in world politics, one of the first main assumptions made by Neo-liberals is that the second half of the twentieth century marked a significant rise in the proliferation of international regimes and other international institutions not comparable with any other moment in

¹¹³ Wheeler NJ Dunne T, "Hedley Bull's Pluralism of the Intellect and Solidarism of the Will," *International Affairs* 72, no. 1 (1996): 95.

¹¹⁴ Alderson K Hurrell A, ed., *Hedley Bull on International Society* (Basingstoke and London: Macmillan Press Ltd, 2000), 8.

world history, which marks a significant change in the international system. They also recognise that although states remain the primary international actors, the significant impact on international relations that saw a rise in the number and roles of other actors such as international organisations and non-state actors is unquestionable.¹¹⁵ Therefore they accept the possibility of changes in ‘the characteristics of the international system’,¹¹⁶ and although they do not treat directly the concept of international law, their assumptions on the notion of change in referring to an international regime can be treated as adaptable in relation to international law. In addition, the aforementioned changes in the characteristics of an international system can have an impact on an international regime as well as influence in its successfulness.¹¹⁷ Moreover, a change of international regime itself can occur when the principles or norms of such regimes change. If such a change takes place then ‘a new regime emerges’.¹¹⁸ Another possibility of change in relation to international regimes is when rules and decision-making procedures change, i.e. a change takes place within the regime itself.¹¹⁹

In the light of the main arguments and assumptions presented above, the possible neo-liberal hypothesis regarding the variation of the response of international society towards the interventions in question can be viewed in the following way. Firstly, the prospect of a change, even in relation to the regime governing the use of force and therefore relating to the notion of national interest and security, is possible. Thus, it might be argued that the way in which international society responded towards 9/11 and the subsequent intervention in Afghanistan indicates an altered approach

¹¹⁵ See, for example: Keohane RO, "International Institutions: Can Interdependence Work," *Foreign Policy* 110 (1998): 82-96.

¹¹⁶ Keohane (n 97) 331-332.

¹¹⁷ *ibid* 331-332.

¹¹⁸ Hesenclever (n 80) 180.

¹¹⁹ *ibid* 180.

towards the use of force in response to acts of terrorism. Secondly, such a possibility, as will be demonstrated, was conditioned by the fact that it was the US – that is the hegemon - who made an instigation of such a change achievable. In a neo-liberal view such situation was to be expected as the role of the hegemon in creation of international regimes is not novel. Thirdly, it will be argued that because it is in states' own interest, a change within the existing regime governing the use of force will be consolidated. Thus, the fact that international society also recognised the Israeli right to self-defence in relation to the 2006 Operation *Change Direction* should be as evidence of such a consolidation.

The following section presents the main assumptions of the theoretical approach chosen to explain the topic in question. The synthesis of the English School and Constructivism with its emphasis on the role of international society and their distinct account of norms and a complex understanding of the notion of interest deliver the most comprehensive explanation of the changed international approach towards the use of force in self-defence evident since 9/11.

Part Four: The Symbiotic Approach of the English School of International Relations and Constructivism

As mentioned, the synthesis of the English School and Constructivism delivers an important contribution to the study of the status of international law. The following case studies will demonstrate that such a symbiotic approach allows for a comprehensive analysis of the shift in international approach towards the use of force observable since the 9/11 attacks. This part of the chapter commences in a similar way

to the preceding parts in that it introduces the reader to the fundamental assumptions and arguments advocated by leading representatives of both the ES and Constructivism.

The English School of International Relations begins by not questioning certain crucial points made by the representatives of both (Neo)realism and Neo-liberalism. The ES theorists agree that states are primary international actors, who pursue national interests and seek their own security. Moreover they do not negate the argument that international anarchy constitutes an important feature of international politics. What they, however, advocate is that international anarchy does not impose conflictual relations among states to the extent comparable with the Hobbesian state of nature. And that in fact various international institutions, including *inter alia* international law, impose certain constraints and limitations on states' actions.

Constructivists, in opposition to Realists, argue that the international structure is in fact socially constructed, i.e. '[a]narchy is what states make of it'.¹²⁰ It is usually held that a structure is 'a set of relatively unchangeable constraints on the behaviour of states'.¹²¹ From a realist perspective, such constraints are embodied within the notions such as self-help and the pursuit of power. As already mentioned, the anarchical structure of the international environment constrains cooperation among states, as it forces states to seek power and further their own national interests. Wendt, however, claims that 'self-help and power politics do not follow either logically or causally from anarchy and that if today we find ourselves in a self-help world, this is due to process,

¹²⁰ Wendt AE, "Anarchy Is What States Make of It: The Social Construction of Power Politics (1992)," in *International Theory. Critical Investigations*, ed. Der Derian J (Basingstoke and London: MacMillan Press Ltd, 1995), 132.

¹²¹ Hopf T, "The Promise of Constructivism in International Relations Theory," *International Security* 23, no. 1 (1998): 172.

not structure'.¹²² He bases his argument on the assumption that 'structure has no existence or causal powers apart from process. Self-help and power politics are institutions, not essential features of anarchy'.¹²³

In addition, relations between states may be as peaceful as they can be conflictual but such a condition does not derive from the international anarchy, which is seen as 'an empty vessel with no inherent logic', but from the culturally or historically created understandings of what the absence of world government in fact means.¹²⁴ Such description brings Constructivism closer to the ES understanding of international anarchy. In fact, Wendt agrees with Bull's distinction of three different types of anarchy, namely a 'Hobbesian', a 'Lockean' or a 'Kantian'.¹²⁵ And as such, international structure might change mirroring the different times in history.

Continuing their deliberation on the notion of international structures Constructivists claim that they are not 'reified objects that actors can do nothing about, but to which they must respond' but '[r]ather structures exist only through the reciprocal interaction of actors'.¹²⁶ What this suggests is that these structures have social rather than only material aspects and that they shape not only the behaviour of states but also their identities and interests.¹²⁷ For instance, taking both the Cold War and the post-Cold War environments into consideration, it can be argued, from a

¹²² Wendt (n 120) 132.

¹²³ Wendt (n 120) 132.

¹²⁴ Copeland DC, "The Constructivist Challenge to Structural Realism: A Review Essay," *International Security* 25, no. 2 (2000): 198.

¹²⁵ Wendt A, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 246-312. See also: Lebow RN, *Coercion, Cooperation, and Ethics in International Relations* (New York and Abingdon: Routledge, 2007), 299.

¹²⁶ Copeland (n 124) 190.

¹²⁷ Wendt AE, "Constructing International Politics," *International Security* 20, no. 1 (1995): 71-72. See also: Guzzini S, "A Reconstruction of Constructivism in International Relations," *European Journal of International Relations* 6, no. 2 (2000): 165.

constructivist point of view, that the understanding of what the notion of international anarchy means was perceived differently. The conflictual nature of bipolarity, which emerged after the Second World War, shaped and was shaped by the identity of the two superpowers. The collapse of the Soviet Union relaxed the tensions and constraints and the identity of both the US and Russia altered and was redefined. As will be demonstrated, a similar assumption can be made about the nature of international society. It will be demonstrated, that the contemporary international society no longer fits the minimalistic, pluralist conception, based on the notion of mere co-existence. It will be shown that, in fact, it embodies certain characteristics of the *solidarist* conception of international society.

a) The Concept of International Law

The English School of International Relations dedicates a special place for international law. As was already mentioned international law is seen as an institution of international society, defined as ‘a body of rules governing the mutual interaction not only of states but of other agents in international politics (...) which is considered to have *the status of law*’.¹²⁸ However, it should not be considered as corresponding to the rule of law observed within the municipal sphere. Whereas in modern states government can be seen as an authority responsible for sustaining order and compliance with law, in the international system there is no such authority which could enforce compliance with international law.¹²⁹ What follows is that international law is

¹²⁸ Bull (n 18) 124.

¹²⁹ *ibid* 125.

not 'a necessary or essential condition of international order' and 'is not itself sufficient to bring about international order'.¹³⁰

It is argued that the existence of international law is 'the most essential proof of the very existence of an international society' and therefore 'those who deny the existence of international society begin by denying the reality of international law'.¹³¹ What follows is that international law cannot identify the idea of international society as the supreme normative principle unless an international society in some measure already exists, and is receptive to the treatment of this principle as the supreme one. Bull in his analysis of the meaning of international law was in contradiction with the instrumental treatment of international law, so explicit in the writings of both Neo-realists and Neo-liberals.¹³² In his own words: 'the importance of international law does not rest on the willingness of states to abide by its principles to the detriment of their interests, but in fact that they so often judge it in their interest to conform to it'.¹³³ Exploring this idea, Wheeler and Dunne argue that 'this narrow argument about the motives of states in conforming to international law is projected on to the broader canvas of international society as a whole' and therefore 'the case for international society against realpolitik is that states will adhere to the rules and norms of the society of states even when these conflict with their non-vital interests'.¹³⁴ Both authors are of the opinion that the writings of Bull indicate implicitly that he agreed that states' actions should be intended to strengthen established normative principles and

¹³⁰ *ibid* 136-137

¹³¹ Wight M cited in Souza (n 112) 97.

¹³² Sofer S, "Recovering the Classical Approach," *International Studies Association* (2002): 144.

¹³³ Bull (n 18) 134.

¹³⁴ Wheeler, Dunne (n 113) 94. See also: Dunne T, *Inventing International Society. A History of the English School* (Basingstoke and London: MacMillan Press Ltd, 1998).

international society itself.¹³⁵ At the same time, however, Bull points out that it is a mistake to think as if

international law were to be assessed only in relation to the function it has of binding states together, and not also in relation to its function as an instrument of state interest and as a vehicle of transnational purposes; as if attempts to maintain a balance of power were to be interpreted only as endeavours to preserve the system of states, and not also as manoeuvres on the part of particular powers to gain ascendancy; as if great powers were to be viewed only as “great responsables” or “great indispensables”, and not also as great predators; as if wars were constructed only as attempts to violate the law or to uphold it, and not also simply as attempts to advance the interest of particular states or of transnational groups.¹³⁶

This lengthy quotation is crucial in understanding the complexity of international politics. Although notions such as values, principles, norms, rules and international institutions constitute an important and irreplaceable feature of world politics, the international arena is not free from power politics, conflicts, and the pursuit of varying interests or egoism.¹³⁷ As will be shown throughout the thesis, the role of the most powerful states, in particular the US, in international politics is extensive. As has already been introduced and will be demonstrated in the subsequent chapters,

¹³⁵ Wheeler NJ Dunne T, "Hedley Bull and the Idea of a Universal Moral Community: Fictional, Primordial or Imagined?," in *International Society and the Development of International Relations Theory*, ed. Roberson BA (London: Pinter, 1998), 46.

¹³⁶ Bull (n 18) 49.

¹³⁷ Makinda SM, "Hedley Bull and International Society," *Working Paper No. 1997/3*, (National Library of Australia: Canberra 1997): 8.

international law embodies and is influenced by interests and values held by dominant states. Moreover most of the changes that occur in international law usually originate from these dominant powers. However, the fact that a particular state occupies the status of great power does not mean that such a state is in a position of imposing or forcing certain rules or behaviour unquestionably and without any protest or objection. The aforementioned institution of sovereignty is not just a lip service or an archaic term. It gives states a choice. As the second case study will demonstrate for a change to occur within the international approach towards the use of force in relation to terrorism, the other members of international society – and not only the US - had to accept such a new development. Although the most dominant and powerful member of such a society may have a power to instigate a changed approach, for such a change to actually be embedded within the system, other members of international society need to accept and recognise it. This is in agreement with a constructivist view that states' interests are shaped further by 'commonly held principles (...) behaviour norms, or shared terms of discourse'.¹³⁸ Although they do not disagree with the IR mainstream theories, which claim that norms and institutions are created by states in pursuit of their own interests and values, they claim that these norms and institutions redefine these 'interests and values, perhaps even the identities of the actors themselves'.¹³⁹ In fact, norms in a constructivist perspective play a crucial role in international politics. For them, the importance of norms is not seen only in their role of regulating states' behaviour as emphasised by Neo-liberals but their significance lies also in the fact that they

¹³⁸ Geisinger A Stein MA, "A Theory of Expressive International Law," *Vanderbilt Law Review* 60 (2007): 110-111.

¹³⁹ Abbott (n 10) 368.

‘constitute actor identities and interests’.¹⁴⁰ Thus, ‘interests cannot be determined in isolation from ideas and norms’.¹⁴¹

Here it is important to elaborate the meaning of an international norm as understood by Constructivists. Norms are defined as ‘a set of intersubjective understandings and collective expectations regarding the proper behaviour of states and other actors in a given context or identity’.¹⁴² They can have either a constitutive character, i.e. they define actors’ identity, or a regulative character, in that they prescribe the proper and expected behaviour.¹⁴³ What distinguishes norms from other types of rules is the embedded ‘quality of “oughtness”, which describes what behaviour is an appropriate one and the appropriateness of behaviour is known through the ‘judgement of a community or a society’.¹⁴⁴ What follows is that a state’s decision to act in a particular way is driven by other states’ possible reaction to or perception of such action.¹⁴⁵ For instance, if a state adheres to norms governing a particular group, the likelihood is that other members of such a group will perceive the state as trustworthy and ‘strongly attracted to the group’.¹⁴⁶ Therefore many Constructivists emphasise the impact that reputation can have on states’ behaviour.¹⁴⁷

¹⁴⁰ Checkel JT, "The Constructivist Turn in International Relations Theory," *World Politics* 50, no. 2 (1998): 328.

¹⁴¹ Björkdahl A, "Norms in International Relations: Some Conceptual and Methodological Reflections," *Cambridge Review of International Affairs* 15, no. 1 (2002): 20.

¹⁴² *ibid* 15.

¹⁴³ Katzenstein PJ, "Introduction: Alternative Perspectives on National Security," in *The Culture of National Security: Norms and Identity in World Politics* ed. Katzenstein PJ (New York and Chichester: Columbia University Press, 1996), 5.

¹⁴⁴ Finnemore M Sikkink K, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics," *Annual Review of Political Science* 4 (2001): 891-892.

¹⁴⁵ Geisinger, Stein (n 138) 86.

¹⁴⁶ *ibid* 96.

¹⁴⁷ See for example: Kratochwil FV, *Rules, Norms, and Decisions. On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989). Shannon VP, "Norms Are What States Make of Them: The Political Psychology of Norm Violation," *International Studies Quarterly* 44 (2000): 293-316. Sharman JC, "Rationalist and Constructivist Perspectives of Reputation," *Political Studies* 55, no. 1 (2007): 20-37.

They oppose the neo-liberal argument that norms possess only a functional character, enabling states to pursue national interests. For them, norms embody explanatory power, which is 'independent of structural and situational constraints', which means that they influence states' behaviour in their own ways.¹⁴⁸ They emphasise the fact that norms can shape states' interests even 'in ways that contradict the strategic imperative of the international environment (...) or the functional need to cooperate'.¹⁴⁹ As an example they bring the notion of humanitarian intervention, in which states may decide to get militarily involved in a situation that does not provide them with any obvious economic or strategic benefit.¹⁵⁰ Thus, by referring to the question of values in international politics, Constructivists emphasise the normative character of norms and international law, which can also lead states to redefine their interests. They argue, for example, that the norm of racial equality influenced states' condemnation of Apartheid even though 'they had material incentives not to do so'.¹⁵¹ As will be shown in the proceeding chapter, the embedded norm of non-intervention had great influence on the response of international society towards the Israeli military operation within the territory of Lebanon.

The analysis of the notion of international norms, as well as the question of their emergence and their roles leads directly to the notion of change. In analysing the question of change it is useful to refer back to the norm of racial equality. As mentioned, the development of this norm led international society to condemn the

¹⁴⁸ Björkdahl (n 141) 11.

¹⁴⁹ Kowert P Legro J, "Norms, Identity, and Their Limits: A Theoretical Reprise," in *The Culture of National Security: Norms and Identity in World Politics* ed. Katzenstein PJ (New York and Chichester: Columbia University Press, 1996), 462.

¹⁵⁰ *ibid* 462.

¹⁵¹ Checkel (n 140) 336.

government of South Africa for its policy of Apartheid.¹⁵² Although many powerful members of international society used to be the colonial powers, once colonialism was over and the norm of racial equality emerged and was recognised the racist policies of South Africa were no longer accepted or even tolerated. Constructivists claim that the violation of certain norms is not disregarded and even states, which may have interests in keeping good relations with the norm-breaking state will nevertheless stand by other members of international society. Therefore 'international law and its associated institutions' create and disperse 'beliefs and standards of appropriate behaviour that have a powerful socializing effect on international relations'.¹⁵³ Hence, both interests and identities of states can be altered in a process of engaging with international law. In addition, '[t]he process of negotiation, mutual education, and principled argument related to the creation of and compliance with international law has a feedback effect on how national actors see themselves and their interests'.¹⁵⁴

Although from the above passage it seems that the possibility of change is not a subject of dispute among Constructivists in that they question 'the inevitability of the social status quo',¹⁵⁵ in fact they argue that it is not so straightforward. The fact that agency and structure can in fact shape each other means that change can be both 'possible and difficult'.¹⁵⁶ However, they also claim that change can in fact occur as a result of just one precedent.¹⁵⁷ They emphasise what they refer to as the focal points of history, which can trigger change that not only brings about an emergence of a new

¹⁵² See, for example: Klotz A, "Norms Reconstituting Interests: Global Racial Equality and Us Sanctions against South Africa," *International Organisation* 49, no. 3 (1995): 451-478.

¹⁵³ Goldsmith J Levinson D, "Law for States: International Law, Constitutional Law, Public Law," *Harvard Law Review* 122, no. 7 (2009): 1829.

¹⁵⁴ *ibid.*

¹⁵⁵ Guzzini (n 127) 154.

¹⁵⁶ Hopf (n 121) 181.

¹⁵⁷ Björkdahl (n 141) 20.

norm but also an alteration in the understanding of what is meant by interest and appropriate behaviour. For instance, the atrocities committed in Rwanda and later in Kosovo triggered an international consensus that international society cannot remain passive to human suffering and prompted an international action.¹⁵⁸ At the same time, however, the enforcement of this norm is limited by the existence of another norm – that of states’ sovereignty, which proscribes an internal authority within specified territory.

This subsection of the chapter has outlined basic and fundamental assumptions and concepts of both the ES and Constructivism. Based on the merits of these assumptions these IR perspectives have been chosen as a theoretical background for this thesis. In the view of the present author a synthesis of the ES and Constructivism allows for the most thorough understanding of the status of international law in the wake of 9/11. As already mentioned and what will be further elaborated throughout the thesis, the scope of international law cannot be limited only to its utilitarian character. Its normative aspect, i.e. what should be seen as an appropriate behaviour cannot be undermined. International law provides a guidance for appropriate behaviours and states recognise that certain principles, which do not clearly reflect their national interests, need to be upheld and should not be broken. Thus, states in adopting their decisions are guided not only by their national interest but also by the aforementioned notion of “oughtness”. For example, as the first case will be shown, the US – a traditional Israeli ally – criticised the government of this state for its intervention in Lebanon despite incentives not to do so. Moreover, as will be further demonstrated, international law not only constrains states’ actions but also reflects the identity of

¹⁵⁸ Abbott (n 10) 377.

international society. As identity of the latter changes, so does the role and scope of the former. It will be argued that the identity of international society and thus the understanding of international law in the wake of 9/11 differ from the ones existing during the Cold War.

b) The Concept of International Society

The English School of International Relations can effectively be classified as the theory of international society. A timeless definition of international society is delivered by Bull in a classic text on the subject, namely: the *Anarchical Society*. International society is defined here as ‘a group of states, conscious of certain common interests and common values’, which ‘form[s] a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions’.¹⁵⁹ A few implications can be deduced from the aforementioned definition. Firstly, the membership of such society is reserved for states and the membership does not necessarily have to be universal. Indeed it would be difficult to claim that prior to the twentieth century international society was comprised of the majority of states. Secondly, members of this society not only share interests and values but they recognise the constraining power of international law. What follows is that states in relations with other states acknowledge that they are *bound by certain rules* such as respect for others’ claims to independence, honouring agreements and limitation in exercising force against other states. Last, but not least, states acknowledge the importance of international institutions, which

¹⁵⁹ Bull (n 18) 13.

includes 'the forms of procedures of international law, the machinery of diplomacy and general international organisations, and customs and conventions of war'.¹⁶⁰

This distinguishes international society from the notion of international system understood more in a traditional and realist manner, 'which contends that states belong to an international system in which there is seldom relief from competition and conflict'.¹⁶¹ Accordingly, international system is brought into being 'when two or more states have sufficient contact between them, and have sufficient impact on one another's decisions, to cause them to behave – at least in some measure – as parts of a whole'.¹⁶² When can the relations between states be viewed as reflecting and encompassing elements of international society instead of merely that of international system? In a view of Bartelson, 'an international system becomes an international society when the logic of anarchy governing interaction in the system presses forward a notion of shared identity that comes to constitute the foundation of international society'.¹⁶³ There is a need for states not only to 'recognise each other as being the same kind of entity', but also to acknowledge and accept 'sovereign equality' of all members of international society.¹⁶⁴

According to the ES, there are six goals of international society. The first objective is 'the preservation of the system and society itself'; the second aim refers to 'the maintenance of the independence or eternal sovereignty of individual states'; the

¹⁶⁰ *ibid* 13.

¹⁶¹ Linklater A Suganami H, *The English School of International Relations. A Contemporary Reassessment* (Cambridge: Cambridge University Press, 2006), 117.

¹⁶² Bull (n 18) 9.

¹⁶³ Bartelson J, "Short Circuits: Society and Traditions in International Relations Theory," *Review of International Studies* 22, no. 4 (1996): 343.

¹⁶⁴ *Ibid*.

third and fourth treats the question of the use of force.¹⁶⁵ While the former's objective refers to the creation of peace understood as the 'absence of war among members of international society', the latter establishes the more achievable goal especially when international society has become universal - namely the 'limitation of inter-state violence'.¹⁶⁶ The fifth goal aims at the respect and adherence to international agreements.¹⁶⁷ The last objective refers to the respect and stability of the rights, which derive from the institution of sovereignty.¹⁶⁸ Bull points out, however, that these goals are not exhaustive and might be subject to change. As the history of relations between states evolves, so does the nature of international society. At different times, different goals are prioritised. What should be emphasised, nevertheless, is that all of these goals contribute to the international order.¹⁶⁹

One of the most important contributions of theorists addressing the notion of international society is their emphasis that such a society can exist despite cultural, linguistic or religious differences.¹⁷⁰ As international society became universal, which can be observed by looking at the membership of the United Nations, 'the doctrine that this society rests upon a specific culture of civilisation is generally rejected'.¹⁷¹ The main features of the contemporary international society are as follows: the equality in terms of rights and obligations; international agreements are based on the notion of reciprocity; rules and institutions derive from states' consent.¹⁷²

¹⁶⁵ Linklater, Suganami (n 161) 57.

¹⁶⁶ *ibid.*

¹⁶⁷ *ibid.*

¹⁶⁸ *ibid.*

¹⁶⁹ Bull (n 18) 19.

¹⁷⁰ Linklater A, "The English School, " in *Theories of International Relations* ed. Burchill S *et al.* (3rd edn Basingstoke: Palgrave Macmillan, 2005), 90.

¹⁷¹ Bull (n 18) 37.

¹⁷² *ibid.* 33.

As the constructivist view is that international politics is socially constructed, theorists associated with this theory claim that the role that international society itself plays in the international arena is significant. They argue that international society indeed shapes the very identity of states by 'virtue of recognizing their legitimacy and admitting them to international organizations whose membership is often restricted only to states' and thus in fact statehood 'depends partly on the position [of a state] in the international society of states'.¹⁷³ What is particularly important is that in the Constructivists' view the very sustainability of international society is perceived as constituting states' long-term interests. Hence, international society is seen as a force in itself, influencing states' decisions.¹⁷⁴

Such a perspective on international society as well as the Constructivists' emphasis on the constitutive values of norms and the processes of norm-generation brings Constructivism close to the English School of International Relations. As Jepperson has argued 'it is not a great leap from arguing that adherence to norms is a condition of participation in a society to argument that states are constructed, partly or substantially, by these norms'.¹⁷⁵

A constructivist emphasis on the role of ideas, norms and identities in international politics enriches the discussion about the nature and role of international society as well as international law. In addition, Constructivists argue that certain notions, such as national interest, sovereignty or even the state, are not given but instead are socially constructed, i.e. the understandings and ideas that actors have about

¹⁷³ Katzenstein (n 143) 24.

¹⁷⁴ Geisinger, Stein (n 138) 111.

¹⁷⁵ Jepperson RL *et al.*, "Norms, Identity, and Culture in National Security," in *The Culture of National Security: Norms and Identity in World Politics* ed. Katzenstein PJ (New York and Chichester: Columbia University Press, 1996), 45.

them are inter-subjective and can change.¹⁷⁶ They base their argument on the assumption that international actors 'operate within a social context of shared subjective understandings and norms' and due to that the aforementioned notions 'are not objectively true, but subjective; their meaning is not fixed, but contingent'.¹⁷⁷

To what extent can we talk about the existence of international society in the contemporary world? Do states form an international entity based on the idea of shared identity? Do they conceive themselves as being bound by an established and recognised set of rules and norms? This thesis argues that all these questions can be answered affirmatively. The existence of international society can be observed in that states created and have been upholding various norms, rules and principles with the aim of not only securing their interests but also ensuring a more peaceful co-existence. According to Reus-Smit, '[t]he warp and weft of international society are the "authoritative practices" that enable states with different goals, values and objectives to coexist and co-operate, such as diplomacy and international law'.¹⁷⁸ It is submitted that states 'have established by dialogue and consent common rules and institutions for the conduct of their relations, and recognise their common interest in maintaining these arrangements'.¹⁷⁹ In fact Bull argues that:

[t]he element of international society has always been present (...) because at no stage can it be said that the conception of the common interests of states, of common rules accepted and common institutions

¹⁷⁶ Finnemore M Sikkink K, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics," *Annual Review of Political Science* 4 (2001): 392.

¹⁷⁷ Abbott (n 10) 367.

¹⁷⁸ Reus-Smit C, "Imagining Society: Constructivism and the English School," *British Journal of Politics and International Relations* 4, no. 3 (2002): 503.

¹⁷⁹ Bull H Watson A, "Introduction," in *The Expansion of International Society*, ed. Bull H Watson A (Oxford: Clarendon Press, 1984), 1.

worked by them, has ceased to exert an influence. Most states at most times pay some respect to the basic rules of coexistence in international society, such as mutual respect for sovereignty, the rule that agreements should be kept, and rules limiting resort to violence.¹⁸⁰

Such an understanding of the modern international relations distinguishes itself from the Hobbesian tradition, which emphasises the conflictual nature of inter-state relations. One of the most important aspects of international society is that states recognise that they are bound by these existing rules and norms. According to Bull, rules ‘must be obeyed to some degree, and must be reckoned as a factor in the calculations of those to whom it applies, even those who elect to violate it’.¹⁸¹ Moreover, rules

need to be legitimised in the eyes of the persons or groups to which they apply. Rules are legitimised to the extent that members of the society accept them as valid, or embrace the values implied or presupposed by the rules. To the extent that the rules are legitimised they do not depend for their effectiveness on sanctions or enforcement.¹⁸²

This is in agreement with Dunne, who argues that ‘the identity of being a member of international society generates an obligation to follow the rules’.¹⁸³ This can be exemplified by the international situation throughout the Cold War. Accordingly, even during the most turbulent moments of that period the US and the Soviet Union did not ‘break off diplomatic relations, withdraw recognition of one another’s sovereignty,

¹⁸⁰ Bull (n 18) 40.

¹⁸¹ *ibid* 53.

¹⁸² *ibid* 54

¹⁸³ Dunne T, "Sociological Investigations: Instrumental, Legitimist and Coercive Interpretations of International Society," *Millenium – Journal of International Studies* 30, no. 1 (2001): 73.

repudiate the idea of a common international law or cause the break-up of the United Nations into rival organisations'.¹⁸⁴ Yet, the existence of international society does not guarantee peaceful and harmonious relations between states. In a view of Bull, '[t]he element of international society is real, but the elements of a state of war and of transnational loyalties and divisions are real also, and to reify the first element, or to speak as if it annulled the second and third, in an illusion'.¹⁸⁵ States sometimes break the established rules but non-compliance with such rules does not mean that international society ceases to exist. According to the same author:

[w]hen accepted norms are broken, the offending state tries to justify its actions with reference to another norm or gives reasons why the actions constitutes a legal exception. If there were no such thing as international society, there would be no need to account for one's actions in this way.¹⁸⁶

This will be exemplified very clearly in the proceeding chapters, where it will be demonstrated that both countries in question, i.e. the US and Israel, delivered justifications for their actions, in which they relied upon specific international legal provisions. International society would be endangered if noncompliance with the established institutions, rules and norms of international behaviour became a notorious feature of international relations and it would no longer be viewed as an exception.

International society is not a static concept and is a subject of development and change. Frameworks of international relations undergo diverse transformations, which

¹⁸⁴ Bull (n 18) 41.

¹⁸⁵ *ibid* 49.

¹⁸⁶ Dunne (n 183) 78-79.

impact international society in a variety of ways. At the same time, any postulate suggesting an emergence of a change or transformation of/within international society needs to be vigorously investigated. The following paragraphs provide, thus, an overview of a number of issues and developments, which might be perceived as signalling what some called a process of ‘reinvention’ of international society.¹⁸⁷

The first argument is delivered by those who question a state-centric approach to international society. When we look at the contemporary world, it is, indeed, impossible not to take into account various and numerous voices other than those of states. When discussing the problématique of the use of force as a response towards terrorist attacks, one cannot help but notice the role of actors other than states. The fact that all three interventions discussed throughout this thesis occurred as results of attacks instigated by non-state actors might be viewed as challenging the state-centric approach to international relations. Indeed, the widespread process of globalisation visible at various platforms enabled a proliferation of numerous interactions involving a variety of international actors. Such account may even suggest that it is more adequate to refer to a world society rather than an international society. According to Williams, ‘whilst the institutions of international society have generally treated individuals as, for example, objects rather than subjects of international law, world society’s reconceptualisation of the nature of political space challenges the need to work through the state to achieve political significance’.¹⁸⁸ The idea of world society is

¹⁸⁷ Clark I, "Another 'Double Movement': The Great Transformation after the Cold War?," in *Empires, Systems and States. Great Transformations in International Politics*, ed. Cox M et al. (Cambridge: Cambridge University Press, 2001), 238.

¹⁸⁸ Williams J, "Pluralism, Solidarism and the Emergence of World Society in English School Theory," *International Relations* 19, no. 1 (2005): 31.

associated with a political system in which states are not the predominant actors, although this does not mean they disappear; where political activity is principally focused upon individuals, rather than institutionalised collectives; and where normative progress is understood in universal terms.¹⁸⁹

According to Buzan, while international society composes of states and treats them as dominant actors, the world society composes of various actors and emphasises the role and importance of transnational actors and individuals.¹⁹⁰ World society encompasses many elements and features of the *solidarist* conception of international society. First and foremost both emphasise the development, protection and enforcement of human rights, the right to self-determination, democracy and a possibility of humanitarian intervention. According to Neumann, ‘the discourse surrounding human rights was one key to the making of world society’.¹⁹¹ Indeed it is viewed from this perspective that ‘some cosmopolitanism, and concern for the rights of individuals, is necessary for international society’.¹⁹² As such, solidarism ‘focuses on the possibility of shared moral norms underpinning a more expansive, and almost inevitably more interventionist, understanding of international order’.¹⁹³ This is in a stark contrast to pluralism, which is ‘about the preservation and/or cultivation of the political and cultural difference and distinctness’.¹⁹⁴ Such characterisation makes the scope of international society rather limited and ‘restricted to shared concerns about the degree of international order under

¹⁸⁹ *ibid* 20.

¹⁹⁰ Buzan B, *From International to World Society? English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2004), 108.

¹⁹¹ Neumann IB, "The English School and the Practices of World Society," *Review of International Studies* 27, no. 3 (2001): 504.

¹⁹² Buzan (n 190) 47.

¹⁹³ *ibid* 47.

¹⁹⁴ *ibid* 46.

anarchy necessary for coexistence'.¹⁹⁵ While the *pluralist* conception of international society is state-centric, the *solidarist* one 'ties together state and non-state actors, and draws on cosmopolitan notions of individual rights and a community of humankind' and because of that 'it cannot help but blur the boundary between international and world society'.¹⁹⁶

Even though the various developments of the last decades point towards a greater relevance and importance of non-state actors the role of states has not been diminished. According to Friedrichs, '[t]he nation-state is the only authority which is entitled to convey popular legitimacy to collective decisions at the international level'.¹⁹⁷ In a slightly different manner, Armstrong observes:

Globalisation and other forces may well have created a structure of economic, social, political and cultural interactions that cannot fully be understood within a framework defined solely by the state and the relations among states, but they have not replaced that framework.¹⁹⁸

International society, encompassing either *pluralist* or *solidarist* characteristics, still remains a society of sovereign states. This is in an agreement with Brown, who states that 'state-centricity is a defining feature of a "society of states" approach and cannot simply be abandoned'.¹⁹⁹ Even though interactions at the global stage are

¹⁹⁵ *ibid* 46.

¹⁹⁶ *ibid* 48.

¹⁹⁷ Friedrichs J, "The Meaning of New Medievalism," *European Journal of International Relations* 7, no. 4 (2001): 491.

¹⁹⁸ Armstrong D, "Law, Justice and the Idea of a World Society," *International Affairs* 75, no. 3 (1999): 558.

¹⁹⁹ Brown C, "World Society and the English School: An "International Society" Perspective of World Society," *European Journal of International Relations* 7 (2001): 435.

conducted via various channels and include a variety of actors and thus are not limited only to states, special and distinctive rights and duties are awarded only to states. As Bull observes, 'states have been united in the belief that they are the principal actors in world politics and the chief bearers of rights and duties within it'.²⁰⁰ International law 'remains the law of states associated in a society of states, not of people who are members of some larger community'.²⁰¹

In the light of international law only states can lawfully use force while implementing their rights to self-defence. This right, embodied within the article 51 of the UN Charter, is restricted to states and states only. This right is recognised both in international customary law and international case law and its application has never been questioned. Furthermore, '[i]t is sovereign states which command most of the armed forces in the world, which are the objects of the most powerful human loyalties and whose conflict and co-operation determine the political structure of the world'.²⁰² In addition, '[n]ot only has globalisation been drive by state policies but state retreat is reversible and the power resources available are still critical and distinctive – Microsoft matters but so, too, do the marines.'²⁰³ According to Jackson, 'any claim that a "global civil society", consisting of such actors and networks, is displacing global international society based on sovereign states seriously misconstrues the character of international society'.²⁰⁴ A similar view is held by Reus-Smit, who argues that 'non-state actors do

²⁰⁰ Bull (n 18) 16.

²⁰¹ Armstrong (n 198) 559.

²⁰² Bull (n 18) 263.

²⁰³ Hurrell A, 'Foreword to the Third Edition: *The Anarchical Society* 25 Years On' in Bull (n 18) xvii.

²⁰⁴ Jackson R, *The Global Covenant. Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), 107.

not fundamentally alter the basic principles and dynamics of the society of sovereign states'.²⁰⁵

In conclusion, the intention of the present author is not to negate the impact of the proliferation and the role of various international non-state actors. Nevertheless the above analysis aimed to demonstrate that state-centric approach of international society is the most adequate in contributing to the explanation of questions posed in this study. Although the role of various actors in international politics can no longer be questioned, the complexity surrounding the notion of legitimacy of the use of force in relation to acts of terrorism can be explained most adequately and effectively by adopting this very approach. International law is created, interpreted and even reinvented by states. Only states can lawfully use force while implementing their rights to self-defence. As the right to self-defence remains states' domain such approach is both logical and effective. Moreover, the scope of this study does not allow for a thorough investigation of whether the current international society should be identified in fact as the world society. Such an investigation would require posing different questions. Lastly, as Dunne observes: 'the question whether one proceeds with an expansive understanding of international society – which includes a multiplicity of actors all enmeshed in international order – or a more restrictive one (simply the inter-state domain) is an analytical choice'.²⁰⁶

A role of and a growth in number of non-state actors are not the only developments suggesting a transformation or a reinvention of international society. This thesis argues that the contemporary international society no longer fits a

²⁰⁵ Reus- Smit (n 178) 503.

²⁰⁶ Dunne T, "System, State and Society: How Does It All Hang Together? 1 " *Millenium – Journal of International Studies* 34, no. 1 (2005): 164.

minimalist *pluralist* conception of international society but in fact embodies certain characteristics of a *solidarist* conception of international society. The former resided within the broad understanding of the notion of co-existence and thus limited itself to the emphasis of notions such as respect for states' sovereignty and non-intervention within domestic affairs. The latter, on the other hand, through its emphasis of the more deeply embedded cooperation between states embodies the notion of interest collectively understood. This suggests that it should not only be understood in terms of self-interest but also as in the collective interest of society. Although mainstream theories of IR might question such an understanding as in their discussions about states' interests they emphasise the material benefits residing within the thin conception of the self-interest, the case studies presented in this thesis will show that such a perception is no longer accurate.

As the identity of states, their roles and interests might change; the same applies to the international society. This thesis argues that the conception of international society during the Cold War differed from the one observed since the 1990s. Although a more in-depth analysis of this transformation of international society will be provided in chapter five and seven, certain basic reflections need to be addressed at this stage. As mentioned, the international society of the second half of the twentieth century can be identified as a *pluralist* society based on the notions of self-preservation, equality and sovereignty and a limited international engagement. Such a limited approach was based on the international situation of the time and the priority of sustainability of the international order and status quo. The current international society can no longer be viewed as resembling such characteristics. Although certain principles, for example the principle of sovereignty, have been sustained, states' understanding of their scope has

altered. For instance, it has become accepted that sovereignty is not absolute and, in fact, is conditional. What it means is that this principle implies not only rights but also obligations. The difference between the current international society and the one of the Cold War period can be viewed in that its members adopted a more active approach, evident for example in their approach towards the enforcement of international law. As will be shown in chapter five, the bipolarity and a continuing hostility between the East and the West allowed the international society to embrace only a limited role. The demise of these constraints in 1990s, however, created a foundation for an emergence of an international society that no longer resembled a limited *pluralist* conception.

c) The UN Security Council as a Proxy of International Society

This thesis analyses the ways in which international society reacted towards Israeli and the US military interventions as responses towards terrorist attacks. To this end it relies to a great extent upon meetings and statements delivered at the UN Security Council. In fact this thesis argues that the UN Security Council can effectively be used as a proxy of international society. Thus this part of the chapter provides reasoning behind such classification.

Firstly, the UN Security Council is the most important organ of the only universal international organisation, which is regarded as ‘a symbol of a sense of common interests and values’.²⁰⁷ The fact that its responsibilities encompass a management of situations threatening international peace and security including the instances of the use of force between states makes a consultation of its involvement

²⁰⁷ Bull (n 18) 250.

both logical and necessary. Due to the fact that its main responsibility is to maintain international order, its involvement in events surrounding Israeli interventions in Lebanon as well as the US intervention in Afghanistan was explicitly noticeable, consistent and continuous. As the following chapter will demonstrate the UN Security Council hold numerous meetings in the aftermath of each interventions, during which its members presented their statements, discussed the issue in question and adopted relevant resolutions.

Secondly, this thesis focuses on the legitimacy of the use of force in relation to terrorism. As the UN Security possesses legal and recognised authority in regards to the use of force it is both logical and crucial to consult it and to treat it as a continuous point of reference. Moreover, it is the only body that not only can make decisions which binds states but also can impose a sanction or (in instances threatening international peace and security) can direct a military operation. Article 25 of the UN Charter states that '[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'.²⁰⁸ This provision means that decisions adopted at the UNSC forum are binding on all members of the United Nations. Moreover, the UNSC resolutions dealing with question of international peace and security under Chapter VII of the UN Charter are considered as 'the most important category of binding resolutions'.²⁰⁹ According to Krisch, 'the fact that Council decisions are legally binding might explain a general inclination to follow them, especially since most states have an interest in maintaining international legal

²⁰⁸ Charter of the United Nations (adopted on 26 June 1945, entered into force on 24 October 1945) 892 UNTS 119.

²⁰⁹ Boyle A Chinkin C, *The Making of International Law* (Oxford: Oxford University Press, 2007), 230.

order in general'.²¹⁰ This is in a striking contrast to the UN General Assembly resolutions, which are described as being 'at best only soft law'.²¹¹ Even though the UN General Assembly is a broader forum where opinions of all member states can be heard, its decisions or statements delivered by states' representatives do not carry the same weight as those of the UN Security Council.

Thirdly, despite the fact that its work or decisions in some cases meet with criticism, in that they are selective, the UNSC is seen as an authoritative and a respected organ of the UN. As the debates surrounding for example interventions in Kosovo and Iraq has demonstrated the question of the UNSC authorisation 'was very much at the centre of attention, and without it, public opinion was far more reluctant to endorse military action'.²¹²

Fourthly, the permanent membership of the UN Security is reserved to states, which can effectively be described as Great Powers traditionally understood. It is not surprising that the special status, privileges as well as responsibilities were bestowed upon the victorious powers of the World War II. This is in an agreement with Bull who argues that

great powers are powers recognised by others to have (...) certain special rights and duties' (...) The idea of a great power, (...) presupposes and implies the idea of international society as opposed to an international system, a body of independent political communities

²¹⁰ Krisch N, "The Security Council and the Great Powers," in *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*, ed. Lowe V et al. (Oxford: Oxford University Press, 2008), 147.

²¹¹ Boyle, Chinkin (n 209) 229.

²¹² Krisch (n 210) 148.

linked by common rules and institutions as well as by contact and interaction.²¹³

Jackson points out that '[t]he special international procedural responsibilities of the great powers since 1945 have been defined by chapter VII of the UN charter which applies to members of the Security Council, particularly the permanent (great power) members: USA, China, Russia, Britain, France'.²¹⁴ Yet, what needs to be emphasised upfront is the fact that Great Powers can realise their roles in international society as long as these roles 'are accepted clearly enough by a large enough proportion of the society of states to command legitimacy'.²¹⁵ A rise in power of states such as Japan, India, Brazil 'might result in a widening gap between actual Great Power "status" and formal privilege', however the permanent membership of the UNSC still 'confirms the Great Power status of the current holders of privilege'.²¹⁶

An establishment of such a privileged status is not a post-1945 invention and it is not an exceptional one. A role of great powers in a creation and maintenance of international order was noticeable in other periods of history, for instance: after the victory over Napoleon in the nineteenth century or in the aftermath of the World War I in the twentieth century. In relation to the former, a composition of a new international order occurred at the Congress of Vienna between 1814 and 1815. This order 'shaped relations between European state for years to come'.²¹⁷ Eventually the victorious powers set up the Concert of Europe reflecting 'a more formal directorate', which

²¹³ Bull (n 18) 196.

²¹⁴ Jackson (n 204) 173.

²¹⁵ Bull (n 18) 221.

²¹⁶ Krisch (n 210) 136.

²¹⁷ Reus-Smit C, *The Moral Purpose of the State. Culture, Social Identity, and Institutional Rationality in International Relations* (Princeton and Chichester: Princeton University Press, 1999), 135.

would allow them to ‘hold periodic conferences whenever international developments called for Great-Power action or threatened to destabilise the continent’.²¹⁸ The future relations were to be based upon multilateralism, which meant that victorious powers ‘were to be consulted on every issue that arose and joint decisions, reflecting the common “European” interest, were to be arrived at’.²¹⁹ It is argued that the establishment of such a new order instigated ‘a fundamental change (...) in the governing rules, norms and practices of international politics’ by bringing about ‘political equilibrium’.²²⁰ Such privileged states ‘undermined the formal equality that has prevailed in the previous century and enabled [the Great Powers] to set norms and lay down rules for international society as a whole’.²²¹

Corresponding situation occurred in the aftermath of the World War I, when the victorious powers of the time ‘convened at the Palace of Versailles to construct a new, more peaceful international order’.²²² The Covenant of the League of Nations expectedly reserved a special position for the victorious states and reflected a distribution of power of the day. In a similar manner in years to come, the creation of the United Nations and the UN Charter rested upon an agreement and a reflection of the interests of the victorious states. As Krisch observes: ‘the Covenant of the League of Nations embodied privileges for the Great Powers, even though it often led to an uneasy balance with aspirations of formal equality. In the negotiations of the UN Charter, the Great Powers exploited this precedent in their favour’.²²³

²¹⁸ Stern G, *The Structure of International Society. An Introduction to the Study of International Relations* (2nd edn London, New York: Pinter, 2000), 82.

²¹⁹ Luard E, *Basic Texts in International Relations* (Basingstoke: MacMillan Academic and Professional Ltd, 1992), 424.

²²⁰ Schroeder P, *The Transformation of European Politics, 1763-1848* (Oxford: Clarendon Press, 1984), viii.

²²¹ Armstrong (n 198) 548.

²²² Reus-Smit (n 217) 145.

²²³ Krisch (n 210) 135

Lastly, the present author's intention is not to suggest that the UNSC is *the* international society. However, the UN Security Council can effectively be seen as a proxy of international society as it plays a central role in the maintenance of international order and has a power to make decisions, which are binding on all member states. As the current membership is virtually almost universal it is not an exaggeration to claim that decisions reached at the UNSC forum have an impact upon the whole world. This far-reaching power and privileged status of the UNSC led Jackson to suggest that it might be viewed even as constituting 'a sort of government of international society'.²²⁴ Although such classification might appear to be contrived it still points toward the influential and central role of the UNSC, and the permanent members in particular. As Jackson argues 'the UN is not a *universitas*. The Political world is still a *societas* of sovereign states. The UN Security Council exists to uphold the *societas* of states'.²²⁵

In light of the above discussion, it is possible to draw the following hypothesis. Firstly, the changed international approach towards the use of force in relation to acts of terrorism evident since 9/11 reflects the identity of the contemporary international society. The fact that the right to self-defence was, for the first time in relation to terrorism, recognised and states expressed an overwhelming solidarity with the US delivers evidence that the international society of the post-Cold War era no longer can be positioned within the *pluralist* conception but in fact embodies certain characteristics of the *solidarist* conception. Secondly, the changed approach towards the use of force was however conditioned by the fact that it was the US who was attacked on September 11, 2001. Thus, in a manner similar to realist and neo-liberal

²²⁴ Jackson (n 204) 103.

²²⁵ *ibid* 138.

theories, the symbiotic perspective of the ES and Constructivism emphasise the role of the hegemon. Its understanding of the term differs, however, in that it stresses the importance of notions such as authority, recognition and legitimacy. Moreover, it argues that hegemony is more deeply embedded within the notion of international society to the extent that it actually might be viewed as its institution. Thirdly, as opposed to mainstream theories of IR, states recognised the US right to self-defence not only because it was in their own self-interest but also because it was in the interest of international society itself. As the identity of international society changed since the end of the Cold War so did its interests. Lastly, the 2006 Operation *Change Direction*, which constitutes the third case study presented in this thesis, delivers further evidence of the changed identity of international society as it shows that international reaction towards 9/11 was not an example of “the double standard”.

The compatibility of the assumption of the ES with Constructivism can be also found in their approach towards international law. Even though the ES theorists agree with Neo-liberals and recognise that international law possesses a functional character, at the same time they point out a limitation of such portrait of the nature of international law. Both the ES theorists and Constructivists share the view that international politics cannot be brought down merely to its material and egoist nature and that international norms play both influential and independent roles in world politics.

Part Five: Research Methods

This thesis can be placed neatly within qualitative research methods. The qualitative methods allow for a thorough scrutiny of international law in general and of trends visible in state practice in relation to the notion of the use of force. Indeed most of legal discourses employ qualitative methodology. Moreover, an in-depth qualitative data is indispensable for a comprehensive and coherent research in a field of International Relations. Thus, this thesis relies upon an extensive collection of international legal documents, such as international treaties, judgements delivered by international courts, resolutions adopted by UN Security Council and UN General Assembly, states' statements as well as secondary sources of international law. This thesis depends also upon a widespread International Relations scholarship. A consultation and engagement with various traditions of International Relations, such as Realism, Liberalism, Neo-liberalism, the English School of International Relations and Constructivism, is central for a formulation of hypothesis and 'structured or codified ways to test theories'.²²⁶

This thesis tests the hypotheses formulated in the preceding parts of this chapter. This is conducted via a comparative study of three case studies, namely the 1982 Operation *Peace for Galilee*, the 2001 Operation *Enduring Freedom* and the 2006 Operation *Change Direction*. Comparison is said to be

²²⁶ Sprinz DF, Wolinsky Y 'Introduction: Methodology in International Relations Research' in Sprinz DF, Wolinsky Y (eds) *Cases, Numbers, Models: International Relations Research Methods* (2000) 10 available at [http://www.sscnet.ucla.edu/polisci/faculty/trachtenberg/syllabi.lists/harvard/moravcsik%20\(sprinz%20wolinsky\).pdf](http://www.sscnet.ucla.edu/polisci/faculty/trachtenberg/syllabi.lists/harvard/moravcsik%20(sprinz%20wolinsky).pdf) [accessed 20 April 2014].

a fundamental tool of analysis. It sharpens our power of description and plays a central role in concept-formation by bringing into focus suggestive similarities and contrast among cases. Comparison is routinely used in testing hypotheses, and it can contribute to the inductive discovery of new hypotheses and to theory-building.²²⁷

Its advantage can be observed in that it allows for ‘hypothesis testing and development’ and in that it ‘has the potential to improve the classifications we use to impose some sort of order on the diversity of the political world’.²²⁸ According to Lijphart, ‘case studies can make an important contribution to the establishment of general propositions and thus to theory-building in political science’.²²⁹ As the preceding parts of this chapter presented this thesis will analyse and explain the dichotomy in ways in which international society reacted towards three military interventions in response to terrorist attacks, which are treated as separate case studies. To this end this thesis will test and falsify various theories of International Relations in order to deliver the most comprehensive and convincing explanation of such a change. As Van Evera observes, ‘case studies can supply quite decisive evidence for or against political theories’.²³⁰ Bennett points out that::

[t]he comparative advantage of case study method includes identifying new or omitted variables and hypotheses, examining intervening

²²⁷ Collier D, "The Comparative Method," in *Political Science: The State of the Discipline II*, ed. Finifter AW (Washington: American Political Science Association, 1993), 105.

²²⁸ Burnham P *et.al.*, *Research Methods in Politics* (2nd edn. Basingstoke: Pgrave Macmillan, 2008), 81.

²²⁹ Lijphart A, "Comparative Politics and the Comparative Method," *American Political Science Review* 65, no. 3 (1971): 691.

²³⁰ Van Evera S, *Guide to Methods for Students of Political Science* (Ithaca: Cornell University Press, 1997), 54.

variables in individual cases to make inferences on which causal mechanisms may have been at work, developing historical explanations of particular cases, attaining high levels of construct validity, and using contingent generalisations to model complex relationships.²³¹

A case is defined as ‘an instance of a class of events of interest to the investigator’.²³² Therefore a case study is ‘a well-defined aspect of a historical happening that the investigator selects for analysis, rather than a historical happening itself’.²³³ Following this definition the scrutiny of case studies will be limited only to the notion of the right to self-defence. This will involve analyses of both Israel’s and the US justifications for military interventions in question based on the premises of this principle and the subsequent international reaction towards these instances of the use of force. As will be shown, the sole focus of this study is reserved to the legal discourse surrounding the instigation of these operations rather than their execution. Thus the criteria of *jus ad bellum* rather than *jus in bello* will be consulted and analysed.

There are, however, certain limitations of the comparative method. For example, Lijphart argues that ‘[t]he principal problems facing the comparative method can be succinctly states as: many variables, small number of cases’.²³⁴ Van Evera emphasises that the results of case study ‘cannot be generalised to other cases’.²³⁵ At the same time, however, the author points out that this consequence is applicable only to ‘single-case studies’.²³⁶ Reliance upon three case studies might be viewed as a

²³¹ Bennett A, ‘Case Study Methods: Design, Use, and Comparative Advantages’ in Sprinz (n 223) 27.

²³² *ibid* 28-29.

²³³ *ibid*.

²³⁴ Lijphart (n 229) 685.

²³⁵ Van Evera (n 230) 53.

²³⁶ *ibid* 53.

limited approach, especially considering the extent to which the findings can be applicable or generalised to other cases. A possible inclusion of a greater number of case studies could potentially strengthen an overall discussion. However, such an inclusion does not necessarily lead to a more coherent and comprehensive study. As Collier observes:

the application of a concept to a broader range of cases can lead to conceptual “stretching”, as some of the meanings associated with the concept fail to fit the new cases. The concepts that can most easily be applied to a broad range of cases are often so general that they do not bring into focus the similarities and contrasts among cases that are essential blocks in worthwhile comparative analysis.²³⁷

Furthermore, it is argued that ‘the most interesting studies will often be those that focus on a smaller number of cases’.²³⁸ This is the view which is apparently shared with Lijphart, who suggests that ‘the intensive comparative analysis of a few cases may be more promising than a more superficial statistical analysis of many cases’.²³⁹ In light of the above, the following paragraphs explain the merits behind choosing only three case studies.

Firstly, the scope of the study imposes certain limitations and in order to deliver a comprehensive analysis and coherent conclusions the topic needs to be approached from a practical way. Secondly, although this thesis relies upon three case studies, the 1982 Operation *Peace for Galilee* can effectively be viewed as a representative of other

²³⁷ Collier (n 227) 110.

²³⁸ *ibid.*

²³⁹ Lijphart (n 229) 685.

interventions instigated by Israel within the territory of Lebanon during the second half of the twentieth century. As the proceeding chapter will demonstrate, Israel conducted various military operations in Lebanon since 1968.²⁴⁰ These interventions were instigated as responses to terrorist attacks and were based on the same justification. As such, Israel claimed that its actions were justified in the light of international law in general and the Article 51 in particular. They also met with the same international reaction in that they were viewed as unlawful actions. Given these points, Operation *Peace for Galilee* and the subsequent international response towards this intervention can in effect be regarded as representing a general international approach towards the use of force prior to 9/11.

Thirdly, such a method allows for a thorough and extensive scrutiny of the cases at hand as it enables placing a particular case study within a historical and political context. A rigorous scrutiny of these three case studies enables a thorough account of a change in international approach towards the use of force in response to terrorist attacks. As such it allows for a more comprehensive explanation as to why such a change has occurred and what does it say about the nature of international law. Placing an analysis within a broader discourse on international society facilitates appreciation of contextual, political as well as historical underpinnings and developments, which not only prompted such a change but also can be viewed as suggesting a certain level of consolidation. This certain level of consolidation can be observed through an analysis of the 2006 Operation *Change Direction*. What is evident firstly is the fact that Israeli right to self-defence was recognised for the first time. This recognition is in a striking contrast to the international reaction following the 1982

²⁴⁰ The 1968 Beirut Raid, the 1978 Operation *Litani*, the 1993 Operation *Accountability*, and the 1996 Operation *Grapes of Wrath*.

Operation *Peace for Galilee*, where Israeli actions met with a widespread criticism and condemnation. Considering the fact that other military intervention instigated by Israel within the territory of Lebanon throughout the second half of the twentieth century also met with similar international criticism and/or condemnation, the recognition of the right to self-defence in 2006 can be viewed as a prominent event delivering indeed evidence of a changed approach towards the use of force in relation to terrorism.

Lastly, a difficulty of whether to include a wide or narrow range of case studies can be resolved by an appropriate understanding of what constitutes comparable cases. Accordingly, Lijphart defines “comparable” as

similar in a large number of important characteristics (variables) which one wants to treat as constants, but dissimilar as far as those variable are concerned with one wants to relate to each other. If such comparable cases can be found, they offer particularly good opportunities for the application of the comparative method because they allow the establishment of relationships among a few variables while many other variables are controlled.²⁴¹

In the light of this characteristic, the case studies selected for the purpose of this study are “comparable” for a number of reasons. Firstly, both Israel and the US in their justification relied upon the notion of the *inherent* right to self-defence. Secondly, all three interventions were instigated as responses to terrorist attacks and directed against the territory of hosting states. Although, it might be argued that 9/11 cannot be

²⁴¹ Lijphart (n 229) 687.

comparable with the assassination attempt triggering Operation *Peace for Galilee* in 1982, this thesis will demonstrate that a difference in scopes does not mean that these cases are incomparable. Firstly, such argument cannot explain the reasoning behind a decision of international society to recognise Israeli right to self-defence in 2006. This is due to the fact that the scale of the attacks triggering Operation *Change Direction* could in no way be viewed as comparable with 9/11. Secondly, as the second case study will demonstrate, the extent to which 9/11 can be viewed as amounting to an armed attack triggering an implementation of the right to self-defence remains debatable. Thirdly, both victim states in their justifications made references to previous attacks launched by relevant non-state actors. This suggests that although one event was a trigger, the whole military campaign can in fact be viewed as a response towards a series of attacks conducted over a period of time. Lastly, each intervention constituted a subject of an extensive debate at the UNSC forum.

a) The Customary International Law and the Notion of Change

This subsection looks at customary international law and analyses the notion of change. The reasoning behind an inclusion of this subsection is twofold. Firstly, it establishes a foundation for the following analysis of the right to self-defence. This thesis argues that there has been a noticeable shift towards the broadening scope of the right to self-defence in relation to terrorism. Although, as the following case studies will show such a shift has not yet been acknowledged by international case law, the validity of such a claim can be found in the recent state practice. Therefore a scrutiny of rules governing the international customary law regarding the possibility of change is pivotal and central to the discussion in question.

International customary law is defined as the law ‘which has evolved from the practice or customs of states’, which consists, for example, of an ‘actual activity, statements made in respect to concrete situations or disputes, statements of legal principle made in the abstract, national legislation and the practice of international organisations’.²⁴² Notions such as time (i.e. how long a norm has been in use) and repetition (i.e. has the state practice been consistent with such as a norm) are viewed here as crucial as they deliver evidence that a particular norm has been recognised and accepted by states as a valid one. The necessity of time and repetition requirements makes a crystallisation of a particular norm into a part of customary international law a long and gradual process. Tunkin observes that ‘[t]he creation of a customary norm of international law is an historical process; the elements of the norm of law evolve gradually’.²⁴³

Customary international law is not, however, static and changes in state practice are eventually reflected in law. Indeed, this thesis argues that the case studies in question demonstrate that there has been a shift in states’ approach towards the use of force in relation to terrorist attacks suggesting a growing acceptance of a broader scope of the right to self-defence. Tunkin in his discussion on the customary norms of international law asks an important question, that is: ‘[i]n what measure does [the] “old” rule answer present-day requirements?’.²⁴⁴ It is true that the aforementioned time

²⁴² Dixon M, *Textbook on International Law* (7th edn Oxford: Oxford University Press, 2013), 32. On customary international law in general, see, for example: Kunz JL, "The Nature of Customary International Law," *American Journal of International Law* 47, no. 4 (1953): 662-669. Shaw MN, *International Law* (5th edn Cambridge: Cambridge University Press, 2003), 68-88. Thirlway H, *The Sources of International Law* (Oxford: Oxford University Press, 2014). Jennings R Watts A, *Oppenheim's International Law*, vol. 1 (9th edn London and New York: Longman, 1996), 25-31. Wolfke K, "Some Persistent Controversies Regarding Customary International Law," *Netherlands Yearbook of International Law* 24 (1993): 1-16.

²⁴³ Tunkin GI, "Remarks on the Juridical Nature of Customary Norms of International Law," *California Law Review* 49, no. 3 (1961): 424.

²⁴⁴ *Ibid*, 420.

factor gives a particular norm an established status and because of that changes occur relatively rarely. At the same, however, a particular change might be necessary to reflect the present international environment.

And even though these factors of time and repetition play again an important role in a process of consolidation rapid changes are not excluded. According to Tunkin, 'the element of time does not in itself create a resumption in favour of the existence of a customary norm of international law' and that '[i]t is conceivable (...) for the element of repetition in some cases not to occur and for the rule of conduct to appear as a result of one precedent only'.²⁴⁵ Such an approach is also reflected in writings of various scholars. For instance, Cassese argues that 'international law does not necessarily require that there should be a consistent repetition over time of the acts or conduct for a new rule to take shape. There may be case where a single episode of some magnitude, combined with the reaction of other states, may suffice to bring about the formation of a rule'.²⁴⁶ It might be suggested that especially in the contemporary world with an ever-expanding globalisation and interconnectedness such instant changes are to be expected. This is in conformity with O'Brien, who states that 'in the modern world with the faster tempo of life it is unrealistic to wait for extensive evidence of prolonged practice'.²⁴⁷ A similar view is presented by Shaw, who states that '[i]n a society constantly faced with new situations because of the dynamics of progress, there is a

²⁴⁵ Ibid, 419.

²⁴⁶ Cassese A, "A Follow-Up: Forcible Humanitarian Countermeasures and *Opinio Necessitatis*," *European Journal of International Law* 10, no. 4 (1999): 796. See also: Akehurst M, "Custom as a Source of International Law (1976)," in *Sources of International Law*, ed. Koskenniemi M (Hants: Ashgate Publishing Ltd, 2000), 248-303.

²⁴⁷ O'Brien J, *International Law* (London: Cavendish Publishing Ltd, 2001), 78.

clear need for a reasonably speedy method of responding to such changes by a system of prompt rule-formation'.²⁴⁸

In instances when a change appears rapidly a crucial factor resides within the degree of international acceptance and recognition. Accordingly:

[s]uch recognition or acceptance represents a tacit proposal to other states to regard this rule as a norm of international law. If such a tacit proposition is accepted by other states, *i.e.*, if other states demonstrate by their actions that they recognise the given customary rule as juridically binding, it may be taken that a customary norm of international law has appeared.²⁴⁹

What is also emphasised is that '[t]he number of States taking part in a practice is much more important than the number of separate acts of which the practice is composed, or the time over which it is spread; a single act involving fifty States provides stronger proof that a custom is accepted by the international community than ten separate acts involving ten separate pairs of States'.²⁵⁰ This, as the chapter four will demonstrate, can be viewed as pivotal evidence of the international acceptance of the changing scope of the right to self-defence observable since 9/11. The international reaction to the 9/11 attacks was uniform on an unprecedented scale. The solidarity with the US and recognition of the right to self-defence was forthcoming even from usually unexpected forums, such the League of Arab States. In a view of Sadat, '[i]t is true that the lack of any real objection to the military campaign initiated on October 7, 2001

²⁴⁸ Shaw (n 242) 74.

²⁴⁹ Tunkin (n 243) 423.

²⁵⁰ Akehurst (n 246) 264.

suggests that the world community viewed the United States' actions in Afghanistan as legitimate acts of self-defence'.²⁵¹

In writings of international legal scholars a substantial degree of attention is paid to the role of the Great Powers in formulation of norms of international customary law. In the words of Tunkin, '[n]o doubt the position of the majority of states, the Great Powers in the first place, is of decisive significance in the creation of generally accepted norm of international law'.²⁵² This is in agreement with Shaw, who points out that 'it is inescapable that some states are more influential and powerful than others and that their activities should be regarded as of greater significance'.²⁵³

Both scholars and the International Court of Justice emphasise the role of states, which are most likely to be affected by the emergence of a particular norm. The ICJ in the *North Sea Continental Shelf* cases stated that

[a]lthough the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law (...) an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked.²⁵⁴

²⁵¹ Sadat LN, "Terrorism and the Rule of Law," *Washington University Global Studies Law Review* 3, no. 1 (2004): 143.

²⁵² Tunkin (n 243) 427.

²⁵³ Shaw (n 242) 75.

²⁵⁴ *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)* [1969] ICJ Rep, section 74, 43. See also: Dixon (n 238).

According to Dixon, the emphasis of the special role of these “affected” states does not necessarily mean that they are ‘more “important” or more powerful than others; it is, rather, that some states will be directly affected by certain rules and thus their practice is more significant’.²⁵⁵

Conclusion

This chapter sets out the theoretical foundations of this study. It provides an analysis of four theories, two of which are indispensable for the discussion on the status of international law in world politics. Firstly, it introduced the reader to the basic arguments and assumptions of the mainstream traditions of International Relations. This was, in turn, followed by their perspectives on the notion of international society and the role that international law play in international politics. The analysis also presented their views on the possibility of change. The subsequent part of the chapter compared the aforementioned theoretical approaches with the English School of International Relations and Constructivism, which constitute the theoretical framework of this thesis. In a similar manner, these theoretical perspectives were approached by looking at their pivotal assumptions, their treatment of both international society and international law as well as the possibility of change. As argued an adoption of such a symbiotic approach allows for a more comprehensive understanding of the status of international law in the aftermath of 9/11. This chapter also delivers reasoning behind choosing the UN Security Council as a proxy of international society. The final part of this chapter provides an overview of the research methods chosen for this research. It delivers an explanation behind a choice of qualitative methods as the most appropriate

²⁵⁵ Dixon (n 242) 34.

methodology, a selection of three case studies and the notion of change in international customary law. The indispensability of this chapter can be observed in that it constitutes the points of departure for further analysis and discussion. The following chapter comprises of the first case study, namely the 1982 Operation *Peace for Galilee* and will not only rely on the information provided here but it will further explore it.

CHAPTER THREE

THE 1982 OPERATION *PEACE FOR GALILEE*

Introduction

This chapter provides an analysis of the first case study of this research, namely the 1982 Operation *Peace for Galilee*, which was instigated by Israeli military forces in Lebanon on June 4, 1982. This operation is symptomatic of the international approach towards the use of force in self-defence in relation to a terrorist attack prior to 2001. In pursuit of this argument, this chapter is organised as follows: it begins by introducing the reader to the background and origins of the operation. The first, main part of the chapter is divided into two sections, both of which investigate the legality of the 1982 Operation *Peace for Galilee* in light of international law. The first section provides scrutiny of the justification delivered by the representative of the Israeli government to the United Nations. The next section comprises of an investigation into whether or not the Israeli justification was in accordance with international law. This, in turn, involves looking at the internationally accepted legal provisions treating the use of force in self-defence. The second main part of this chapter provides a presentation and analysis of the ways in which international society responded to this operation. This is undertaken by looking at various statements delivered by the Permanent Members of the UN Security Council as well as resolutions adopted subsequently.

The rationale behind the focus on Operation *Peace for Galilee* is as follows. Firstly, the choice of this operation was dictated by its scope; in fact, it constituted the biggest military intervention when compared with other military operations launched by Israeli

armed forces in Lebanon. Although this operation comprises the main focus of this study, this chapter is not only limited to it as other interventions, which were instigated between 1968 and 1996, are also looked at and form additional evidence supporting the argument.¹ Thus they are treated as background for the main focus of this chapter, namely the 1982 Operation *Peace for Galilee*. Though the military organisations responsible for attacks and subsequently comprising the target of Israeli strikes differed over time, both the Israeli justification and the international response remained similar. Secondly, the 1978 Operation *Litani* and the 1982 Operation *Peace for Galilee* are of great importance because one of their results was the establishment of the Israeli “security zone” in Southern Lebanon. Although these interventions were instigated as a response to the attack undertaken by the PLO, the creation of the “security zone” led to an increase of attacks against Israel by another faction, namely Hezbollah.

There was a clear pattern in the response of international society towards these operations. All military interventions conducted by Israeli forces within the territory of Lebanon met either condemnation or disapproval. In neither occasion was the right of self-defence recognised thus suggesting an international agreement with regard to these operations as constituting unlawful and unjustified uses of force. For these reasons, the 1982 Operation *Peace for Galilee* is treated in this study as representing all Israeli

¹ For general information about other Israel's interventions in Lebanon see, for example: Amnesty International, *Israel/Lebanon. Unlawful Killings During Operation "Grapes of Wrath"*, 1996 (AI Index: MDE 15/42/96). Anonymous, "Why?," *Economist* 1996. Blum YZ, "The Beirut Raid and the International Double Standard: A Reply to Professor Richard A. Falk," *American Journal of International Law* 64, no. 1 (1970): 73-105. Falk RA, "The Beirut Raid and the International Law of Retaliation," *American Journal of International Law* 63, no. 3 (1969): 415-443. Fedarko K Beyer L, "Operation Grapes of Wrath," *Time* 147, no. 17 (1996). Morris N Shahin M, "Bombs of Wrath," *Maclean's* 109, no. 18 (1996). Najem TP, "Palestinian-Israeli Conflict and South Lebanon," *Economic and Political Weekly* 35, no. 46 (2000): 4006-4009. Nelan BW Beyer L, "What's Peace Got to Do with It," *Time* 142, no. 6 (1993). Peterson S, "Grapes of Wrath' Blitz Sill Bites Back at Israel," *Christian Science Monitor* 89, no. 224 (1997). Phares W, "Liberating Lebanon," *Middle East Quarterly* 3, no. 4 (1996). Sirriyeh H, "Lebanon: Dimensions of Conflict," *Adelphi Paper* 243 (1989). Steele S Silver E, "A War of Wills," *Maclean's* 106, no. 32 (1993). Zisser E, "The Maronites, Lebanon and the State of Israel: Early Contacts," *Middle Eastern Studies* 31, no. 4 (1995): 889-918. Yearbook of the United Nations, vol. 22 (1968). Yearbook of the United Nations, vol. 32 (1978). Yearbook of the United Nations, vol. 47 (1993). Yearbook of the United Nations, vol. 50 (1996).

interventions in Lebanon carried out since 1968 until 1996 as all of these operations were based on the same reasoning, directed against non-state actors and international society treated them in a particular way.

Background and Origins

Operation *Peace for Galilee* began on June 4, 1982 when Israeli forces launched an attack against the Lebanese territory.² In the Israeli justification, which will be analysed subsequently, the initial reason for the military operation was the assassination attempt upon the Israeli Ambassador in London, Shlomo Argov, on June 3. The organisation that was held accountable for the attack was the PLO, an organisation which had been responsible for previous attacks against Israel. The growth in power of this organisation in Lebanon could be observed since the early 1970s, when a massive influx of Palestinian refugees occurred in Lebanon.³ This wave of migration was a result of what became known as the Black September initiated by King Hussein of Jordan, as a response to PLO attacks against Israel, who announced he would not tolerate the PLO hostile activities. Eventually the policy of the King and the on-going fights between the PLO and Jordanian authorities forced Palestinians to leave Jordan and seek refuge in the other place. Lebanon, with its multicultural society and unstable situation resulting from the eruption of the civil war, seemed the perfect platform for a continuation of the PLO's fight against Israel. Southern Lebanon became a territory dominated by Palestinians where refugee camps provided an excellent opportunity for the PLO to recruit Palestinians for their military

² Yearbook of the United Nations, vol. 36 (1982), 428 (hereinafter UNYB). See: Appendix 1.

³ On Palestinian refugees in general see, for example: Masalha N, *Catastrophe Remembered. Palestine, Israel and the Internal Refugees* (London: 2005). Morris B, *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge: 2004). Perretz D, "The Arab-Israeli War. Israel's Administration and Arab Refugees," *Foreign affairs* 66, no. 5 (1988): 336-346.

operations.⁴ From that moment as the Lebanese government was unable to prevent and stop the PLO actions against Israel, 'Lebanon became the centre of organised Palestinian operations against Israel, and, indeed, was the only Arab state along the Israeli border that afforded them an opportunity to launch military strikes on Israeli targets'.⁵

Although some argue that the invasion had been planned long before its *de facto* initiation and there were different reasons behind the decision to launch the operation, the purpose of this study is limited to the official justification. It suffices, however, to point out that the 1982 Operation *Peace for Galilee* was indeed controversial.⁶ In short, the controversy arose as to the question of who was responsible for the assassination attempt as the PLO had not admit to the commission of that act.⁷ Secondly, there was an accusation that the ultimate aim of Israel was to get access to the Litani River, the main water source in the area⁸ and thirdly Israel was accused of trying to establish a more favourable government in Lebanon.⁹

The cease-fire agreement was reached on November 25, 1983 in Damascus according to which the PLO militia and Israeli forces were to withdraw from Lebanon. Although Israeli forces withdrew from most of the Lebanese territory, they took under

⁴ See, for example: Ignatius D, "How to Rebuild Lebanon," *Foreign affairs* 61, no. 5 (1983): 1145. Murden S, "Understanding Israel's Long Conflict in Lebanon: The Search for an Alternative Approach to Security During the Peace Process," *British Journal of Middle East Studies* 27, no. 1 (2000): 29. See: Appendix 2.

⁵ Najem (n 1) 4006.

⁶ Wellens KC, ed., *Resolutions and Statements of the United Nations Security Council (1946-1992). A Thematic Guide* (The Hague Martinus Nijhoff Publishers, 1993), 743.

⁷ Chomsky N, "Israel's Invasion and the Disarmament Movement," *MRIP Reports* 108/109 (1982): 37.

⁸ See, for example: Beschoner N, "Water and Instability in the Middle East," *Adelphi Paper* 273 (1992/1993): 3-26. Cooley JK, "The War over Water," *Foreign Policy* 54 (1984): 3-26. Frey F Naff T, "Water: An Emerging Issue in the Middle East," *Annals of the American Academy of Political and Social Science* 482, no. 1 (1985): 65-84. Killgore AI, "For Israel, Southern Lebanon Means the Litani River," *Washington Report on Middle East Affairs* 25, no. 7 (2006): 21-21. Medzini A Wolf AT, "Towards a Middle East at Peace: Hidden Issues in Arab-Israeli Hydropolitics," *Water Resources Development* 20, no. 2 (2004): 193-204. Zeitoun M, "The Conflict Vs. Cooperation Paradox: Fighting over or Sharing of Palestinian-Israeli Groundwater?," *Water International* 32, no. 1 (2007): 105-120. See: Appendix 3.

⁹ Chomsky (n 7) 37.

their control a 10-15 km stripe of Lebanese territory in the South, which subsequently was called a “security zone”. In reality, it meant that the population of one hundred thousand living in hundred fifty towns and villages came under the authority of Israel.¹⁰ The establishment of the “security zone” can be regarded as both the consequence of the 1978 and 1983 interventions and the initial reason and rationale for the future attacks against Israel undertaken from the Lebanese territory. Although a substantial part of the PLO troops withdrew from Lebanon, some groups of Palestinians still remained there, oriented at the continuation of their fight against Israel. However, with the pacification and limited ‘actual influence of the PLO, many of the attacks against territory of Israel [were] undertaken by newly established Hezbollah’.¹¹ As was pointed out earlier, one of the main aims of this organisation was to force Israel to withdraw from the “security zone”.¹² Hezbollah concentrated its militia in the north of the Israeli “security zone”. Their attacks mainly involved firing rockets against the settlements in northern Israel and ‘sometimes infiltrating the zone itself’.¹³ Such actions provoked subsequent Israeli interventions in 1993 and 1996, directed mainly against the Hezbollah militia.¹⁴

Part One: Operation *Peace for Galilee*, Israeli Justification and (Non)compliance with International Law

The justification for launching Operation *Peace for Galilee* was delivered by Israel on June 4, 1982, the very same day the operation was instigated. Israel claimed that it was acting in self-defence and in order ‘to stop the attacks across its northern border from PLO

¹⁰ Murden (n 4) 34. See also Phares (n 1).

¹¹ For more detailed information about Hezbollah, see chapter six, part one, subsection a.

¹² Najem (n 1) 4007.

¹³ Osmańczyk EJ, *Encyclopedia of the United Nations and International Agreements* (London, New York: Routledge, 2003), 1180.

¹⁴ *ibid.*

bases in southern Lebanon, to deter continued terrorism against its citizens and to ensure their safety'.¹⁵ The reasoning given by Israel that it had the right to use force in self-defence within the territory of Lebanon was based on three grounds. Firstly, in a letter to the UN Security Council, the Israeli representative pointed to the assassination attempt upon the Ambassador, which he referred to as the 'heinous terrorist outrage perpetrated in London'.¹⁶ Secondly, the attention was also drawn to the policy of the PLO, which the Israeli government held responsible for the attack upon the Israeli Ambassador as well as previous attacks. In the words of the Israeli official:

such terror attacks constitute a central objective in the deliberate and vicious strategy of the Palestine Liberation Organisation (PLO) to cause maximum loss of life and limb among Israelis and Jews everywhere, whether officials or civilian, including men, women and children.¹⁷

He continued by stating that Israel will 'take the measures necessary to protect lives and ensure the safety of its citizens'.¹⁸ The third reason correlated with an international principle, namely the duty of states to exercise due diligence.¹⁹ Although the Lebanese government was not accused of commissioning the PLO to initiate the attack, it was, however, accused of being indirectly responsible because it did not put an end to terrorist activities that originated from within its own territory.

¹⁵ UNYB (n 2) 435.

¹⁶ UN Chronicle, vol. XIX nr. 8 (September 1982) 14. The Israeli Ambassador Argov was attacked by on 3 June 1982 by HG Said, M al-Banna and N al-Rosan, members of Abu Nidal's organisation. The Ambassador was shot in the head but survived despite the severe injuries.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ The term refers to the duty of a state to take all necessary steps to prevent an occurrence of the offence (Curzon LB Richards PH, *The Longman Dictionary of Law* (7th edn Harlow: Pearson Longman), 207.) See also: Shaw MN, *International Law* (5th edn Cambridge: Cambridge University Press, 2003).

According to Israel:

if Lebanon was unwilling or unable to prevent the harbouring, training and financing of PLO terrorists openly operating from Lebanese territory with a view to harassing Israel, Israelis and Jews world-wide, it must be prepared to face the risk of Israeli countermeasures. Since July 1981, about 150 terrorist acts had been instigated by PLO against Israelis and Jews in Israel and elsewhere, most recently the wounding of the Israeli Ambassador in London (on 3 June). PLO deliberately established bases in civilian neighbourhoods and thus bore responsibility for losses of civilian lives in such places.²⁰

Opposite this, the Lebanese representative to the UN claimed that the military intervention on such a scale launched by the Israeli armed forces was in no way justified.²¹ He pointed to the fact that the assassination attempt ‘was carried out by non-Lebanese and (...) unidentified persons’.²² And, ‘[w]hile there is unanimous condemnation of this attempt, in no way can Lebanon be held accountable, and no principles of international law can justify Israel’s violent aggression’.²³

Dividing the above Israeli justification into three separate, although connected, reasons is very useful for the analysis of whether the Operation *Peace for Galilee* was in accordance with international law. Therefore, in a similar manner, these three reasons will

²⁰ UNYB (n 2) 435.

²¹ Israel’s forced attack on Southern Lebanon and eventually reached Beirut. It is estimated that between five thousands and 8 thousands civilians were killed as a result (Anonymous, *Twenty Century Atlas – Death Tolls and Casualty Statistics for Wars, Dictatorship and Genocides* in <http://necrometrics.com/20c300k.htm> [accessed 1 December 2012]).

²² UN Chronicle (n 16) 14.

²³ *ibid.*

be treated from the angle of international provisions governing the use of force. As was already mentioned in chapter one, a state in order to use force in self-defence lawfully must show that it has been a victim of an armed attack.²⁴ This requirement was further confirmed by the International Court of Justice in the *Nicaragua* case, where it was stated, that ‘the exercise of this right is subject to the State concerned having been the victim of an armed attack’.²⁵

Although the term an “armed attack” is the subject of many debates and commentaries²⁶ as it is not explained clearly in either example of the treaty law, both state practice and international case law since the adoption of the UN Charter seem to support the view that usually an armed attack refers to an attack undertaken by a state.²⁷ Thus, if a state was under an on-going attack launched by the armed forces of another state, a rationale behind a decision of a victim state to defend its territory militarily would rarely have been questioned. The more complicated and less straightforward situation arises when a state has been a victim of a terrorist attack. In such a situation, a victim state needs to show that a terrorist attack was, in fact, an armed attack. Often the attacks launched by non-state actors might have been characterised more likely as aggressions and not as armed attacks. It is, therefore, useful to analyse the dichotomy between the two. The reason for choosing the term an “armed attack” is explained by Fawcett, who indicates that

²⁴ See chapter one, part two, subsection a.

²⁵ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)* (Merits) [1986] ICJ Rep. section 195, 103.

²⁶ For a discussion, see, for example: Feder NM, "Reading the UN Charter Connotatively: Toward a New Definition of Armed Attack," *New York University Journal of International Law and Politics* 19 (1987): 395-432.

²⁷ The explanation of ‘an armed attack’ is not provided in the Article 51 of the UN Charter, which governs the right of self-defence. The Article reads: ‘[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations (...)’ (Charter of the United Nations (adopted on 26 June 1945, entered into force on 24 October 1945) 892 UNTS 119 (hereinafter: UN Charter)). For a discussion, see, for example: Feder (n 26).

there is some evidence that the drafters of the Charter used the precise and restrictive notion of “armed attack” in preference to “aggression” or “threat to the peace”, precisely because they wished to avoid giving too much latitude within the Charter system to the recognised right of self-defence.²⁸

This is further explored by Dinstein, according to whom, ‘[t]he choice of words in Article 51 is deliberately confined to a response to an armed attack’.²⁹ Thus, a ‘[r]ecourse to self-defence under the Article is not vindicated by any violation of international law other than an armed attack’.³⁰

What follows is that it is generally accepted that an armed attack indicates some level of gravity, which may not be the case when it comes to an aggression. Thus, every armed attack can be seen as an aggression; however, not every aggression may be recognised as constituting an armed attack. Nevertheless, neither of the terms is well defined in the UN Charter. Although the word aggression appears in the UN Charter, its meaning is not clearly explained.³¹ One of the attempts of international society to provide some level of clarity was the adoption of the Definition of Aggression by the UN General Assembly.³² The importance and precision of this definition can be observed not only in that it has been widely accepted by member states but also through the ICJ reference to it, which in turn suggests that it has the status of customary law.³³ In its judgment, the Court stated, that ‘an armed attack must be understood as including not merely action by regular

²⁸ Fawcett JES, “Intervention in International Law: A Study of Some of Recent Cases” *Recueil des Cours* 103 (1961): 361 cited in Maogoto JN, “War on the Enemy: Self-Defence and State-Sponsored Terrorism,” *Melbourne Journal of International Law* 4 (2003).

²⁹ Dinstein Y, *War, Aggression and Self-Defence* (4th edn Cambridge: Cambridge University Press, 2005), 185.

³⁰ *ibid* 186.

³¹ Maogoto (n 28).

³² Definition of Aggression, UNGA Res 3314 (XXIX) (14 December 1974).

³³ Dinstein (n 29) 127.

armed forces across an international border’.³⁴ In accordance with Article 3(g) of the aforementioned Definition, the ICJ agreed, that ‘the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed forces against another State of such gravity as to amount to’ an attack undertaken by regular forces ‘or its substantial involvement therein’³⁵ may be treated as an armed attack. However, the Court highlighted as well that it is ‘necessary to distinguish the most grave forms of the use of force (those constituting an armed attack) from other less grave forms’.³⁶

The aforementioned gravity requirement is further explained by Dinstein, according to whom for an aggression to constitute an armed attack there must be “sufficient gravity”, which can be observed in ‘serious consequences, epitomized by territorial intrusions, human casualties or considerable destruction of property’.³⁷ If that is missing then the action undertaken in response to such aggression cannot be seen in accordance with the Article 51 of the UN Charter. What follows is that if such an attack was on a scale comparable to that committed by regular forces than a victim state could have convincingly postulated rationale for launching a military campaign.

As the next section of this chapter focusing on the response of international society towards Operation *Peace for Galilee* will demonstrate, an assassination attempt upon the Israeli ambassador in London was not seen as meeting the above criteria necessary for a state to implement its right of self-defence. Here, it is important to bring to attention the fact that Israel in its justification referred to previous and continuous attacks launched by

³⁴ *Nicaragua Case* (n 25) section 195, 103.

³⁵ Definition of Aggression (n 32) Art 3(g) and *Nicaragua Case* (n 25) section 195, 103. These acts may include: invasion, bombardment, blockade, etc.

³⁶ *Nicaragua Case* (n 25) section 191, 101.

³⁷ Dinstein (n 29) 193.

non-state actors operating from within Lebanese territory. Israel, in delivering such rationale behind the instigation of the military operation relied upon the merits of the *Nadelstichtaktik* theory,³⁸ also known as the “accumulation of events” theory, which implies, that a state can respond militarily to the attacks of militia when they occur repeatedly for the certain period of time. According Feder:

each specific act of terrorism, needle prick, may not qualify as an armed attack that entitles the victim state to respond legitimately with armed force. But the totality of the incidents may demonstrate a systematic campaign of minor terrorist activities that does rise to the intolerable level of armed attack.³⁹

In addition, while one attack may not be seen as constituting enough threat and damage, the series of attacks and their consequences when treated accumulatively may, nevertheless, be regarded as meeting the “gravity” requirement for an attack to constitute an armed attack.⁴⁰ As will be shown, however, international society did not discuss at the UNSC forum the adequacy and accuracy of this theory. Although the merits of this theory were not the subject of the deliberation, it may, nevertheless, be assumed that during the Cold War in general and in relation to the 1982 Operation *Peace for Galilee*, in particular, the validity of this theory was not internationally recognised.⁴¹

³⁸ *Nadelstichtaktik* is German concept and means “tactics of the needle prick”. It was described by German international lawyers (Blum YZ, "State Response to Acts of Terrorism," *German Yearbook of International Law* 19 (1976): 233.)

³⁹ Feder (n 26) 415.

⁴⁰ See also: Bowett DW, "Reprisals Involving Recourse to Armed Force," *American Journal of International Law* 66, no. 1 (1972): 1-36. Falk (n 1). Kattan V, "The Use and Abuse of Self-Defence in International Law: The Israel-Hezbollah Conflict as a Case Study," *Yearbook of Islamic and Middle Eastern Law* (2007): 31-50. Dinstein (n 29) 202.

⁴¹ See, however, Feder who argues that '[n]umerous incursions and attacks by PLO personnel on Israel's nationals and property individually satisfy conceptions of armed attack that would warrant a proportionate response to each distinct event' ((n 26) 411).

Assuming, *arguendo*, that an assassination attack or previous attacks treated cumulatively amounted to an armed attack, for the government of Lebanon to be held responsible for the attacks, Israel, in order to exercise lawfully its right of self-defence, would have had to prove that there had been a close relationship between Lebanon and the PLO. From this, it is submitted, that for a victim state to implement its right of self-defence, not only an attack launched by non-state actors needs to be amounting to an armed attack but also the relationship between these non-state actors and another state and its involvement in the attack need to be proved. What this means is that it needs to be investigated whether actions undertaken by non-state actors can be 'attributable to the state' which in turn may give a legal justification for a victim state to exercise its right of self-defence.⁴² The same view was expressed by the ICJ in the *Tehran* case, where it was decided the conduct of the militants

might be considered as itself directly imputable to the (...) State only if it were established that, in fact, on the occasion in question the militants acted on behalf of the State, having been charged by some competent organ of the (...) State to carry out a specific operation.⁴³

From this, it could be further argued by analogy, that in a situation when non-state actors launch an attack from the State A against State B, the State A can be in breach of its international obligations but not necessarily held responsible for the actions of non-state actors.

⁴² Gray C, *International Law and the Use of Force* (Oxford: OUP, 2000), 97.

⁴³ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)* [1980] ICJ Rep, section 58, 29.

Although some argued that

a state that is the target of persistent terror has virtually no effective response, in the event that the foreign government is unable or unwilling to suppress the terroristic tactics of a liberation movement, other than recourse to what is traditionally regarded as “aggressive” war,⁴⁴

the ICJ continued to support the narrow notion of the right of self-defence, when it decided that for a state to be responsible for actions of non-state actors ‘it would in principle have to be proved that State [has] effective control of the military or paramilitary operations in the course of which the alleged violations were committed’.⁴⁵ While elaborating on this, Gray further added, that it would be difficult to conclude from the judgment that ‘a lesser degree of state involvement, such as acquiescence or even inability to control armed bands operating on its territory, could ever be enough to constitute an armed attack, but it seems implicit in its judgment that armed attack is narrower than this’.⁴⁶

Israel in its justification did not claim that the government of Lebanon had a direct involvement in attacks launched by the PLO or had a control over the activities of this organisation. What Israel, however, relied upon further in its justification was the duty of states to exercise *due diligence*. Israel, throughout the conflict with Lebanon, claimed that

⁴⁴ Falk (n 1) 427. Wedwood, for example further argues that ‘[i]f a host country permits the use of its territory as a staging area for terrorist attacks when it could shut those operations down, and refuses requests to take action, the host government cannot expect to insulate its territory against measures of self-defence’ (“Responding to Terrorism: The Strikes against Bin Laden,” *Yale Journal of International Affairs* 24 (1999): 565.) Blum points out, that there has been an increase in acceptance that ‘the encouragement by a state of guerrilla organisations planning to operate on foreign territory, or even the toleration of such organisations on a state’s territory’ can be treated as an act of aggression (Blum (n 1) 80).

⁴⁵ *Nicaragua Case* (n 25) section 115, 64. ‘The requirement of international law for the attribution to States of acts performed by private individuals is that the State exercises control over the individual. The degree of control may, however, vary according to the factual circumstances of each case’ (*Tadić Case* (Judgment) ICTY-94-I-A (15 July 1999) section 117, 48).

⁴⁶ Gray (n 42) 99.

the latter was responsible for failure in preventing the attacks by the irregular forces to be launched in the first place, and because of that, Israel had the right to implement its inherent right of self-defence. In addition, ‘failure to prevent, or mere acquiescence in, the activity of armed bands was claimed not only to cause state responsibility but also to justify self-defence’.⁴⁷ As was already briefly described in chapter one of this thesis, a state, which allows ‘knowingly its territory to be used for acts contrary to the rights of other States’⁴⁸ may be accused of breaching its international obligations towards another state. This duty to exercise *due diligence*, which impose on a state a duty to ‘prevent its own subjects, and such foreign subjects as live within its territory, from committing injurious acts against other states’ was referred to by the ICJ in the *Corfu Channel* case and has acquired international recognition.⁴⁹ From this, it can be assumed that the territory of State A cannot be used as a base for non-state actors from which an attack against State B may be carried out. What follows is that ‘it is irrefutable that the toleration by a State of activities by terrorists or armed bands, directed against another country, is unlawful’.⁵⁰ A similar view was expressed by the ICJ in the *Tehran* case, where the Court decided that the state can be ‘in breach of its international obligations’ when it fails to prevent attacks undertaken within its territory against premises belonging to foreign states. What needs to be noted, however, is that such a state would not be held responsible for the attacks.⁵¹

The ICJ, in the *Corfu Channel* case, stressed further that ‘it cannot be concluded from the mere fact of the control exercise by a State over its territory and waters that State

⁴⁷ *ibid* 100.

⁴⁸ *Corfu Channel Case (United Kingdom v Albania) (Merits)* [1949] ICJ Rep, 22.

⁴⁹ Jennings R Watts A, *Oppenheim’s International Law*, vol. 1 (9th edn London and New York: Longman, 1996), 549.

⁵⁰ Dinstein (n 29) 206.

⁵¹ Jennings, Watts (n 49) 552. The same view was expressed by Kelsen who argued that ‘the states are obliged by general international law to prevent certain acts injurious to other states from being committed on their territories and if prevention is not possible, to punish the delinquents and force them to repair the damage caused by the delict’ (Kelsen H, *Principles of International Law* (New York: Holt, Rinehart and Winston inc., 1966), 205-206.) See also: Dinstein (n 29) 244.

necessarily knew, or ought to have known, of any unlawful act perpetrated therein'.⁵² Moreover, even if it is proved that a state knew about unlawful activities taking place within its border, not fulfilling the duty to exercise *due diligence* does not automatically give a victim state a right to use force in self-defence. Generally in a situation when a state shows negligence in exercising its duty it may be held 'responsible and (...) liable to pay damages',⁵³ but not become a target of a state exercising a right of self-defence.

Although Israel claimed that Lebanon did not fulfil its duty to prevent hostile activity against Israel organised within its territory, it can be persuasively argued that the government of Lebanon could not put an end to the aforementioned attacks as the territory from which the attacks were launched, that is South Lebanon, was *de facto* under the control of the PLO and not the state of Lebanon. An important factor relates to the internal situation in Lebanon: a state, which witnesses many difficulties within different parts of its territory and is unable to stabilise and create an internal order, cannot be held responsible for hostile actions that originate from yet one part and are not, in fact, actions directed by such a state. It can be argued that the eruption of the Lebanese civil war in 1975 had given the PLO an opportunity to establish 'a considerable level of autonomy in South Lebanon'.⁵⁴ In addition, Lebanon with its multicultural society and unstable situation seemed to be a perfect place for a continuation of the PLO's fight against Israel. Southern Lebanon became Palestinian land, where refugee camps provided an excellent opportunity for the PLO to recruit Palestinians for their military operations.⁵⁵

⁵² *Corfu Channel Case* (n 48) 18.

⁵³ Jennings, Watts (n 49) 549.

⁵⁴ Najem (n 1) 4006.

⁵⁵ Murden (n 4) 29. Ignatius (n 4) 1145.

Therefore, the internal unstable situation in Lebanon taken together with the level of autonomy enjoyed by the PLO in South Lebanon can be seen as evidence that the government of Lebanon could not regain control over its territory and did not have the power to prevent cross-border strikes launched from the territory which was not *de facto* under its own control. Moreover, in the situation when a state does not have enough power to suppress the militia activities undertaken against other states '[t]he obligation not to tolerate may in part be fulfilled by collaboration with an international authority or other States to avert the danger resulting from terrorist activities or to inform other States or international bodies of the situation'.⁵⁶ This was fulfilled by the government of Lebanon already in 1978 when it protested against Israeli invasion⁵⁷ on the UNSC forum. The UN Security Council subsequently decided to establish UNIFIL.⁵⁸ One of the main purposes of this peacekeeping force was to assist 'the Government of Lebanon in ensuring the return of its effective authority in the area'.⁵⁹ By doing so, the UNSC acknowledged that the government of Lebanon did not control South Lebanon in an effective way. Therefore, taking into consideration the fact that the government of Lebanon on various occasions brought attention of the UNSC to the situation in the southern part of its territory and subsequently asked for extending the mandate of the UNIFIL⁶⁰ it can be concluded, that the Government of Lebanon could not be held responsible in any way for the hostile actions against Israel committed by the PLO.⁶¹

⁵⁶ Sucharitkul S, "Terrorism as an International Crime: Questions of Responsibility and Complicity," *Israel Yearbook on Human Rights* 19 (1989): 257.

⁵⁷ Referring to the Operation *Litani* launched on the night of 14/15 March 1978.

⁵⁸ United Nations Interim Force in Lebanon.

⁵⁹ UNSC Res 425 (19 March 1978) UN Doc S/RES/425.

⁶⁰ For more information see: <http://www.un.org/en/peacekeeping/missions/unifil/background.shtml> [accessed 1 December 2012].

⁶¹ Although some authors already in 1970 suggested that had been an increase in acceptance that 'the encouragement by a state of guerrilla organisations planning to operate on foreign territory, or even the toleration of such organisations on a state's territory' can be treated as an act of aggression, such an approach and especially the second part did not reach a recognition either in the case law or in states practice (Blum (n 1) 80).

Part Two: The 1982 Operation *Peace for Galilee* and the Response of International Society

As the Israeli justification for using the force within Lebanese territory remained the same in relation to various interventions launched since 1968, the response of international society towards these operations, in a similar manner, did not differ and set a particular pattern. In addition, correspondingly to all interventions, Operation *Peace for Galilee* was not recognised as constituting the lawful exercise of the right to self-defence. The fact that neither an assassination attempt upon the Israeli Ambassador in London nor previous and continuous attacks launched by the PLO treated accumulatively were internationally recognised as justifying military intervention within Lebanon suggests, that prior to 2001 it had been very difficult for a victim state to convince the international society that the resort to force was an adequate and reasonable response to a terrorist attack. Such an approach was reflected in statements of the Permanent Members of the UNSC during the meetings devoted to the situation in Lebanon.

In addition, in relation to Operation *Peace for Galilee*, the President of the UNSC acting on behalf of the UNSC made ‘an urgent appeal to all the parties to adhere strictly to the cease-fire that had been in effect since 24 July 1981 and to refrain immediately from any hostile act likely to provoke an aggravation of the situation’.⁶² On June 5, the UNSC unanimously adopted Resolution 508 in which it called ‘upon all parties to cease immediately and simultaneously all military activities within Lebanon and across the Lebanese-Israeli border’.⁶³ In the same resolution, the UNSC brought attention to its grave concern ‘at the violation of the territorial integrity, independence and sovereignty of

⁶² UNYB (n 2) 433.

⁶³ UNSC Res 508 (5 June 1982) UN Doc S/RES/508.

Lebanon'.⁶⁴ During the next day meeting, the UNSC adopted a subsequent resolution, in which it demanded 'that Israel withdraw all its military forces forthwith and unconditionally to the internationally recognised boundaries of Lebanon'.⁶⁵ The growing international concern over the gravity of the situation in Lebanon can be observed in that over the period of two months the UNSC adopted ten resolutions.⁶⁶

Subsequently to the initiation of Operation *Peace for Galilee*, the Permanent Members of the UNSC expressed their opinions in various forms. While some in their statements expressed their disapproval of the techniques and scope of the force used by Israel, others delivered a stronger response and, in fact, condemned the Israeli actions. In addition, the representative of the United Kingdom argued that the assassination attempt against the Israeli Ambassador 'did not justify the massive Israel attacks on Lebanese cities and towns, and called for a halt to the conflict and restoration of the cease-fire'.⁶⁷ Although the US did not deliver an explicit condemnation of the Israeli intervention, the representative of the US to the UNSC called for a simultaneous implementation of the 'two interrelated objectives' of an adopted resolution, namely the 'cessation of hostilities by all parties and Israeli withdrawal from Lebanon'.⁶⁸

⁶⁴ *ibid.*

⁶⁵ UNSC Res 509 (6 June 1982) UN Doc S/RES/509.

⁶⁶ UNSC Res 508 (n 63). UNSC Res 509 (n 63). UNSC Res 511 (18 June 1982) UN Doc S/RES/511. UNSC Res 512 (19 June 1982) UN Doc S/RES/512. UNSC Res 513 (4 July 1982) UN Doc S/RES/513. UNSC Res 515 (29 July 1982) UN Doc S/RES/515. UNSC Res 516 (1 August 1982) UN Doc S/RES/516. UNSC Res 517 (4 August 1982) UN Doc S/RES/517. UNSC Res 518 (12 August 1982) UN Doc S/RES/518. UNSC Res 519 (17 August 1982) UN Doc S/RES/519. Moreover, the UN General Assembly adopted resolution on 26 June 1982, in which it referred to Israeli actions as 'acts of aggression against the sovereignty of Lebanon' and condemned Israel for its non-compliance with previous resolutions and demanded its compliance (UNGA Res (26 June 1982) UN Doc A/RES/ES-7/12). Although the UNGA resolutions are not binding and therefore their powers are limited, they nevertheless provide an illustration of general states' opinion and can be useful for getting a broader view on the Operation *Peace for Galilee*.

⁶⁷ UNYB (n 2) 434.

⁶⁸ *ibid* 435-436.

France, on the other hand, condemned 'Israeli air raids', and pointed out that 'force would not guarantee Israel's right to live within secure and recognised boundaries'.⁶⁹ The representative of the Soviet Union presented a stronger view and, in referring to the UNSC resolution, claimed that it 'did not reflect clearly enough the condemnation Israel deserved and the Council should use all means available in accordance with the United Nations Charter to halt Israeli aggression'.⁷⁰ In a similar manner, China opted for an adoption of 'a resolution which explicitly condemned Israeli aggression'.⁷¹

As has been shown, none of the Permanent Members of the UN Security Council accepted Israeli justification and rationale behind the instigation of Operation *Peace for Galilee*. In a similar manner, Israeli right of self-defence was not recognised. The empirical evidence presented throughout this chapter demonstrates that not only were the assassination attempt and previous attacks launched by the PLO not of sufficient gravity to amount to an armed attack but also that Lebanon did not bear responsibility for these attacks.

Conclusion

This chapter has sought to provide insights into a certain dichotomy surrounding the possibility of the use of force in self-defence in relation to a terrorist attack during the Cold War. As has been demonstrated, for a state to exercise its right of self-defence in relation to a terrorist attack it was imperative to prove firstly that such an attack was of a scale comparable to an attack instigated by regular armed forces and secondly, that there existed a certain close relationship between the non-state actors responsible for such an

⁶⁹ *ibid* 434.

⁷⁰ *ibid*.

⁷¹ *ibid* 435.

attack and a state. The empirical evidence suggests that international society, during the Cold War, favoured a narrow and rigid understanding of the right to self-defence.

Operation *Peace for Galilee*, which constitutes the main Israeli intervention in Lebanon thereby justifying its choice as the focus of this chapter confirms the above argument, as it was either condemned or criticised by the Permanent Members of the UN Security Council for being an excessive response towards the assassination attempt upon the Israeli Ambassador and was perceived, in general, as unlawful. Despite Israeli attempts to persuade an international opinion that, in fact, its military response was instigated not only as a response towards the aforementioned attack but also towards the previous and continuous attacks launched by the PLO, the Israeli rationale was not accepted internationally. Although Israel relied upon the same justification and reasoning in relation to each intervention it instigated over the period of three decades within the territory of Lebanon, neither one of them was recognised by the international society as being in accordance with international law.

This chapter constitutes an important part of this thesis. Its contribution can be observed not only in that it provides an example of the international approach towards the use of force during the Cold War but also in that it sets the grounds for the comparison of this approach with the one observed since September 2001. Thus, the evidence presented in the following chapter is set against the evidence gathered in here and thoroughly compared. The following chapter is structured in a similar way, which allows for the differences of international approach to be seen in a clear and structured fashion.

CHAPTER FOUR

THE 2001 OPERATION *ENDURING FREEDOM*

Introduction

This chapter provides an analysis of the 2001 *Operation Enduring Freedom*, which was instigated by the US and the coalition forces within the territory of Afghanistan on October 7, 2001 as a response towards the terrorist attacks upon the US carried out by the al-Qaeda on September 11, 2001.¹ The significance of this operation for the study of international law relating to the use of force is indeed crucial as for the first time in history the right of self-defence in relation to a terrorist attack was officially recognised by international society. The scrutiny of this operation will be conducted by comparing it with the 1982 Operation *Peace for Galilee*, which constituted the first case study of this thesis. As will be shown, although the rationale for instigating both operations was based on very similar justifications, the response of international society differed substantially in that while the 1982 operation in Lebanon was seen as an unlawful use of force, the 2001 operation in Afghanistan was treated as constituting a lawful exercise of the right to self-defence. This chapter, thus, looks at Operation *Enduring Freedom* from the angle of the 1982 intervention in Lebanon. The rationale behind comparing these two operations is based on four main reasons. Firstly, both operations were instigated as responses to acts of terrorism committed by non-state actors. Secondly, both countries justified their military actions on the basis of their rights to self-defence. Thirdly, both victim states made reference to previous and continuing attacks launched by these non-state actors. Lastly,

¹ See: Appendix 4.

both interventions were conducted within the territory of hosting states, which could not be seen as directly responsible for the attacks.

As will be demonstrated, the fact that the 2001 intervention in Afghanistan was recognised as a lawful and justified use of force, has had a significant impact on an international perception of the use of force in relation to terrorist attacks: for the first time since the adoption of the UN Charter's general prohibition on the use of force, a state's right to self-defence was recognised – legitimising, in turn, the use of force. This recognition of the right to self-defence has challenged certain existing rules governing the use of force. It will also be shown, that this has expanded the notion of an armed attack and has granted some validity to the claim for accepting the "accumulation of events" theory. Moreover, it has also challenged the very notion of the right of self-defence, in that its scope has been widened, which, in turn, questions further application of international rules governing the use of force during the second half of the twentieth century.

Such a changed international approach towards the use of force in relation to a terrorist attack was noticed by international legal scholarship. As will be demonstrated there have been two noticeable and distinct approaches towards the new developments. The first one refers to the on-going insistence upon the adequacy of the narrow scope of the right to self-defence evident in the ruling of the International Court of Justice and the ILC Articles on State Responsibility, which according to both the ICJ and some international lawyers have obtained the status of international customary law.² The

² For the debate on the notion of self-defence prior to 9/11, see in general: Feder NM, Reading the UN Charter Connotatively: Toward a New Definition of Armed Attack, " *New York University Journal of International Law and Politics* 19 (1987): 395-432. Gray C, *International Law and the Use of Force* McCormack TLH, *Self-Defence in International Law. The Israeli Raid on the Iraqi Nuclear Reactor*. Schachter O, "The Right of States to Use Armed Force," *Michigan Law Review* 82, no. 5/6 (1984): 1620-1646. -- "Self-Defence and the Rule of Law," *American Journal of International Law* 83, no. 2 (1989): 259-

representatives of the second approach, however, emphasise the priority of the state practice, which seems to support the growing acceptance of the wider scope of the right of self-defence.³

This chapter consists of two main parts. Part One begins with introducing the reader with the background information on the 9/11 attacks and a short history of al-Qaeda and its activity prior to the attacks in question. This, in turn, is followed by an analysis of the justification delivered by the US at the UN Security Council forum. The US justification is compared with Israel's justification relating to the 1982 Operation *Peace for Galilee* and treated from the angle of new developments, especially in relation to scholars' opinion regarding the use of force that has taken place since the end of the Cold War. Part Two comprises an analysis of ways in which international society responded towards the 9/11 attacks and subsequent military intervention in Afghanistan.

Part One: The 9/11 Attacks and the Case Against Al-Qaeda and the Taliban

a) Background

Operation *Enduring Freedom*, instigated on October 7, 2001, was a military response towards the September 11 attacks upon the United States, which resulted in the deaths of 3,000 people, a complete destruction of the World Trade Center and a partial destruction of

277. Wettberg G, *The International Legality of Self-Defence against Non-State Actors* (Frankfurt: Peter Lang, 2007). For those advocating narrow right of self-defence, see for example: Brownlie I, *International Law and the Use of Force by States* Charney JI, "The Use of Force against Terrorism and International Law," *American Journal of International Law* 95, no. 4 (2001): 835-839. Maogoto JN, "Walking an International Tightrope: Use of Military Force to Counter Terrorism," 1-58. Tams CJ, "The Use of Force against Terrorists," *European Journal of International Law* 20, no. 2 (2009): 359-397.

³ For those supporting wider scope of self-defence, see, for example: Bowett DW, *Self-Defence in International Law* (New York: Praeger, 1958). Maogoto (n 2). S Schwebel, "Aggression, Intervention and Self-defence in Modern International Law," 136 RCADI (1972-II) in http://mefacts.org/cached.asp?x_id=10943 [accessed 1 December 2012].

the Pentagon. Soon after the attacks, the US administration pointed out the terrorist organisation al-Qaeda⁴ with Osama bin Laden as its leader as being responsible for the aforementioned attacks. Al-Qaeda is a terrorist organisation, created in 1988, whose aim was to undertake jihad (“the holy war”) against the US and ‘the Western “occupation” of Islamic land’.⁵ In an official document, the UK government confirmed that ‘Osama bin Laden and al-Qa’ida (...) planned and carried out the atrocities on 11 September’.⁶ The information was supported by the intelligence sources establishing that ‘not long before [the 9/11 attacks] bin Laden had indicated he was about to launch a major attack on America’.⁷ This led the UK Prime Minister at the time; Blair to state that there was ‘absolutely no doubt that bin Laden and his network are responsible’.⁸ The UK government furthered its argument by pointing to the possession of information outlining ‘that bin Laden himself asserted shortly before 11 September that he was preparing a major attack on America’.⁹ The accusation was further supported by NATO officials who said that the US had presented ‘clear and compelling proof’ that al-Qaeda was responsible for the attacks.¹⁰ The leader of al-Qaeda, nevertheless ‘did not publicly and expressly claim responsibility for the attacks’.¹¹

⁴ The roots of the word al-Qaeda comes from the Arabic word *qaf-ayn-dal*, which can be understood as ‘a base, as in camp or a home, a foundation, such is what beneath a house or a pedestal that supports a column’ (...) it can also mean a precept, rule, principle, maxim, formula, method, model or pattern’ (Burke J, *Al Qaeda. The True Story of Radical Islam* (3rd edn London: Granta Books, 2004), 1.) See also: Ruthven M, *A Fury for God. The Islamist Attack on America* (London: Granta Books, 2002).

⁵ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report. Final Report*. (New York and London: WW. Norton& Company, Inc., 2004), 55-56. See also: Johnston D Risen J, "After the Attacks: The Investigation; Bin Laden Tie Cited," *New York Times* 13 September 2001.

⁶ Office of Prime Minister, *Official Document: Responsibility for the Terrorist Atrocities in the United States, 11 September 2001* (October 4 2001).

⁷ *ibid.*

⁸ Murphy SD, "Contemporary Practice of the United States. Legal Regulation of Use of Force. Terrorist Attacks on World Trade Center and Pentagon," *American Journal of International Law* 96, no. 1 (2002): 241.

⁹ Office of Prime Minister (n 6).

¹⁰ See, for example: Daley S, "The Evidence; NATO Says US Has Proof against Bin Laden Group," *New York Times* (3 October 2001).

¹¹ Murphy (n 8) 241.

b) The US Justification

Looking at the US justification for instigating Operation *Enduring Freedom*, there were three explicit grounds upon which the case against both the al-Qaeda and the Taliban was built. As will be demonstrated, the rationale behind the initiation of Operation *Enduring Freedom* resembled the one delivered by Israel in relation to the 1982 Operation *Peace for Galilee* discussed in chapter three.

Firstly, similarly to the 1982 intervention, a terrorist organisation was held responsible for the attack. Indeed, in the US opinion, there was no doubt that al-Qaeda was responsible for the 9/11 attacks. Although the attack upon American soil constituted the ultimate rationale for launching the military campaign, the US government delivered two other reasons in furthering its case. Secondly, George W Bush, the President in office at the time, declared in various statements following the attacks that not only was al-Qaeda responsible for the attacks but also that it presented a continuing threat to the US and other western countries. On November 6, the President stressed that al-Qaeda ‘operates in more than 60 nations (...) [t]hese terrorist groups seek to destabilise entire nations and regions (...) Given the means, our enemies would be a threat to every nation and, eventually, to civilization itself’.¹² Similarly to the 1982 Operation *Peace for Galilee*, the US administration referred also to previous attacks instigated by al-Qaeda,¹³ such as the 1993 attacks on World Trade Center, 1996 attacks on US military housing complex in Saudi

¹² Bush GW, "President Bush: "No Nation Can Be Neutral in This Conflict". Remarks by the President to the Warsaw Conference on Combating Terrorism," (6 November 2001) in <http://georgewbush-whitehouse.archives.gov/news/releases/2001> [accessed 1 December 2012].

¹³ Bush GW: 'The evidence we have gathered all points to a collection of loosely affiliated terrorist organisations known as al Qaeda. They are the same murderers indicted for bombing American embassies in Tanzania and Kenya, and responsible for bombing the USS Cole' (Bush GW, "Address to a Joint Session of Congress and the American People," (20 September 2001) in <http://georgewbush-whitehouse.archives.gov/news/releases/2001> [accessed 1 December 2012].

Arabia, the 1998 attacks on US embassies in Tanzania and Kenya and the 2000 attack on USS Cole in Yemen.¹⁴ In relation to the 1998 attacks, bin Laden was interviewed by Time magazine and admitted that he was responsible. He declared that '[t]he US knows that I have attacked it, by the grace of God, for more than ten years now'.¹⁵ The US and the UK also brought attention to various statements and declared objectives of al-Qaeda's organisation. Most notably, the main aims of that organisation were to 'oust pro-Western governments in the Middle East, to remove US military forces from the region, and to prevent an Arab-Israeli peace settlement'.¹⁶ Moreover, days after the 9/11 attacks the plot against the US embassy in Paris was discovered and thwarted.¹⁷ All these al-Qaeda's activities were treated as a reason to think that the US and its allies were under an ongoing threat from bin Laden's organisation.

The third reason delivered by the US administration constituted the basis for the military operation within the territory of Afghanistan and was related to the alleged relationship between al-Qaeda and the Taliban. Similarly to the 1982 intervention, the notion of *due diligence* was inexplicitly brought out as the Taliban regime was accused of allowing its territory to be used for acts contrary to the rights of other states. What distinguished the US's from Israel's justification, however, was the fact that the former pointed to the close and dependant relationship between al-Qaeda and the Afghanistan's *de facto* government, which had not been the case in relation to the 1982 Operation *Peace for*

¹⁴ Murphy (n 8) 239. See also Responsibility for the Terrorist Atrocities (n 5). In one of his speeches, the President stated that '[t]he evidence we have gathered all points to a collection of loosely affiliated terrorist organisation know as al Qaeda. They are the same murderers indicted for bombing American embassies in Tanzania and Kenya, and responsible for bombing the USS Cole' (Bush (n 13)).

¹⁵ Office of Prime Minister (n 6).

¹⁶ Murphy (n 8) 239.

¹⁷ See for example: Hedges C, "Police Work; the Inner Workings of a Plot to Blow up the US Embassy in Paris," *New York Times* (28 October 2001).

Galilee and the relationship between the PLO and the state of Lebanon. According to Cohan:

the Taliban appears to have been both directly and indirectly supportive of terrorists within its borders by consistently permitting, failing to suppress, and tolerating international terrorists in their use of Afghanistan as a center for training camps, supply, and staging operations, and in refusing to cooperate in the capture of Osama bin Laden.¹⁸

However, as will be demonstrated even though the relationship between Taliban and al-Qaeda was indisputably close it was not, in fact, on a scale which would trigger the implementation of the right to self-defence in accordance with international law as understood throughout the twentieth century.

Nevertheless, elaborating on its rationale, the US claimed that the leadership and training bases of al-Qaeda were 'under the protection of the Taliban rulers of Afghanistan'.¹⁹ In the view of the UK's government, 'bin Laden and the [Taliban] regime [had] a close alliance on which both depend for their continued existence'.²⁰ Accordingly, such a dependent or symbiotic relationship had been evident, firstly, in bin Laden's provision of troops, arms, and money to the Taliban in order to support their fight against the Northern Alliance; secondly, in bin Laden's 'representatives in the [Taliban] military command structure'; and thirdly, in the Taliban's provision of 'a safe haven' and permission to establish terrorist training camps; and fourthly in the joint exploitation of the

¹⁸ Cohen JA, "Formulation of a State's Response to Terrorism and State-Sponsored Terrorism," *Pace International Law Review* 14, no. 1 (2002): 93.

¹⁹ US Department of State, "Patterns of Global Terrorism 2001," (2002): 161.

²⁰ Office of Prime Minister (n 6).

Afghan drug trade. The close association between the two was also emphasised by a former Afghan government official, who described the relationship in a following way: the Taliban and bin Laden are ‘two sides of the same coin: Osama cannot exist in Afghanistan without the [Taliban] and the [Taliban] cannot exist without Osama’.²¹ Furthermore, the then NATO’s Secretary General, speaking on the basis of classified material stated that ‘the facts are clear and compelling’ and that ‘[w]e know that the individuals who carried out these attacks were part of the worldwide terrorist network of Al Qaeda, headed by Osama bin Laden and his key lieutenants and protected by the Taliban’.²²

c) The 2001 Operation *Enduring Freedom* in the Light of International Law

This part of the chapter is oriented at scrutinising the aforementioned justification from the angle of international law. The structure of it is commenced in a similar fashion to the one in the preceding chapter that focused on the 1982 Operation *Peace for Galilee*, which in turn allows for an explicit comparison between the two military interventions. In addition, the notion of an armed attack and the changes in the general understanding of it will be analysed initially. This analysis will be conducted by investigating whether the 9/11 attacks met the gravity requirement needed for an act of terrorism to amount to an armed attack. This, in turn, is followed by a discussion about the nature of the relationship between the Taliban regime and al-Qaeda. As already stressed, such analysis of the relationship between a hosting state and non-state actors is crucial as it comprises the second requirement needed for the victim state to implement its right to self-defence.

²¹ *ibid.*

²² Lord Robertson cited in Daley (n 10).

i) A new meaning of “an armed attack”?

As was already mentioned in the preceding chapters, although the term an “armed attack” usually referred to an attack instigated by a state,²³ international law did not negate the possibility of an attack launched by non-state actors to be treated as amounting to an armed attack.²⁴ For instance, the Appeals Chamber in the *Boškoski and Tarčulovski* case recalled the Trial Chamber judgement that ‘[a]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State’.²⁵ The Court thus recognised the possibility of the existence of an armed conflict between a state and a non-state actor. Although the UN Charter does not provide a definition of an armed attack, the ICJ in the *Nicaragua* case pointed out that, for the actions of non-state actors to constitute an armed attack, they must be committed by the group of armed irregulars ‘of such gravity as to amount to an actual armed attack by regular forces’.²⁶ As will be demonstrated 9/11 has prompted a debate surrounding the question whether the attacks could in fact be regarded as an armed attack traditionally understood. The following paragraphs will introduce the reader to the main arguments underlying this debate. What needs to be emphasised upfront however is the fact that the UN Security Council recognised the US right to self-defence. This suggests that 9/11 could be seen as either amounting to an armed attack traditionally understood or creating a precedent where a terrorist attack can prompt a defensive military response.

²³ See, for example: Verhoeven S, "Attacks by Private Actors and the Right of Self-Defence," 289-320.

²⁴ See for example: Schmitt MN, "Counter-Terrorism and the Use of Force in International Law ": 25. According to Murphy, ‘Article 51 is silent on who or what might commit an armed attack justifying self-defence’ ("Terrorism and the Concept of “Armed Attack” in Article 51 of the UN Charter," *Harvard International Law Journal* 43, no.1 (2002): 50).

²⁵ Prosecutor v Ljube Boškoski and Johan Tarčulovski. The Appeals Chamber (Judgement 19 May 2010) IT-04-82-A, section 21, 8-9

²⁶ *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)* (Merits) [1986] ICJ Rep, section 195, 103.

When the number of victims is considered, the 9/11 attack could be seen as an attack resembling the one by armed forces as it resulted in the death of 3,000 people. This, in itself contrasts the 1982 Operation *Peace for Galilee*, launched by Israel in Lebanon and which was initially instigated as a response to the assassination attempt upon the Israeli Ambassador in London. Although the difference at first seems indeed to be striking, the comparison is problematic as the ambassador is the representative of the state and the latter itself may be seen as the target of the attack.²⁷ Further, taking especially into account the contemporary picture of wartime with advanced technology oriented at the limitation of the casualties, the 9/11 with its devastating consequences could have amounted to an armed attack. Moreover, the attackers targeted two significant symbols of the United States, namely the World Trade Center, which could be seen as the headquarters of world finance and the Pentagon, the symbol of American power and government. However when looked at from a different angle it is difficult to place 9/11 within the narrow scope of Article 51 as well as other sources of international law treating the concept of an armed attack.

Taking into consideration the traditional hesitancy and controversy surrounding the subject it was of no surprise that some authors argued that the group of people who kidnapped planes on 9/11 might not meet the criteria established by the aforementioned *Nicaragua* case. This is because the group of nineteen kidnappers can be described rather as a small group, which was armed with an unconventional weapon (i.e., “box cutters”) that would not usually be regarded as a weapon used for example by armed forces. Moreover, the kidnappers ‘did not in any sense operate as normal military or paramilitary

²⁷ For a discussion on the notion of scale and gravity of the attack, see chapter one, part two and chapter three, part one.

units, and [who] were engaged in isolated incidents'.²⁸ What follows is that such actions according to these scholars should be treated as 'a use of force or intervention below the threshold of armed attack'²⁹ and, therefore, considered a criminal act rather than an armed attack.³⁰ Moreover, such reasoning can be further supported by the response of the UN General Assembly, which did not treat 9/11 as an armed attack but as 'heinous acts of terrorism'.³¹

By contrast, the supporters of the claim that 9/11 was an armed attack argue that the gravity of the attack was similar to that of a conventional military attack – even that of Pearl Harbour, which occurred in 1941.³² This is further supported by the number of victims of the attack that took place on a single day, and was regarded as the worst attack since the American Civil War.³³ Secondly, the gravity and the seriousness of the attack could be observed not only in its lethality but also by the fact that the attack was not initiated by a state but was organised and launched by a terrorist organisation. The fact that a non-state actor could undertake an attack on such a scale within the territory of a state signifies and magnifies the actual threat and access to resources available to such organisations. It seems plausible to argue that in the past only states could have access to such resources. Indeed, usually non-state actors used to rely upon the sponsor state to a great extent in order to instigate their military campaigns. Moreover, although terrorist attacks had not been uncommon prior to 9/11, the gravity of these attacks and the consequences were argued to be on an unprecedented scale. According to one author:

²⁸ Murphy (n 24) 45.

²⁹ *ibid* 45-46.

³⁰ According to Schmitt: 'actions by non-State actors (...) might be criminal in nature and/or represent threats to the peace, breaches of the peace or acts of aggression, but not be of a scale sufficient to implicate the international law right of self-defence' in Schmitt (n 24) 18-19. See, also: Tams (n 2).

³¹ UNGA Res 56/1 (2001) A/RES/56/1.

³² It is said that 'the death toll from the incidents was worse than Pearl Harbor' (Murphy (n 24) 47).

³³ Murphy (n 8) 237.

the territorial integrity of the US was violated and the psychological effect, the feeling of utmost vulnerability and insecurity of the population as a whole, was comparable to that generated from a military attack by a state.³⁴

By this, the gravity of the attack ‘went beyond terrorism as it was known’ and ‘statements from various capitals around the world pointed to a need to develop new strategies to confront a new reality’.³⁵ Here, it would seem that the ‘scale and effects’ requirements³⁶ set up in the *Nicaragua* Case were also fulfilled. According to these premises, ‘the “scale and effects” of the act that are determinative in assessing whether an armed attack is taking place such that a right to respond in self-defence vests. By the Court’s standard, acts of a “significant scale” suffice’.³⁷

Thirdly, as was already mentioned, the majority of countries across the globe agreed with the US as to the treatment of the events as constituting an armed attack. Although neither the General Assembly nor the Security Council of the United Nations in their resolutions called the events of 9/11 an armed attack, they recognised the inherent right of individual and collective self-defence and the need ‘to combat by all means [the] threats to international peace and security caused by terrorist acts’.³⁸ The response of international society will be further scrutinised in the next part of this chapter.

³⁴ Müller AC, "Legal Issues Arising from the Armed Conflict in Afghanistan," *Non-State Actors and International Law* 4 (2004): 250-251.

³⁵ Maogoto JN, "War on the Enemy: Self-Defence and State-Sponsored Terrorism."

³⁶ '[T]he prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack' *Nicaragua* Case (n 26) section 195, 103.

³⁷ Schmitt (n 24) 18.

³⁸ UNSC Res 1368 (12 September 2001) UN Doc S/RES/1368, UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373.

Furthermore and as was already mentioned, the Bush administration in various statements following the 9/11 attacks referred to previous attacks instigated by al-Qaeda, such as the 1993 attacks on World Trade Center, 1996 attacks on US military housing complex in Saudi Arabia, the 1998 attacks on US embassies in Tanzania and Kenya and the 2000 attack on USS Cole in Yemen,³⁹ which in its view was evidence that the US was undergoing a sustained threat from al-Qaeda. Such an approach to treat the attacks cumulatively was supported by some scholars. According to Schmitt,

it would make little sense to evaluate each terrorist attack individually in every case (...) in many situations it may be reasonable to conclude that an armed attack was merely the opening shot in an overall campaign that in itself constitutes a single ongoing armed attack.⁴⁰

The fact that this reasoning was not questioned by other members of international society and, in fact, accepted by some international legal scholars gives certain validity to the claim that the “accumulation of events” theory has acquired international recognition. It can, however, also mean that the reliance on the premises of this theory was not necessary as 9/11 in itself amounted to an armed attack and thus gave the basis for implementation of the right to self-defence. Or it could be argued that the reliance on the *Nadelstichtaktik* theory in relation to previous attacks launched by al-Qaeda was treated barely as an additional support for the case rather than the main part of justification as had been the case in relation to the 1982 Operation *Peace for Galilee*.

³⁹ Murphy (n 8) 239. See also: Office of Prime Minister (n 6).

⁴⁰ Schmitt (n 24) 31.

All of the aforementioned arguments were believed to deliver a coherent, yet for some controversial, reasoning supporting the view that 9/11 constituted, in fact, an armed attack in accordance with the UN Charter. Those scholars, who questioned this view, suggest that the 9/11 attacks could have been dealt under domestic criminal law and adequate international law treating the terrorist acts.⁴¹ Others suggest the possibility of organising a short police action, which would involve apprehending terrorists from a particular state.⁴² Yet another possibility brought up was that a victim state could have organised a short incursion into the territory of a harbouring state in which they only attack terrorist bases.

Authors who were, however, sceptical in relation to the lawfulness of the US military response, questioned the time during which Operation *Enduring Freedom* actually commenced. According to the reading of Article 51, for a state to exercise the right of self-defence the armed attack should not end but be ongoing.⁴³ In other words, '[i]f an attack has ceased and there is no danger of future attack, the right of self-defence itself ceases'.⁴⁴ What follows is that if the response comes long after the attack and there is no real danger of possible future attack, such a response should be treated as an unlawful reprisal.⁴⁵ In addition, the attack against Afghanistan occurred a few weeks after the 9/11 attacks on October 8,⁴⁶ and for some such a response was too late to be lawful. The supporters of the US intervention in Afghanistan counter-argued that such a late response was

⁴¹ Rogers APV, "Terrorism and the Laws of War: September 11 and Its Aftermath" in www.crimesofwar.org/expert/attack-apv.html [accessed 1 December 2012]. See also: Schroeder PW, "The Risk of Victory. An Historian's Provocation," *The National Interest* (2001/02): 22-36.

⁴² O'Connell ME, *Jurist Forum: Lawful Responses to Terrorism* (2001) in www.jurist.law.pitt.edu/forum/forumnew30.htm [accessed 1 December 2012].

⁴³ Schmalenbah K, "The Right of Self-Defence and the "War on Terrorism" One Year after September 11," *German Law Journal* 3 (2002) in www.germanlawjournal.com/article.php?id=189 [accessed 1 December 2012]. See also: Charney (n 2).

⁴⁴ *ibid.*

⁴⁵ O'Connell (n 42).

⁴⁶ Müller (n 34) 239.

understandable and necessary in order to ascertain proof of al-Qaeda's responsibility. Moreover,

[b]earing in mind that hasty self-defence would undermine the aims of Article 2(4) of the UN Charter, such a delay was understandable and perhaps even justifiable. The terrorist attacks were not followed immediately by other terrorist attacks, but several threats were made by Al Qaeda members, which could justify the perception of the threat as enduring.⁴⁷

Although the controversies surrounding 9/11 remain present in the writings of various scholars, one of the consequences of the 9/11 attacks is that international society recognised the US right to self-defence, which, in turn, suggests that a terrorist attack can constitute an armed attack and states can exercise their right to self-defence against terrorist organisations within the territory of other states once the threat of future attacks is established.⁴⁸ However this in itself is not the only requirement needed to exercise the right to self-defence. As was already mentioned, the attacks needed to be attributed to a state, in this case to Afghanistan. If no link between the non-state actors and the supporting states is established then a state, which has been attacked, should look for an 'alternative response to armed force'.⁴⁹ What is interesting and worth mentioning here is that although according to some authors there were other legal bases for the use of force,⁵⁰ the US chose to justify its action as an exercise of the right to self-defence. Byers, for instance, points to three

⁴⁷ *ibid* 252.

⁴⁸ Schmalenbah (n 43).

⁴⁹ O'Connell (n 42).

⁵⁰ Such as Chapter VII of the UN Charter, intervention by invitation, humanitarian intervention, see, for example: Byers M, "Terrorism, the Use of Force and International Law after 11 September," *International & Comparative Law Quarterly* 51, no. 2 (2002): 401.

other possible legal justifications that could have been used, that is: Chapter VII of the UN Charter (intervention under the UN's emblem), intervention by invitation and humanitarian intervention.⁵¹

ii) Al-Qaeda and the Taliban

This part of the chapter seeks to investigate the relationship between the Taliban regime and al-Qaeda and whether the nature of this relationship was sufficient enough to establish the Taliban's responsibility and in turn legitimise the intervention in accordance with international law. As mentioned earlier,⁵² a state, which openly supports non-state actors, might be held responsible for the actions of such an entity. This principle, as the first case of this thesis has demonstrated, proves to be controversial as in some cases the relationship between the two actors is difficult to be established. Moreover, the cases involving wilful or unwilful harbouring of non-state actors prove to be debateable and controversial. Although international law of treaties is silent in this matter and does not provide any legal guidance regarding the responsibility of states for the actions conducted by non-state actors the workings of international courts and tribunals⁵³ as well as the writing of various international lawyers and scholars⁵⁴ put some insight into the understanding of the matter in question.

⁵¹ *ibid* 401.

⁵² See chapter one, part two and chapter three, part one.

⁵³ For example, the *Corfu Channel Case (United Kingdom v Albania)* (Merits) [1949] ICJ Rep, *Nicaragua case* (n 26), *Tadić Case* (Judgment) ICTY-94-I-A (15 July 1999).

⁵⁴ See, for example: Blum YZ, "State Response to Acts of Terrorism." Brownlie I, "International Law and the Activities of Armed Bands." Brown Weiss E, "Invoking State Responsibility in the Twenty-First Century," *American Journal of International Law* 96, no. 4 (2002): 798-816. Cassese A, "The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgement in Bosnia," *European Journal of International Law* 18, no. 4 (2007): 649-668. Griebel J Plücken M, "New Developments Regarding the Rules of Attribution? The International Court of Justice's Decision in Bosnia V. Serbia," *Leiden Journal of International Law* 21, no. 3 (2008): 601-622. Milanović M, "State Responsibility for Acts of Non-State Actors: A Comment on Griebel and Plücken," *Leiden Journal of International Law* 22 (2009): 307-324. Talmon S, "The Responsibility of Outside Powers for Acts of Secessionist Entities," *International & Comparative Law Quarterly* 58 (2009):

In addition, if a close relationship is established, a victim state, which has suffered from the terrorist actions, can ask for reparation of the wrong.⁵⁵ With regard to 9/11, however, the US implied that it had a right to attack Afghanistan in order to exercise its inherent right to self-defence, which, in turn, implied that the Taliban's regime was indirectly responsible for 9/11. The point of departure is the investigation of the proof. In other words, it needs to be established whether the US and its allies provided evidence proving the attribution of al-Qaeda attacks to Taliban regime and whether such evidence was, indeed, satisfactory. Throughout the history of the US advocating its case for the use of force, most Administrations referred to the provision of "convincing" or "compelling" evidence.⁵⁶ The ICJ in the *Nicaragua* case stressed the importance of "sufficient proof".⁵⁷ Scholars refer to "sufficiently convincing", "convincing evidence"⁵⁸ or "stringent evidence".⁵⁹ Thus the question to be asked is: has the US provided such compelling, sufficient or convincing evidence?

The US in its justification claimed that leadership and training bases of al-Qaeda were 'under the protection of the Taliban rulers of Afghanistan'.⁶⁰ As was already mentioned at the beginning of this chapter, the relationship between the Taliban and al-Qaeda was seen as dependable and close. Despite this accusation, the US decided to provide the Taliban with a series of demands, which, in turn, could halt the possibility of the US intervention in Afghanistan. This, in turn, suggests that the US before engaging in a military operation sought to resolve the conflict by peaceful means in accordance with the

493-517. Tams CJ, "Do Serious Breaches Give Rise to Any Specific Obligations of the Responsible State?," *European Journal of International Law* 13, no. 5 (2002): 1161-1180.

⁵⁵ Shaw MN, *International Law* (5th edn Cambridge: Cambridge University Press 2003), 694. See also: Jennings R Watts A, *Oppenheim's International Law*, vol. 1 (9th edn London and New York: Longman, 1996), Chapter IV.

⁵⁶ O'Connell ME, "Evidence of Terror," *Journal of Conflict and Security Law* 7, no. 1 (2002): 21.

⁵⁷ *Nicaragua* case (n 26) section 101, 59.

⁵⁸ Greenwood cited in O'Connell (n 56) 25.

⁵⁹ Lobel cited in O'Connell (n 56) 25.

⁶⁰ US Department of State (n 19) 161.

principles of international law. Moreover, although the US did not recognise the Taliban as the *de jure* government of Afghanistan, it accepted the fact that the regime is, in fact, the *de facto* government of the state,⁶¹ as it controlled ninety per cent of the Afghan territory⁶² and therefore the Bush administration decided to engage in a discussion with them through Pakistan's officials.⁶³ In addition, three demands are of special interest for this case study. Firstly, President Bush insisted on the delivery 'to United States authorities all the leaders of al Qaeda who [hid] in [Taliban's] land'.⁶⁴ Secondly, the Taliban were required to '[c]lose immediately and permanently every terrorist training camp in Afghanistan'.⁶⁵ And finally, to 'give the United States full access to terrorist training camps, so [the US] can make sure [that] they are no longer operating'.⁶⁶ Moreover, the President also stressed that '[t]hese demands are not open to negotiation or discussion. The Taliban must act, and act immediately. They will hand over the terrorists, or they will share in their fate'.⁶⁷

Although the Taliban leadership at first instance condemned the 9/11 attacks, it claimed that bin Laden was not responsible,⁶⁸ and demanded that proof of bin Laden's guilt be delivered. Although at the beginning, due to the lack of evidence, the Taliban decided not to extradite bin Laden⁶⁹ their position changed and the Taliban suggested that they may be

⁶¹ The exact translation of the words *de jure*: 'by rights; by lawful title' (Curzon LB Richard PH, *The Longman Dictionary of Law* (7th edn Harlow: Pearson Longman, 2007)). In international law, the term refers to the theory of states' recognition. According to Shaw, '[r]ecognition *de jure* usually follows where the recognizing state accepts that the effective control displayed by the government is permanent and firmly rooted and that there are no legal reasons detracting from this' ((n 55) 382). In other words, the government of a particular state is recognized by other states as lawful government. Recognition *de facto*, on the other hand, 'implies that there is some doubt as to the long-term viability of the government in question' and by this it 'involves a hesitant assessment of the situation, an attitude of wait and see' (ibid 382).

⁶² Schmalenbah (n 43).

⁶³ Murphy (n 8) 244.

⁶⁴ Bush (n 13).

⁶⁵ ibid.

⁶⁶ ibid.

⁶⁷ ibid.

⁶⁸ Bearak B, "Condemning Attacks, Taliban Says Bin Laden Not Involved," *New York Times*. 12 September 2001.

⁶⁹ Burns JF, "Hunt for Bin Laden Begins on a Trail Gone as Cold as the Afghan Landscape," *New York Times* 23 September 2001.

willing to 'turn [bin Laden] to a third country'.⁷⁰ The US responded that the demands were not negotiable.

It is worth mentioning here that the scholars' opinions, in relation to the US' strikes against Afghanistan, were divided. Some authors claimed that the US intervention was lawful. According to one of them, 'defensive action in the territory of the host state is necessary if this host does not protect the defending state from further attacks emanating from its territory'.⁷¹ Therefore, 'in the case of the Taliban, the *de facto* government did not sufficiently protect the US, so that self-defence could be considered necessary'.⁷² Others argued that the military actions should have been directed against al-Qaeda only and that the 9/11 attacks could not have been attributed to the Taliban.⁷³ It was also suggested that launching an attack against training camps and weapons arsenals and not the host state itself would be a legitimate response.⁷⁴

Although scholars' opinions on the legality of the US military intervention in Afghanistan were divided, the controversy surrounding this case has prompted an academic debate on the notion of the right to self-defence. While throughout the most of the twentieth century, at least since the adoption of the UN Charter, the majority of scholars tended to support the narrow right of self-defence, a number of those supporting the wider scope of the right of self-defence has increased since 2001.⁷⁵ When this is coupled with the growing support explicit in various statements of the members of

⁷⁰ Frantz D, "Taliban Say They Want to Negotiate with the US over Bin Laden," *New York Times* 3 October 2001.

⁷¹ Krajewski cited in Müller (n 34) 256.

⁷² *ibid.* See also: Franck TM, "Terrorism and the Right of Self-Defence," *American Journal of International Law* 95, no. 4 (2001): 840-841. --"When, If Ever, May States Deploy Military Force without Prior Security Council Authorization?," *Washington University Journal of Law & Policy* 5 (2001): 51-68.

⁷³ Schmitt (n 24) 51, 53. See also: O'Connell (n 56) 30.

⁷⁴ Müller (n 34) 254, 257.

⁷⁵ See note 2 and 3.

international society, it is apparent that, firstly, it is much more likely now for a terrorist attack to be seen as constituting an armed attack; and secondly international society, as will be demonstrated, has become less reluctant towards the use of force directed against non-state actors and harbouring states. This suggests the growing acceptance of the wider scope of the right of self-defence which, in turn, gives more freedom for a victim state to engage its armed forces in a military action outside its borders.

Part Two: The Response of International Society Towards the 2001 Operation

Enduring Freedom

As will be demonstrated the manner of the way in which international society responded towards the 2001 Operation *Enduring Freedom* suggests that there has been change in states' approaches firstly towards terrorist attacks and secondly towards those states, that willingly or unwillingly allow their territories to be used as operational bases for non-state actors. This shift can be observed clearly when both the 1982 Operation *Peace For Galilee* and the 2001 Operation *Enduring Freedom* and the subsequent responses of international society towards the operations in question are compared.

a) Terrorist Attack as an Armed Attack

The fundamental change, which has had consequences on the legal system, can be observed in that the right to self-defence was, for the first time since the adoption of the UN Charter, recognised in relation to a terrorist attack. Writing in relation to 9/11 Cassese noted that 'in a matter of a few days, practically all states (...) have come to *assimilate* a terrorist attack by a terrorist organisation to an armed aggression *by a state*, entitling the

victim state to resort to individual self-defence'.⁷⁶ This in turn may indicate that 'the response of the international community in the aftermath of 9/11 has given rise to a new principle of customary international law that permits the use of force in self-defence in response to "armed attacks" committed by non-state terrorist organisation'.⁷⁷

The fact that neither an assassination attempt nor previous attacks launched by the PLO were recognised by international society as justifying military intervention within Lebanon suggests that prior to 2001 it had been very difficult for a victim state to convince international society that the resort to force was an adequate and reasonable response to a terrorist attack. As has been demonstrated, the recognition of the right to self-defence might have been caused by the gravity of the attacks, which occurred on September 11 and resulted in the deaths of 3,000 people. However, as the third case study will demonstrate international society changed its approach towards the use of force in relation to terrorism in general rather than only in relation to terrorist attacks, which could in its gravity amount to an armed attack, traditionally understood. The following case study will show that even in a situation when the attack launched by non-state actors did not meet the gravity requirement, international society nevertheless recognised a state's right to self-defence.

Regarding the international approach towards 9/11, the international support, signalling the shift in approach towards terrorism, was further strengthened by the adoption of two resolutions by the UN Security Council.⁷⁸ The significance of these resolutions can be observed in that not only the 9/11 attacks were condemned but also were treated as constituting a threat to international peace and security. In addition, Resolution 1368 states

⁷⁶ Cassese A, "Terrorism Is Also Disrupting Some Crucial Legal Categories of International Law," *American Journal of International Law* 12, no. 5 (2001): 996-997. (emphasis in original).

⁷⁷ Garwood-Gowers A, "Self-Defence against Terrorism in the Post-9/11 World," *Queensland University of Technology Law and Justice Journal* 4, no. 2 (2004): 11.

⁷⁸ UNSC Res 1368; UNSC Res 1373 (n 38).

that the UNSC '[u]nequivocally condemns in the strongest terms the horrifying terrorist attacks, which took place on 11 September 2001 (...) and regards such acts (...) as a threat to international peace and security'.⁷⁹ Moreover and indeed more importantly, the Security Council also recognised 'the inherent right of individual or collective self-defence in accordance with the Charter'.⁸⁰

However, the very fact that the 9/11 attacks were treated as constituting a threat to international peace and security as well as giving a basis for the implementation of the right to self-defence brought about an academic dispute over the meaning of these resolutions: the controversy over the adoption of these resolutions surrounded the question of whether 9/11 should be treated as an armed attack thus giving the basis for the right of self-defence⁸¹ or as a threat to international peace and security and thus be dealt with under the provision of Article 39 of the UN Charter.⁸² In addition, according to some, the aforementioned resolutions indicated that 9/11 should be seen as constituting a threat to peace and therefore the situation 'should be dealt with not under the rubric of unilateral or multilateral self-defence, but under the collective security provisions of the UN Charter'.⁸³ In addition, both resolutions were adopted before an instigation of the military campaign on October 7. Thus, the US government could have asked the UNSC to undertake the enforcement measures in compliance with Article 39 of the UN Charter,⁸⁴ especially since

⁷⁹ UNSC Res 1368 (n 38) (emphasis in original) the reaffirmation of this statement was delivered in UNSC Res 1373 (n 38).

⁸⁰ UNSC Res 1368; UNSC Res 1373 (n 38).

⁸¹ See, for example: Byers (n 50) 401-414. Gray C, "The US National Security Strategy and the New "Bush Doctrine" on Preemptive Self-Defence," *Chinese Journal of International Law*, Vol. 2 (2002), pp. 437-447. White ND Myjer EPJ, "The Twin Towers Attack: An Unlimited Right to Self-Defence?," *Journal of Conflict and Security Law* 7, no. 1 (2002): 5-17.

⁸² See, for example: Bothe M, "Terrorism and the Legality of Pre-Emptive Force," *European Journal of International Law* 14, no. 2 (2003): 227-240. White, Myier (n 80).

⁸³ White, Myier (n 81) 11.

⁸⁴ Article 39 reads: *The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security* (Charter of the

the Security Council had already recognized acts of international terrorism as a threat to peace and security. The US in launching operation *Enduring Freedom*, however, relied upon the merits of Article 51 and thus its right to self-defence and not the UNSC authorisation.⁸⁵

Nonetheless it should be noted that although 9/11 or ‘any act of international terrorism’ was recognized as constituting a threat to international peace and security, this does not necessarily imply the recognition of the right to use of force. What this implied, however, is the possibility of the use of force in accordance with Articles 41 and 42 or the usage of other legal measures, discussed earlier, and not necessarily Article 51, which treats the right to self-defence.⁸⁶ It is enough to bring attention to acts of terrorism that occurred in the past, such as those committed either by the PLO or Hezbollah discussed in the preceding chapter, and the subsequent response of states, to realize that not every act of international terrorism would subsequently lead to the implementation or international recognition of the right of self-defence. As will be demonstrated subsequently this very shift, i.e. that the right of self-defence was recognised, created a certain dichotomy or controversy in relation not only to the meaning of the aforementioned resolutions but also to the role of the UNSC in a situation relating to the implementation of the right to self-defence.

United Nations (adopted on 26 June 1945, entered into force on 24 October 1945) 892 UNTS 119 (hereinafter: UN Charter)).

⁸⁵ Ruys, Verhoeven (n 23).

⁸⁶ While Article 41 treats an employment of measures not involving the use of force, Article 42 envisages the possibility of an armed intervention under the emblem of the United Nations.

b) The Recognition of the Right of Self-defence in Relation to a Terrorist Attack and the Question of the UNSC Authorisation

As was demonstrated in the preceding chapter discussing the Israeli interventions in Lebanon, although the justification delivered by the Israeli government was indeed similar to that of the US government in relation to 9/11, the Israeli right to self-defence was not recognised. Thus state practice prior to 2001 had given evidence suggesting that it was indeed very difficult for a victim state to convince international society that the use of force was, in fact, legitimate and in accordance with international law. As will be demonstrated the way in which international society reacted to 9/11 has shone a new light onto the legitimacy of the use of force in relation to a terrorist attack.

In addition, the UNSC, in resolutions 1368 and 1373 adopted on September 12 and 28 respectively, recognized and reaffirmed ‘the inherent right of individual or collective self-defence in accordance with the Charter’.⁸⁷ This recognition was not free from controversy not only regarding the aforementioned recognition of 9/11 as constituting a threat to international peace and security but also in relation to the role of the UNSC in the implementation of the right to self-defence. In addition, although some authors argue that this wording is proof that 9/11 was “an armed attack”⁸⁸ and thus the UNSC ‘was acknowledging for the first time that States may unilaterally use military force against terrorists who have committed an armed attack’,⁸⁹ for some the resolutions were not that straightforward. Various scholars, for example, argued that although the right to self-defence was recognised, the US prior to the instigation of the military campaign in

⁸⁷ UNSC Res 1368, UNSC Res 1373 (n 38).

⁸⁸ Wall AE, "International Law and the Bush Doctrine," *Israel Yearbook on Human Rights* 34 (2004): 202. See also, for example: Schmitt (n 24) 26-27.

⁸⁹ Wall (n 88) 202.

Afghanistan should have obtained formal authorisation from the UNSC.⁹⁰ This argument, though, raises certain questions: firstly, is the authorisation actually required? And, secondly, in a case when such authorisation is missing, is the instigation of the military campaign unlawful? According to Murphy, the UNSC did not authorise explicitly the use of force.⁹¹ Delbrück, on the other hand, argued that although the UNSC did not expressly authorize the use of force,

it appears that the requirements of the applicability of Art. 51 (...) are fulfilled with the proviso, though, that the measures of self-defence have to stay within the bounds set by the principle of proportionality and the rules of international humanitarian law⁹²

and therefore it is 'a clear indication of the consensus'.⁹³ Yet another criticism is delivered by Bowring, according to whom, 'the Security Council neither endorsed nor authorized the military action, it merely noted that it is taking place, with a justification of self-defence'.⁹⁴ For him, '[t]he Security Council, and, in effect, the whole Charter and

⁹⁰ See for example: Charney (n 2). Lietzau WK, "Old Laws, New Wars: Jus Ad Bellum in an Age of Terrorism," 383-455. Stahn C, "International Law at a Crossroads? The Impact of September 11," *MaxPlanck Institut* (2002): 183-255.

⁹¹ Murphy (n 8) 244.

⁹² Delbrück J, "The Fight against Global Terrorism: Self-Defence or Collective Security as International Police Action? Some Comments on the International Legal Implications of the 'War against Terrorism'," *German Yearbook of International Law* 44 (2001): 16.

⁹³ *ibid* 20.

⁹⁴ Bowring B, "The Degradation of International Law?," in *Law after Ground Zero*, ed. Strawson J (London: The GlassHouse Press, 2002), 14-15. The Resolution 1368 reads: 'The Security Council, *Reaffirming* the principles and purposes of the Charter of the United Nations (...) *Recognising* the inherent right of individual or collective self-defence in accordance with the Charter, *Unequivocally condemns* (...) and *regards* such acts, like any act of international terrorism, as a threat to international peace and security (...) *Expresses* its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations' (n 38).

customary law on the use of force and self-defence, [had] been jettisoned in the name of the war against terrorism'.⁹⁵

Franck, crucially, argues that there is no need for states to obtain 'the blessing of the Security Council before responding to an armed attack according to international law'.⁹⁶ This argument seems to be the most convincing. In addition, the UN Charter imposes a requirement to report defensive actions to the UNSC⁹⁷ and this was fulfilled by the US on October 7, 2001.⁹⁸ Indeed, Article 51 of the UN Charter reads that a state can act in self-defence after an armed attack and until the UNSC takes the appropriate action.⁹⁹ No authorization requirement is, in fact, mentioned in this article. Moreover, both resolutions (i.e. 1368 and 1373) did, in fact, recognize the inherent right of self-defence and did not impose any further steps for the US to fulfil before such a right could be endorsed. It is very probable that the drafters of these resolutions took into consideration the likelihood of the use of force. If they did include authorization of the use of force then in the future such resolutions could be used to justify any military action undertaken to fight international terrorism. This seems to be corresponding to Byers' opinion in that the point

is not that the resolution (...) should be read as authorizing the use of force – indeed, in my view it does not – but that it could provide the US with an at-least-tenable argument whenever and wherever it decides, for political

⁹⁵ Bowring (n 94) 14-15. Koh, argues, however, 'a narrow, legalistic focus should not obscure the bigger picture: September 11 was an attack, not just on innocent civilians, but on the very spirit of international law' ("The Spirit of the Laws," *Harvard International Law Journal* 43, no. 1 (2002): 25.)

⁹⁶ Franck (n 72) 843.

⁹⁷ Schmitt (n 24) 12.

⁹⁸ *Letter dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council* (7 October 2001) UN Doc S/2001/946.

⁹⁹ For a discussion, see: Shah NA, "Self-Defence, Anticipatory Self-Defence and Pre-Emption: International Law's Response to Terrorism," *Journal of Conflict and Security Law* 12, no. 1 (2007): 95–126.

reasons, that force is necessary to “prevent the commission of terrorist acts”.¹⁰⁰

Moreover, it seems right to argue, as Cassese did, that even the UNSC did not know exactly how to respond to 9/11.¹⁰¹ Undoubtedly, the very fact that such vast support for the US was delivered by various states must have caused uneasiness for the UNSC regarding the possible ways of dealing with such a pressing issue. Such uneasiness can be observed in the adoption of the two resolutions. In addition, firstly the UNSC recognised the right of self-defence and then subsequently referred to the attacks as constituting a threat to international peace and security, which in turn, suggests the possibility of applying the provisions embodied within Chapter VII of the UN Charter.¹⁰² By doing so ‘the Security Council waver[ed] between the desire to take matters into its own hands and resignation to the use of unilateral action by the US’.¹⁰³ What should be emphasised, however, is the fact that the UNSC recognised the right of self-defence and thus it might be argued that it did in fact acknowledge the occurrence of an armed attack. Furthermore, from the way in which the Security Council responded to the 9/11 attacks, it can be argued that the Council accepted two possible and lawful resolutions of the situation. The 9/11 attacks could have been dealt with either by the use of force instigated by the US or by the implementation of provisions enlisted in Chapter VII of the UN Charter.¹⁰⁴

¹⁰⁰ Byers (n 50) 402.

¹⁰¹ Cassese (n 76) 996.

¹⁰² Articles 41 and 42 of the Chapter VII of the UN Charter are of special significance as according to them, the UNSC may decide to either impose economic sanctions or to instigate an appropriate action including military one directed against member of the UN.

¹⁰³ Cassese (n 76) 996.

¹⁰⁴ See n 102. See, however: Subedi SP, "The UN Response to International Terrorism in the Aftermath of the Terrorist Attacks in America and the Problem of the Definition of Terrorism in International Law " *International Law FORUM Du Droit International* 4 (2001): 160.

Notwithstanding the importance of the aforementioned debate surrounding the meaning of the UNSC resolutions, an indisputable fact is that the right of self-defence was recognised. This recognition, as has and will be further demonstrated throughout the third case study, is indispensable for this thesis as it unequivocally delivers the evidence suggesting the shift in international approach towards the use of force in relation to terrorism. Taking further into consideration the fact that many states decided to assist and join the US in Operation *Enduring Freedom* it can be argued that the intervention in Afghanistan was, indeed, seen as a legitimate exercise of the right to self-defence.¹⁰⁵ Lastly, it should be mentioned that the UNSC acknowledged the US notification of carrying out Operation *Enduring Freedom* on October 7¹⁰⁶ and did not condemn it subsequently. It can be, thus, argued that even though a statement suggesting an acquirement of the UNSC authorisation¹⁰⁷ seems to be normatively coherent, it, in a way, questions the very meaning of the *inherent* right of self-defence and places too much burden on a victim state. In addition, the UN Charter, apart from requiring a victim state to report any use of force undertaken in self-defence, does not invoke an obligation to seek formal authorisation. Although, it might be argued that if, in fact, the US had sought the UNSC authorisation, it would have further strengthened its case, this requirement cannot be found in any of the sources of international law.

¹⁰⁵ 136 countries offered various military assistance, '89 countries granted overnight authority for US military aircraft, 76 'granted landing rights for US military aircraft', 23 'agreed to host US and Coalition forces involved in military operations in Afghanistan' (US Department of State (n 17) xii).

¹⁰⁶ UN Doc (n 98).

¹⁰⁷ See also: Murphy (n 8); Delbrück (n 92); White and Myier (n 81); Subedi (n 104); Bowring (n 94); Byers (n 50).

c) The Taliban Regime and the Question of Harbours

Other evidence suggesting that there was a growing international acceptance of a wider definition of the right to self-defence can be found in that states have become more firm and intolerant towards states, who either willingly or unwillingly allow their territory to be used as operational bases for non-state actors. This new development is evident when Operations of *Peace for Galilee* in 1982 and *Enduring Freedom* in 2001 are compared. Whereas in relation to the former, international society criticised Israel in a strong form and viewed actions of the PLO as not being attributable to the government of Lebanon,¹⁰⁸ it adopted an opposite approach in relation to the latter suggesting that the Taliban regime might have been responsible for the actions of al-Qaeda. This in turn may imply that currently, states, which fail to prevent their territories to be used by non-state actors, can be held accountable or can at least face serious consequences resulting in military intervention.

As the first case study has shown, Israel failed to convince international society that it had a right to use force against the territory of Lebanon. Although, from the perspective of time it can be observed that, in fact, Israel relied upon similar reasoning as the US in 2001, international society did not recognise this justification as lawful rationale for a military campaign. Thus, it may be suggested, that prior to 2001 it was difficult for a victim state to build a case for the use of force based on the principle of *due diligence*, and allowance (either wilful or unwilful) of the territory to be used as a base for non-state actors, as such. Looking, however, at the US justification and the subsequent international recognition of such justification a conclusion can be derived that there has been growing

¹⁰⁸ See chapter three, part two.

acceptance of the lowering of the standard of state attribution. Even though the relationship between the Taliban regime and al-Qaeda, as opposed to Lebanon and the PLO, was characterised as close and dependable, it still would not have been on such a scale as triggering the rules of attribution had it happened prior to 9/11. Thus, the way in which both the US and international society responded towards the 9/11 attacks strongly suggested that the control requirements discussed earlier in this thesis (either “effective control”¹⁰⁹ or “overall control”¹¹⁰) do not apply anymore or at least they have been broadened.

As was demonstrated already, the scholars’ opinion in relation to the US strikes against Afghanistan was, however, divided. Some authors claimed that the US intervention was lawful. According to one of them, ‘defensive action in the territory of the host state is necessary if this host does not protect the defending state from further attacks emanating from its territory’.¹¹¹ Therefore ‘in the case of the Taliban, the de facto government did not sufficiently protect the US, so that self-defence could be considered necessary’.¹¹² Others argued that the military actions should have been directed against al Qaeda only and that the 9/11 attacks could not have been attributed to the Taliban.¹¹³ One commentator suggested that launching an attack against training camps and weapons arsenals and not the host state itself would be a legitimate response’.¹¹⁴

When the relationship between al-Qaeda and the Taliban regime is scrutinised, it can be concluded that the Taliban neither controlled nor directed the al-Qaeda actions.

¹⁰⁹ *Nicaragua* case (n 26).

¹¹⁰ *Tadić* Case (n 53).

¹¹¹ Krajewski (2002) cited in Müller (n 34) 256. See also: Franck (n 72) 840-841.

¹¹² Müller (n 34) 256.

¹¹³ Schmitt (n 24) 51, 53. See also: O’Connell (n 56) 30.

¹¹⁴ Muller (n 34) 254, 257.

Therefore, the criteria established either by *Nicaragua* or *Tadić* cases was not fulfilled. As pointed earlier, it was al-Qaeda, which financed and provided money and weapons therefore it can be argued that al-Qaeda was the superior one in the relationship. Although that does not change the fact that the Taliban was responsible for allowing its (*de facto*) territory to be used by terrorists, it cannot be said that the Taliban controlled bin Laden's organisation.¹¹⁵ Such a situation, although controversial in that 'a private organisation constitutes a force superior to the state authorities without striving to exercise governmental authority remains a novelty that is hard to assess within the existing rules on attributability',¹¹⁶ does not change the fact that al-Qaeda was not controlled by the Taliban. In summary, apart from allowing Afghanistan's territory to be used as al-Qaeda bases, there was no credible evidence indicating that the regime was 'providing arms, money, or other material support' to bin Laden's organisation.¹¹⁷ What follows is that in the words of one author: 'the case is probably weaker than the case for US control over Nicaraguan contras, who were organized, trained, armed, and financed by the US government'.¹¹⁸

The above findings suggest a new development regarding the threshold for attribution of action undertaken by non-state actors to a state. The current trend indicates that a state can not only, be accused of breaching its international obligations when allows for its territory to be used by non-state actors, but also, become a target of a victim state exercising its right to self-defence. Although, as it was mentioned earlier in this thesis, some states and scholars¹¹⁹ presented this argument before 9/11, their views were not

¹¹⁵ See, for example: Schmitt (n 24) 46 and Müller (n 34) 247.

¹¹⁶ Müller (n 34) 249.

¹¹⁷ Malzahn S, "State Sponsorship and Support of International Terrorism: Customary Norms of State Responsibility," *Hastings International & Comparative Law Review* 26, no. 1 (2002): 112-113.

¹¹⁸ *ibid.*

¹¹⁹ According to Wedgwood, '[i]f a host country permits the use of its territory as a staging area for terrorist attacks when it could shut those operations down, and refuses requests to take action, the host government cannot expect to insulate its territory against measures of self-defence' (Wedgwood (1999) cited in Dinstein Y, *War, Aggression and Self-Defence* (4th edn Cambridge: Cambridge University Press, 2005), 245.

supported by the wider international spectrum. In addition, the adequacy of the situation changed when international society together with international legal scholars supported the above argument. Even though it is argued that states do not have to 'prevent every act of international terrorism that originates from [their] territory', they are expected, however, to 'exercise *due diligence* in the performance of their international obligations so as to take all reasonable measures under the circumstances to protect the rights and securities of other states'.¹²⁰ Though, as was already discussed earlier in the preceding chapter, the duty to exercise *due diligence* was treated by international case law, it had not been generally accepted either by the ICJ or by international legal scholarship that a state which failed to exercise its due diligence can become a legitimate target of a state exercising the right to self-defence. The 9/11, therefore, has brought a new light to this provision.

The evidence presented by the US and the coalition made it very clear that the Taliban failed to exercise *due diligence*. Although the Taliban allowed Afghanistan's territory to be used as a base for al-Qaeda's operations, there was no evidence suggesting that the regime had any prior information suggesting the occurrence of the 9/11 attacks. Nevertheless, their lack of exercising *due diligence* can be evident in that the regime neither appealed for international support in dealing with terrorist organisation¹²¹ nor acknowledged its inability to suppress the al-Qaeda actions. This can be further supported by the fact that it actually rejected the US willingness to provide assistance in dealing with

¹²⁰ Maogoto (n 35) 10-11. (emphasis added)

¹²¹ According to Sucharitkul, 'if the state cannot prevent unlawful acts that originate from its own territory it can however bring international society attention to the matter and ask international authority for its assistance' ("Terrorism as an International Crime: Questions of Responsibility and Complicity," 257.)

al-Qaeda.¹²² Moreover, the Taliban's lack of desire to act cooperatively can be further observed in their refusal to extradite bin Laden.¹²³

Further, it is argued that an action of non-state actors is attributable to a state if such a state 'deliberately created a situation which was a necessary precondition for a later event under the condition that the happening of that event was not beyond reasonable probability'.¹²⁴ It can, accordingly, be concluded that if al-Qaeda had not been allowed to use the Afghan territory and if the Taliban regime had, in fact, acted in accordance with UN Security Council resolutions,¹²⁵ the 9/11 attack would not have occurred. In addition, Taliban's passive approach towards the al-Qaeda's actions and its own international obligations 'was one of the indispensable preconditions for the functioning of al-Qaeda and of the attack of 11 September 2001'.¹²⁶ Moreover, considering previous attacks undertaken by al-Qaeda it would be very doubtful to assume that the Taliban regime did not know about the terrorist activity of the non-state actor operating within its territory. Furthermore, resolutions adopted by the UNSC made the Taliban fully aware of the danger al-Qaeda constituted to the western states. In addition, Wolfrum and Philipp argue that

¹²² Malzahn (n 117) 112-113.

¹²³ It is worth mentioning the controversy surrounding the notion of prosecution and extradition of terrorists. Malzahn notices, for example, that '[w]hile states are obliged to prosecute terrorist activities that occur within its territory against aliens, there is no corresponding duty under customary international law to prosecute terrorist who commit acts of terrorism in another state's territory' (n 117) 109). What follows is that in relation to 9/11 although the Taliban were not obliged to extradite al-Qaeda leaders under international law, it nevertheless 'demonstrated extreme bad faith and was evidence of the state's seal-of-approval' (ibid 113). However, in a view of Byers 'extending the right of self-defence to include action against States willingly harbouring terrorists creates a potentially awkward overlap between the law of self-defence and the law of judicial co-operation, especially with regard to extradition' (Byers (n 50) 413).

¹²⁴ Wolfrum R Philipp CE, "The Status of the Taliban: Their Obligations and Rights under International Law," *MaxPlanck YUNL* 6 (2002): 596.

¹²⁵ See, for example: UNSC Res 1214 (8 December 1998) UN Doc S/RES/1214; UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267; UNSC Res 1333 (19 December 2000) UN Doc S/RES/1333; UNSC Res 1363 (30 July 2001) UN Doc S/RES/1363.

¹²⁶ Wolfrum and Philipp (n 124) 595-6.

‘acts carried out by *Al Qaeda* [were] attributable also to the *Taliban* and therefore the *Taliban* themselves could be made the target for actions of self-defence’.¹²⁷

d) The Unparalleled International Solidarity with the United States

As was already mentioned, the international solidarity with the US was, indeed, on an unprecedented scale. Not only the UNSC, the UNGA and UN Secretary-General expressed their condemnation of the 9/11 attacks but other international and regional organizations including NATO,¹²⁸ EU¹²⁹ and more surprisingly the Arab League and Organisation of African Unity¹³⁰ also expressed their criticism and support for the US. Moreover, many states also decided to assist the US in Operation *Enduring Freedom*.¹³¹ In order to emphasize this unprecedented support and solidarity, it is important to present in this part of the chapter statements issued by representatives of various states and international bodies. In addition, the President of the UNSC speaking on behalf of the Council on September 11 ‘unanimously condemn[ed] in the strongest terms the horrifying

¹²⁷ *ibid* 596 (emphasis in original).

¹²⁸ ‘The attack against the United States on 11 September was directed from abroad and shall therefore be regarded as an action covered by Article 5 of the Washington Treaty, which states that an armed attack against one or more of the Allies in Europe or North America shall be considered an attack against them all’ (Statement by NATO Secretary General, Lord Robertson (2 October 2001) reprinted in US Department of State (n 19) 163. See also: Statement by the North Atlantic Council (12 September 2001) in <http://www.nato.int/docu/pr/2001/p01-124e.htm> [accessed 1 December 2012].

¹²⁹ The EU in its statement dated 8 October (S/2001/967) ‘declared its full solidarity with the United States and wholehearted support for the action it was taking in Afghanistan’ (Yearbook of the United Nations, vol. 55 (2001), 65 (hereinafter UNYB)). This decision was confirmed by the Declaration by the Heads of State or Government of the European Union and the President of the Commission, in which it was stated that ‘The European Council confirms its staunchest support for the military operations which began on 7 October and which are legitimate under the terms of the United Nations Charter and of Resolution 1368 of the United Nations Security Council’ (‘The Declaration by the Heads of State or Government of the European Union and the President of the Commission. Follow-up to the September 11 Attacks and the Fight Against Terrorism’ (19 October 2001) EU Doc SN 4296/2/02 REV 2.).

¹³⁰ Also known as African Union. OAU in its communiqué states that it ‘[c]ondemns unequivocally the horrific terrorist attacks that have caused enormous loss of human life and destruction’ Communiqué of the Seventy-six Ordinary Session of the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution Held at the Ambassadorial Level (20 September 2001) reprinted in US Department of States (n 19) 169.

¹³¹ 136 countries offered various military assistance, 89 countries granted overnight authority for US military aircraft, 76 ‘granted landing rights for US military aircraft’, 23 ‘agreed to host US and Coalition forces involved in military operations in Afghanistan’ (US Department of States (n 19) xii).

terrorist attacks'.¹³² According to the UN Secretary – General, 'these attacks [were] deliberate acts of terrorism, carefully planned and coordinated - and as such I condemn them utterly'.¹³³ The UK representative stated that the UK 'is united in deep shock and sympathy for the people of the United States and in determination to eradicate terrorism globally, in cooperation with and in support of the United States'.¹³⁴ The representative of China said that they were 'deeply shocked and strongly condemn (...) serious terrorist attacks' and 'support the United Nations in strengthening its work in preventing and combating terrorism'.¹³⁵ The President of Russia, Putin in his statement said that 'I would like to say that we are with you, we are in full solidarity with your feelings of grief and we support you'.¹³⁶ This was followed by the Russian representative to the UNSC, who stated that the US had come 'up against an unprecedented act of aggression of international terrorism'.¹³⁷ The representative of France stated that his country 'stands side by side with the United States in this time of trial'.¹³⁸ Other non-permanent members of the UNSC and members of the UN delivered similar statements.¹³⁹

What should be also noted here is the response of Rabbani, the President of Afghanistan, who brought attention to the preceding terrorist attack directed against Vice-President and Defence Minister of the Islamic State of Afghanistan,¹⁴⁰ which occurred on September 9 and said that both the 9/9 and 9/11 attacks 'well established how terrorism

¹³² UNSC, Press Statement by Security Council President on Terrorist attacks in United States (11 September 2001) Press Release SC/7141.

¹³³ UNSG Kofi Annan (11 September 2001) UN Doc SG/SM/7948.

¹³⁴ Sir J Greenstock, UNSC 4370th meeting (12 September 2001) UN Doc S/PV.4370, 2.

¹³⁵ Statement by Mr Wang Yingfan, UNSC 4370th meeting (n 134) 5

¹³⁶ V Putin, statement dated 11 September 2001 reprinted in UNSC 4370th meeting (n 134) 5.

¹³⁷ Mr Lavrov, UNSC 4370th meeting (n 134) 5.

¹³⁸ Mr Levitte, UNSC 4370th meeting (n 134) 7.

¹³⁹ See: UNSC 4370th meeting (n 134). For the summary of the meeting, see UNSC 'Security Council Condemns, "In Strongest Terms" Terrorist Attack on United States' (12 September 2001) Press Release SC/7143; UNSC (13 September 2001) UN Doc S/2001/864.

¹⁴⁰ Vice-President and Defence Minister of the Islamic State of Afghanistan: Ahmad Shah Massoud,

constituted a threat to international peace and security, freedom and liberty'.¹⁴¹ Moreover, the President also reminded his 'earlier warnings of the threats of terrorist activities by the Pakistan-Taliban-bin Laden axis in the Taliban-occupied parts of Afghanistan'.¹⁴² This statement is very interesting taking into consideration the previous warnings and general international agreement about the importance of stopping the al-Qaeda activities and the lack of the US initiative to pursue its goals through the possibility of intervention by invitation. As already mentioned, the UNSC adopted various resolutions during the late 1990s, expressing its concern over the situation within the territory of Afghanistan. Moreover, Resolution 1363 determined it as constituting 'a threat to international peace and security in the region',¹⁴³ which in turn implied the possibility of implementing Article 39. Further, the aforementioned statement by the President of Afghanistan and his condemning approach towards the Taliban regime could have been used as a foundation for initiation of an intervention by invitation.

Another interesting example is the position of the United Arab Emirates, which had been one of three countries¹⁴⁴ that had had diplomatic relations with the Taliban regime. In a letter dated September 24,¹⁴⁵ the representative of the UAE notified the Secretary-General about the decision to end the diplomatic relations with the Taliban Government of Afghanistan. The reason for this decision was the 'failure to respond to the Security Council's request to hand over Osama bin Laden to face a fair international trial on the

¹⁴¹ *Annex to the identical letters dated 14 September 2001 from the Permanent Representative of Afghanistan to the United Nations addressed to the Secretary-General and the President of the Security Council* (17 September 2001) UN Doc A/56/365-S/2001/870.

¹⁴² UNYB (n 129) 65.

¹⁴³ UNSC Res 1363 (30 July 2001) UN Doc S/RES/1363.

¹⁴⁴ Those were Saudi Arabia, the United Arab Emirates and Pakistan.

¹⁴⁵ *Annex to the letter dated 24 September 2001 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the Secretary-General* (25 September 2001) UN Doc A/56/401-S/2001/903.

accusations made against him in connection with the terrorist attacks of 11 September in the United States'.¹⁴⁶ A similar decision was reached by Saudi Arabia.¹⁴⁷

Conclusion

This chapter has set out the second case study of this thesis discussing the 2001 Operation *Enduring Freedom* instigated by the US within the territory of Afghanistan. The main objective of this chapter was to compare the aforementioned intervention with the one examined in the preceding chapter and which constituted the first case study of this thesis, namely the 1982 Operation *Peace for Galilee* launched by Israel in Lebanon. As has been demonstrated, although both interventions were based upon similar rationale international society treated them in different ways. This chapter, thus, has provided a comparison between the justifications delivered by governments of both states in question and subsequently contrasted the ways in which international society responded towards these military operations.

As has been shown, the opinions of both international legal scholars and international society seemed to support military intervention in Afghanistan. Although some scholars have expressed concern about certain issues relevant to the victim state's claim of implementation of the right to self-defence, many scholars, indeed, did not question the legality of the US military response towards those responsible for the 9/11 attacks. Moreover, the concerns expressed by sceptics were, in a way, outweighed by the response of international society, which demonstrated an unprecedented solidarity and support with the US. In addition, there has been an acceptance at least among states that,

¹⁴⁶ UNYB (n 129) 65.

¹⁴⁷ Murphy (n 8) 245.

firstly, the 9/11 was an armed attack. This, in turn, suggests that the term “armed attack” no longer naturally applies only to an attack launched by a state. Although, as discussed earlier, even prior to 9/11 the term was not solely applicable to a state but certain, rigid requirements had to be fulfilled and this, in turn, made it difficult for a state to use force as a response to terrorist attack. Secondly, the inherent right of self-defence was internationally recognised. Indeed, for the first time since the adoption of the UN Charter, the right of self-defence was recognised in relation to a terrorist attack. Thirdly, the intervention in Afghanistan was also supported and accepted, signalling a changed international approach towards states which willingly or unwillingly allow their territory to be used as operational bases for non-state actors. As demonstrated, neither the “effective” nor “overall” control requirement was proved in relation to the relationship between the Taliban regime and al-Qaeda. Although the relationship was undoubtedly close and even dependable, it was not the Taliban but al-Qaeda, which was superior in this relationship. Indeed, as Garwood-Gowers argued ‘the threshold for attribution may have been lowered [to the point] that any level of support, or even merely hosting or tolerating non-state terrorist groups, is now sufficient to make a state responsible for the conduct of those groups’.¹⁴⁸

The importance of this chapter can be observed not only in that it provided evidence suggesting a changed international approach towards the use of force in relation to terrorist attacks since 9/11 but also in that it creates a platform for further elaboration on whether the way in which international society responded towards Operation *Enduring Freedom* constituted an exception from the existing international approach or, in fact, it set up a precedent, that will be used in future by states, who are victims of terrorism.

¹⁴⁸ Garwood-Gowers (n 77) 12.

CHAPTER FIVE

COMPARISON OF THE TWO CASE STUDIES FROM THE ANGLES OF IR THEORETICAL PERSPECTIVES

Introduction

The aim of this chapter is to analyse the two case studies discussed in the preceding chapters through the lenses of different IR theoretical perspectives. As have been demonstrated, although the rationale behind the instigation of the military operations in Lebanon and Afghanistan was similar, in that both Israel and the United States invoked their rights to self-defence thus claiming to act in accordance with international law, international society responded towards these interventions in different ways in that it condemned Israel on the one hand but supported the US on the other. Such a change of approach invites an interesting theoretical debate on states' behaviour, the very nature of international society itself and on the role and status of international law.

The focal point of this chapter is on this variation of ways in which international society responded towards these two military operations. As will be shown, different IR theoretical standpoints deliver plausible answers to the question why international society recognised the US right to self-defence and had not done so in relation to Israel's claim in 1982. Although the underlying rationale behind such a decision was similar, the main difference lies in the understanding, the meaning and the implications of such rationale on world politics. The first step is to look at the mainstream IR perspectives, namely Realism and Liberalism. Both theories can deliver plausible explanations to the aforementioned variations. The following paragraphs will, thus, discuss crucial concepts embedded with

each of these traditions, such as the theory of balance of power, the hegemonic stability theory, and the theory of democratic peace. This will be followed by an analysis of writings of scholars associated with Neo-liberalism and their explanation behind the aforementioned variation. The last part of this chapter comprises a discussion surrounding the notion of international society and the explanation delivered by the representatives of both the English School of IR and Constructivism.

Part One: Case Studies Through the Lenses of IR Mainstreams

1. Realist Interpretations

The variation between international reactions towards the 1982 Operation *Peace for Galilee* and the 2001 Operation *Enduring Freedom* can be seen as challenging the foundations of the Realist Theory of International Relations. Realist emphasis on the notion of continuity, counter-balancing and the on-going reliance on self-interest and self-help might be regarded as losing its significance in contemporary world politics, especially taking into consideration the changes that have occurred in the aftermath of 9/11 and since the collapse of Soviet Union in general. However, the following paragraphs will demonstrate that it is too soon to discredit realism if the argument is based solely on the unprecedented support for the US in 2001. Thus, in order to highlight the adequacy and inadequacy of some of the realist claims, the response of international society to the military operations in question will be compared through the lenses of different offshoots of this theory.

Balance of power

As already discussed,¹ the merits of the balance of power theory rest upon the assumption that states tend to balance against the power of other states. This theory of balancing is the hallmark of Neo-realism and its validity was advocated most widely and explicitly during the Cold War era. Indeed, as will be demonstrated, this theory is plausible in relation to the international response towards the 1982 Operation *Peace for Galilee*. Neo-realists, similarly to Classical Realists, emphasise states' pursuit of the national interest. What they point out, however, is that it is not the sole driving force behind states' actions. According to the leading neorealist theorist Waltz, states, first and foremost, pursue their security, 'since to pursue whatever other goals they may have, they first must survive'.² It is further argued that due to the fact that 'states have an interest in maximising their long-term odds on survival, they will coordinate to check dangerous concentrations of power'.³ Thus, according to this approach, states tend to show restraint in aggressive behaviour if such behaviour can threaten their survival or security. The consequence of this is that 'states ought to generally pursue moderate strategies as the best route to security'.⁴ It was widely held that during the Cold War security was mainly based on the sustainability of the balance of power between the two blocs.⁵ Indeed, it is argued that during the Cold War 'the conventional wisdom was that balancing was a universal law of international relations'.⁶

¹ See chapter two.

² Waltz KN, "Evaluating Theories," *American Political Science Review* 91, no. 4 (1997): 915. See, for example: Barry T, "The US Power Complex: What's New," *Foreign Policy in Focus* (2002): 1-11.

³ Brooks SG Wohlforth WC, "International Relations Theory and the Case against Unilateralism," *Perspectives on Politics* 3, no. 3 (2005): 510. See also: David SR, "Explaining Third World Alignment," *World Politics* 43, no. 2 (1991): 233-256.

⁴ Taliaferro JW, "Security Seeking under Anarchy. Defensive Realism Revisited," *International Security* 25, no. 3 (2000/01): 129.

⁵ For more information on the neo-realist approach towards the balance of power see chapter three.

⁶ Kang DC, "Hierarchy, Balancing, and Empirical Puzzles in Asian International Relations," *International Security* 28, no. 3: 170.

Miller states that the reliance on such balancing was evident in relation to the approaches of two power blocks towards the Middle East situation during the Cold War. His analysis, thus, is very useful in looking at the reasoning behind the non-recognition of the Israeli right to self-defence in relation to the 1982 Operation *Peace for Galilee*. In addition, although both superpowers had to protect their own interests and alliances, they tended to do so cautiously, without infringing upon the interests of each other. In relation to Operation *Peace for Galilee*, such reasoning can indeed be observed in that even the US, a traditional Israeli ally, did not support the actions of the latter.⁷ Thus, '[b]y restraining Israel (...) the United States implicitly recognized the legitimacy of the Soviet threats'.⁸ The author claims that during this period certain rules were created, which both reflected the bipolarity of international system and limited the escalation of the conflict; the existence of such rules was crucial for the sustainability of the status quo despite the ongoing conflict between the superpowers.⁹ Miller describes such approach as 'resolute but also restrained; competitive but cautious; security-conscious rather than power-maximizing'.¹⁰ Such a tendency could have been observed during the peaks of the Middle East conflict, when 'each superpower showed resolve in protecting its important interests, and restraint with regard to encroaching on the other's interests'.¹¹

The result of this resolute restraint was persistence in a successful crisis management, namely, the containment and termination of regional wars and the avoidance

⁷ On the allies' relationship see, for example: Lake DA, "Anarchy, Hierarchy, and the Variety of International Relations," *International organization* 50, no. 1 (1996): 13.

⁸ Miller B, "Competing Realist Perspectives on Great Power Crisis Behaviour," in *Realism: Restatements and Renewal*, ed. Frankel B (Abingdon: Frank Cass, 1996), 347. While Israel was the US ally, states such as Syria and Egypt had a close relationship with the Soviet Union. A strategic defeat could threaten 'the survival of its domestic regime' and thus endanger Soviet interests (ibid 346).

⁹ ibid 334.

¹⁰ ibid 355.

¹¹ ibid 346.

of an escalation to direct confrontations between the superpowers'.¹² And thus, for Neo-realists the non-recognition of the Israeli right to self-defence was not dictated so much by the fact that the instigation of the intervention was not in accordance with international law but by the necessity of sustaining the equilibrium, exemplified by the maintenance of the balance of power between the West and the East. Such response, thus, reflected the international environment of the time and the desire of the two superpowers to maintain the balance of power between each other and to sustain the status quo. It is also argued that the aforementioned rules of mutual restraint were unchangeable during the Cold War and persisted as long as the international system remained bipolar.¹³ In a support of this claim, Miller emphasises the fact that even when the Soviet Union achieved a nuclear second-strike capability and when its power-projection capability increased, it still favoured not to upset the status quo; this, according to the author, is evident in Soviets' 'greater restraint during the 1982 Lebanon War'.¹⁴

Notwithstanding its merits, the theory of balance of power does not provide an insight into why other states, most particularly China, whose tensions with the Soviet Union were at the time apparent, did not recognise the Israeli justification for the intervention. Most significantly, however, its limits can be observed in relation to the response of the international society towards the 9/11 attacks and the subsequent intervention in Afghanistan. Although as will be demonstrated 9/11 can be explained through realist lens in terms of gains and states' interests the situation surrounding the September 11 attacks proved to be problematic not only for advocates of the balance of power theory but also for other scholars affiliated with the realist tradition. On the one hand Realists doubted the significance or transformative impact of this event upon

¹² *ibid.*

¹³ *ibid* 352.

¹⁴ *ibid* 345.

international politics. Some implications of 9/11 on world politics were, however, noticed in that even Mearsheimer, a representative of the offensive realist offshoot, admits that 9/11 has altered to a certain degree the direction of US policy, thus admitting that not only states but also non-state actors can pose a threat to a security of a state.¹⁵

The unprecedented international support for the war in Afghanistan delivers not only evidence, that 9/11 was in fact a significant event but also discredits the aforementioned pillar of Neo-realism, namely the balance of power. According to the premise of this theory, members of the UN Security Council - instead of showing great support for the US - they should have expressed balancing tendencies. Not only was the US's right to self-defence recognised but various states also offered their support and some even directly became a part of the coalition and engaged their armed forces in Afghanistan. If realist assumption was correct, states, most notably Russia and China, should have opposed the US military actions in Afghanistan. Such predicted or expected opposition would have been caused by a desire of these states to counterbalance against the US. However, as Kane argues, although 'Russian and Chinese leaders commonly express their desire to *balance* US power (...) they have taken little overt action to interfere with American policies, even diplomatically'.¹⁶

The lack of balancing against the US has proved to be problematic for Realists even earlier, most notably since the end of the Cold War. The demise of the other superpower has left the international system with the sole superpower. In the aftermath of the end of the Cold War, Realists, mostly those affiliated with its structural strand, predicted the revival of other great powers in order to restrain the prominence of the US

¹⁵ Mearsheimer JJ, "Hearts and Minds," *National Interest* 69 (2002).

¹⁶ Kane TM, "Realism," in *New Directions in US Foreign Policy*, ed. Parmar I *et al.* (Abingdon and New York: Routledge, 2009), 10. (emphasis added)

within the international system. As states, according to this tradition, usually are suspicious of other states' policies and intentions, even those which do not signalise a tendency for expansion, ultimately would be oriented at the increase of their own power and thus balancing the dominant state.¹⁷ According to Waltz, '[i]n international politics, overwhelming power repels and leads others to try balance against it'.¹⁸ Such an opinion is shared with Layne, who argued that '[u]nipolarity is likely to be short-lived because new great powers will emerge as the uneven growth process narrows the gap between the hegemon and the eligible states that are positioned to emerge as its competitors'.¹⁹ In fact, for those authors, the unipolarity is 'the least stable of all structures'²⁰ as the lack of counter-balance is seen as threatening to other states in international system. Consequently, an uneven allocation of power is said to be unstable and prone to generate conflict between the remaining sole superpower and potential contestants, as the latter will inevitably try to repel such dominance. And thus, the unipolarity brought up by the collapse of the Soviet Union disrupted the existing status quo and the balance of power, which in turn can bring uncertainty and instability. It is widely held that a state in such a dominant position will ultimately use it in order to maximise its power even more as 'only the most powerful states can guarantee their survival'.²¹ Such a pursuit of a state's own objectives can lead to

¹⁷ Jervis R argues that 'a state that is not subject to severe external pressures tends to feel few restraints at all' and thus 'power is checked most effectively by counterbalancing power' ("The Compulsive Empire," *Foreign Policy* (2003): 84.) See also, for example: Brooks, Wohlforth (n 3) 509-524. Krasner SD, "Realism, Imperialism, and Democracy. A Response to Gilbert," *Political Theory* 21, no. 1 (1992): 38-52. Waltz (n 2) 913-917. Wohlforth WC, "Realism and the End of the Cold War," *International Security* 19, no. 3 (1994/95): 91-129.

¹⁸ Waltz KN, "Structural Realism after the Cold War," *International Security* 25, no. 1 (2000): 28. See also other works of this author, such as: *Theory of International Politics* (Boston: McGraw-Hill, 1979). "Anarchic Orders and Balances of Power," in *Neorealism and Its Critics*, ed. Keohane RO (New York: Columbia University Press, 1986), 98-129.

¹⁹ Layne C, "The Unipolar Illusion: Why New Great Powers Will Rise," *International Security* 17, no. 4 (1993): 11. See also: Cox M, "Is the United States in Decline – Again? An Essay," *International Affairs* 83, no. 4 (2007): 643-653.

²⁰ Wohlforth WC, "The Stability of a Unipolar World," *International Security* 24, no. 1 (1999): 5. See also: Mastanduno M, "Preserving the Unipolar Moment. Realist Theories and Us Grand Strategy after the Cold War " *International Security* 21, no. 4 (1997): 49-88., Waltz KN, "The Emerging Structure of International Politics," *International Security* 18, no. 2 (1993): 44-79.

²¹ Taliaferro (n 4) 128.

a conflictual situation and counter-balancing and thus it is advocated that it should pursue its interests in a way that 'communicate[s] restraint'.²²

However, the last decade of the twentieth century demonstrated that although there are states which can be described as 'second-rank powers', the primacy of the US within the international arena is unchallenged as 'it is the only country with the military, diplomatic, political and economic assets to be a decisive player in any conflict in whatever part of the world it chooses to involve itself'.²³ As expectations and predictions of Neo-realists regarding the unavailability of the revival of great powers and greater counter-balancing against the US has been invalidated by during the last decade of the twentieth century and most striking in the aftermath of 9/11, it is necessary to turn to the writings of Realists, who look at the primacy of the US from yet another angle. For them unipolarity is not the least stable but in fact one of the most prone to peaceful international structures.

Gilpin, a representative of the Hegemonic Stability Theory, argues that the United States position since the end of the World War II enabled the sustainability of 'an international system of relative peace and security'.²⁴ This ability to maintain such order together with the preservation of military and economic predominance has inevitably ensured American domination within the international sphere. Kennedy's stark portrayal is worth citing at length:

²² *ibid* 129.

²³ Krauthammer C, "The Unipolar Moment," *Foreign affairs* 70, no. 1 (1991): 24. See also: Williams MJ, "The Empire Writes Back (to Michael Cox)," *International Affairs* 83, no. 5 (2007): 945-950.

²⁴ Gilpin R, *War and Change in World Politics* (Cambridge: CUP, 1981), 145.

Because [the US] has so much power for good or evil, because it is the linchpin of the western alliance system and the centre of the existing global economy, what it does, or does not do, is so much more important than what any of the other powers decides to do.²⁵

The hegemonic position of the US is compared by Gilpin with that of the Great Britain's in the nineteenth century. Both states 'created and enforced rules of a liberal international economic order'.²⁶ They managed to do it through the acquiring responsibility of 'organizing and defending the world market economy', promotion of free trade, provision of investment capital and international currency.²⁷ Both the Great Britain and the US acquired and accepted such a role and responsibility because it was lucrative for them.²⁸ What it means is that '[t]he benefits to them of a secure status quo, free trade, foreign investment, and a well-functioning international monetary system were greater than the associated costs'.²⁹ Their success of sustainability of such order was based firstly on the fact that they had compelled 'their will on lesser states' and secondly on the fact that other states enjoyed benefits from such situation.³⁰ When the US's current preponderant position is compared with examples of past empires, the point that comes into mind is that these empires eventually ceased to exist. Kennedy, however, argues that such a 'reference to historical precedents does not imply that the United States is destined to shrink to the relative obscurity of former leading powers'.³¹

²⁵ Kennedy P, *The Rise and Fall of the Great Powers. Economic Change and Military Conflict from 1500 to 2000* (London: Fontana Press, 1989), 692.

²⁶ Gilpin (n 24) 145.

²⁷ *ibid* 139.

²⁸ *ibid* 139.

²⁹ *ibid* 145.

³⁰ *ibid* 144.

³¹ Kennedy (n 25) 688.

Following the reasoning of the Hegemonic Stability Theory, the expression of the supportive stand towards the US in the aftermath of 9/11 was in states' own interest. Russia, for instance, supported the US because Putin's administration worked towards 'a deal over missile defense' and acquiring the US support for its own policy towards Chechnya.³² Moreover, it is argued that in a situation when the US encompasses such an overreaching influence it is more advantageous for states to bandwagon together especially when the administration at the time emphasised that 'neutrality is not an option'.³³ It is, thus, more profitable to support the US because at least such states' interests can be protected.

The aforementioned inclination for peace of unipolarity is further advocated by Wohlforth, for whom, 'the current unipolarity is not only peaceful but durable'.³⁴ For this author, the predominance of the US diminishes 'an important source of conflict', namely the 'hegemonic rivalry over leadership of the international system' common 'in previous systems is absent'.³⁵ Such a situation inclines other states to bandwagoning, rather than balancing against the US, at least 'as long as the expected costs of balancing remain prohibitive'.³⁶ It is further opined, that the predominant position of the US makes balancing pointless and fruitless. As states 'recognise that balancing against the United States is likely to fail' they tend not to try.³⁷ Others claim that the lack of balancing does derive from the fact that the likelihood of a success is very slim. They argue that states do not

³² Walt SM, "Beyond Bin Laden. Reshaping Us Foreign Policy," *International Security* 26, no. 3 (2001/02): 61. Similar argument is presented by Jervis R in "An Interim Assessment of September 11: What Has Changed and What Has Not?," *Political Science Quarterly* 117, no. 1 (2002): 52.

³³ Walt (n 32) 61.

³⁴ Wohlforth (n 20) 8.

³⁵ *ibid* 7. See also: Wohlforth (n 17) 91-129.

³⁶ Wohlforth (n 20) 8.

³⁷ Glaser CL, "Structural Realism in a More Complex World," *Review of International Studies* 29 (2003): 405.

balance against the US because 'they believe it is unnecessary'.³⁸ As '[t]he major powers recognise that the United States is essentially a benign, security-seeking state', the current hegemon 'does not pose a threat that warrants balancing against'.³⁹ Such an approach is linked to the aforementioned claim that it is in states' own interests to bandwagon with the US. As the world hegemon does not constitute a threat to other powerful states in the international system these states, in fact, can benefit significantly from such a situation. This is noticed by Kugler, who emphasised that even 'Russia became a closer ally as the United States revised its stance on Chechnya by declaring that resistance to be part of the war on terror. China, facing its own border challenges, moved closer to the US position on Afghanistan'.⁴⁰

The preceding paragraphs deliver a plausible explanation surrounding the variation of international responses towards the 1982 Operation *Peace for Galilee* and the 2001 Operation *Enduring Freedom* through the lens of the realist theory of International Relations. As has been demonstrated the way in which international society responded towards the Israeli intervention in Lebanon expressed the international bipolar environment of the Cold War in that both superpowers tended to act accordingly to the premise of the balance of power theory, not upsetting the established status quo. The international support for the US in the aftermath of 9/11, on the other hand, delivered evidence suggesting the lack of applicability of this theory to the current international setting. Thus, the most reasonable and compelling realist explanation for the variation of international responses towards the operations in question can be found through reference

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ Kugler J *et al.*, "Integrating Theory and Practice: Global Implications of the War in Iraq," *International Studies Review* 6 (2004): 170.

to the Hegemonic Stability Theory. As will be shown in the next section, however, the liberal tradition can also deliver a plausible explanation to this variation.

2. Liberal Interpretations

Most authors associated with Liberalism joined various governments in their condemnation of the attacks upon the US. Representatives of this theory expressed their overwhelming support for 'the right of Western states to wage war on terrorist groups and those that allegedly harbour them' in the aftermath of 9/11.⁴¹ They pointed out, that 'the terrorist attacks of September 11 were unacceptable and the war against al Qaeda and the Taliban in Afghanistan is necessary and justified'.⁴² Indeed, one of the leading Liberals, Fukuyama, joined other scholars and expressed his support for the intervention in an officially written letter to the President Bush.⁴³ Thus, most liberal scholars joined the wider international spectrum and backed the US government. Such overwhelming support raises an important question, as to why such support was not expressed in relation to the Israeli intervention in Lebanon. Indeed, if Liberals agreed with international society and together appraised the war in Afghanistan, the question to be raised is why the Israeli intervention

⁴¹ Dunne T, "Liberalism, International Terrorism, and Democratic Wars," *International Relations* 23, no. 1 (2009): 107. See, for example: Slaughter AM Burke-White W, "An International Constitutional Moment," *Harvard International Law Journal* 43, no. 1 (2002): 2.

⁴² Ikenberry GJ, "Liberal International Theory in the Wake of 9/11 and American Unipolarity" (2006) in <http://www.scribd.com/doc/7257919/Ikenberry-Liberal-International-Theory-in-the-Wake-of-911-and-American-Unipolarity> [accessed 1 December 2012].

⁴³ The letter reads as follow: 'We write to endorse your admirable commitment to "lead the world to victory" in the war against terrorism. We fully support your call for "a broad and sustained campaign" against the "terrorist organizations and those who harbor and support them." We agree with Secretary of State Powell that the United States must find and punish the perpetrators of the horrific attack of September 11, and we must, as he said, "go after terrorism wherever we find it in the world" and "get it by its branch and root." We agree with the Secretary of State that U.S. policy must aim not only at finding the people responsible for this incident, but must also target those "other groups out there that mean us no good" and "that have conducted attacks previously against U.S. personnel, U.S. interests and our allies. "Osama bin Laden We agree that a key goal, but by no means the only goal, of the current war on terrorism should be to capture or kill Osama bin Laden, and to destroy his network of associates. To this end, we support the necessary military action in Afghanistan and the provision of substantial financial and military assistance to the anti-Taliban forces in that country' (Fukuyama F, *et al.*, "Letter to President Bush on the War on Terror" (2001) in <http://www.newamericancentury.org/Bushletter.htm> [accessed 1 December 2012].).

in Lebanon in 1982 was condemned. As was demonstrated in chapter three, Israel based its justification on the same reasoning as the US did in 2001. The response of international society was, however, very different. How can this dichotomy be explained through liberal lenses?

The aim of this subsection is to test the main arguments of the Liberal Theory of International Relations already introduced in chapter two. The application of these arguments will be crucial in determining the extent to which this theoretical perspective can explain the differential response of international society towards the 1982 Operation *Peace for Galilee* and the 2001 Operation *Enduring Freedom*. This part thus begins by looking at the premise of the Democratic Peace Theory. As will be demonstrated this theory can, to a certain extent, explain why a number of states expressed their support for the US in the aftermath of 9/11. However, what needs to be pointed to up front is that such support was not limited to democratic states, and thus the DPT does not deliver a comprehensive explanation behind the UN Security Council's recognition of the US right to self-defence. As this premise is one of the core liberal pillars, it is, nevertheless, important to include it in this analysis.

As outlined in chapter two, one of the crucial liberal arguments is that the relationship amongst states with democratic systems of government is one of a cooperative and peaceful nature. Ikenberry's portrayal of an ability of democratic governments to cooperate with each other is worth citing at length.

Democracies are unusually willing and able to cooperate. Led by the United States, these democracies built an international order around

multilateralism, alliance partnership, strategic restraint, cooperative security, and institutional and rule-based relationship.⁴⁴

Thus, the fact that other liberal states recognised the US military response as legitimate was based on the fact that an attack occurred against a member of the established liberal security system and thus, using the wording of the Washington Treaty ‘an armed attack against one (...) shall be considered an attack against them all’.⁴⁵ This is summarised by Macmillan, according to whom ‘the right of liberal and decent peoples to defend their legitimate allies, from which one might infer support for some form of collective defence or even collective security’.⁴⁶ This, however, does not explain why the 1982 intervention launched by a democratic state was not recognised as lawful use of force. Israel with its well-established and embedded liberal and democratic system of government could have been seen as belonging to the aforementioned circle of collective defence. It can be argued, however, that the reason behind the criticism in relation to Operation *Peace for Galilee* was that Israel’s intervention was instigated within a territory of another democratic state. Afghanistan under the Taliban regime, on the other hand, was regarded as undemocratic and illegitimate and thus Operation *Enduring Freedom* was deemed to be lawful exercise of the use of force.

Moreover, contrary to Operation *Peace for Galilee*, which was based solely on the right of Israel to defend itself, Operation *Enduring Freedom* had a broader foundation and

⁴⁴ Ikenberry (n 42). Similarly, writing about the merits of liberal order Koivisto and Dunne point out, that ‘states are taken to be able to overcome constraints of international anarchy and achieve collective ends, facilitated by institutions that enhance cooperation’ (“Crisis, What Crisis? Liberal Order Building and World Order Conventions,” *Millennium* 38 (2010): 619.)

⁴⁵ The North Atlantic Treaty (adopted 4 April 1949, entered into force 24 August 1949) in http://www.nato.int/cps/en/natolive/official_texts_17120.htm. [accessed 1 December 2012].

⁴⁶ Macmillan J, “Liberalism and the Democratic Peace,” *Review of International Studies* 30, no. 2 (2004): 186.

also included the promotion of democracy. As Liberals, especially those associated with what Sørensen referred to as Liberalism of Imposition,⁴⁷ advocate a more active approach towards the spreading of democracy, including even forceful intervention intended at the protection of states' population and regime change, the removal of the Taliban regime was seen as justified and reasonable. Indeed, as mentioned, the support for Operation *Enduring Freedom* was spread across the liberal spectrum. For example, Fukuyama in the already mentioned letter to President Bush appraised the aid to anti-Taliban Forces in Afghanistan.⁴⁸

Slaughter, in a more direct form, postulated for the protection of the Afghan population. According to this author, 'the United States, Britain, and other states (...) must protect civilian lives in America, Afghanistan and around the globe. Such protection is neither obsolete nor impossible. It is necessary and increasingly urgent'.⁴⁹ Moreover, the basis for this support can be found in the fact that the Taliban regime as a non-democratic and non-liberal (*de facto*) government had constituted a significant threat to liberal states even prior to 9/11 and in fact since it commenced power during the 1990s.⁵⁰ Thus, the legality of the military intervention should not only be discussed from the angle of 9/11 but should also be looked upon through the wider context. In addition, as mentioned in chapter four, the UNSC on various occasions stressed the seriousness of the situation in Afghanistan under the Taliban rule.

⁴⁷ Sørensen G, "Liberalism of Restraints and Liberalism of Imposition: Liberal Values and World Order in the New Millennium," *International Relations* 20, no. 3 (2006).

⁴⁸ Fukuyama *et al.* (n 43). See also: Shani G, "The Liberal Project: Globalisation, Modernity and Identity," *Ritsumeikan Annual Review of International Studies* 14, no. 2 (2003): 48.

⁴⁹ Slaughter, Burke-White (n 41) 21.

⁵⁰ As shown in chapter four, part two, subsection c, the Taliban - al-Qaeda relationship was very close. As the former allowed its territory to be used as operational and training bases, the latter was in position to carry out its actions against Western states.

The problem of the Taliban rule was further associated with the on-going suppression of human rights, most profoundly women's rights as Afghanistan operated strictly under Sharia law, emphasising a patriarchal society that limited women's various freedoms. The protection of human rights and individual freedoms constitute fundamental pillars of liberal thought and has been widely advocated since the end of the Cold War.

Another issue that Liberals emphasise and which can be viewed as influential in explaining the dichotomy between the ways in which international society responded towards the two operations in question is a growing interdependence and interconnectedness as associated with globalisation, more explicitly evident since the end of the Cold War. As Ikenberry points out:

[t]he more economically interconnected states become, the more dependent they are for the realisation of their objectives on the actions of other states. Rising economic interdependence is one of the great hallmarks of the contemporary international system.⁵¹

Mansfield, further, claims that economic relations facilitate and intensify contact and communication, which 'in turn, are expected to foster cooperative political relations'.⁵² Accordingly, 'the recognition of mutual benefits through cooperation serves to foster peace, as national interests converge'.⁵³ What follows is that, '[L]eaders are deterred from

⁵¹ Ikenberry GJ, "Power and Liberal Order: America's Postwar World Order in Transition," *International Relations of the Asia-Pacific* 5 (2005): 148.

⁵² Mansfield ED Pollins BM, "The Study of Interdependence and Conflict: Recent Advances, Open Questions, and Directions for Future Research " *Journal of Conflict Resolution* 45, no. 6 (2001): 836.

⁵³ Barbieri K, "Economic Interdependence: A Path to Peace or a Source of Interstate Conflict?," *Journal of Peace Research* 33, no. 1 (1996): 31. See also: Gartzke E *et al.*, "Investing in the Peace: Economic Interdependence and International Conflict," *International Organisation* 55, no. 2 (2001): 391-438. Oneal JR Russett B, "Assessing the Liberal Peace with Alternative Specifications: Trade Still Reduces Conflict," *Journal of Peace Research* 36, no. 4 (1999): 423-442.

initiating conflict against important trading partners for fear of losing welfare gains associated with trade'.⁵⁴

Thus from a liberal perspective as the world of 2001 encompasses a far greater interdependence and interconnectedness than the world of 1982 it is understandable that states, such as Russia and China, which can be viewed as more liberal in their current outlook as well and are engaged in a closer economic cooperation with the West, would express their solidarity with the US in the aftermath of 9/11 and recognised its right to self-defence. Indeed, it might be argued from a liberal view that these states would not risk their economic relationships with the US and benefits arising from these relationships by expressing their criticism. As states have a stake in broader cooperative relationships an outright critique could have negative consequences on future relationships. Still, the question should be asked whether a growing economic cooperation solely delivers a comprehensive explanation for the change in international approach. That is, would states risk the existing order just to sustain the stability of their economic position? As chapter six will demonstrate Israel instigated two other interventions during the 1990s and yet, similarly to the 1982 instance, they were not recognised as lawful use of force.

As has been shown the Liberal Theory of International Relations can provide a plausible explanation for the variation of international responses towards the operations in question. The preceding paragraphs have demonstrated that this shift can be elucidated through the premises of the Democratic Peace Theory, a firmer approach towards rogue states, a growing economic interdependence and the hegemonic position enjoyed by the US. In addition, the DPT can be explanative in relation to overwhelming support for the

⁵⁴ *ibid.*

US in the aftermath of 9/11 expressed by Western states as well as to the on-going condemnation of the Taliban regime and its policies. It has been shown that such a firmer approach towards non-democratic governments has been more explicit since the end of the Cold War. The further liberal argument emphasises a growing economic interdependence and interconnectedness. However, despite its insightfulness this point raises a question whether states would change their approach towards something so fundamental as an embedded order governing the use of force just to secure the closer economic cooperation. Thus, as the following subsections will demonstrate for the shift to be explained comprehensively, another factor, namely the preponderance of the US needs to be evaluated.

3. Neo-liberal Interpretations

Similarly to the aforementioned liberal theorists, the significance of 9/11 and its potential consequences have also been emphasised by Neo-liberals. According to one of the main representatives of liberal institutionalism, namely Keohane, these attacks 'have incalculable consequences for domestic politics and world affairs'.⁵⁵ This section will demonstrate that one of these consequences can be seen in a change to the international regime governing the use of force in world politics. Such a change can be observed through the variation of responses of international society towards the operations in question. In addition, while the international reaction towards Operation *Peace for Galilee* resembled the approach towards the use of force envisioned by the international regime created in the aftermath of the Second World War, the international response towards Operation *Enduring Freedom* instigated the change in such a regime. Although theorists

⁵⁵ Keohane RO, "The Globalisation of Informal Violence, Theories of World Politics, and the "Liberalism of Fear", in *Power and Governance in a Partially Globalized World*, ed. Keohane RO (London and New York: Routledge, 2002), 272.

associated with this strand of Liberalism point to the capacity of the international regime to survive even in the event of a shift in the distribution of power in world politics, the change 'of' or 'in' an international regime can occur.

As chapter two of this thesis has demonstrated, when the principles or norms of a particular regime change then it is possible to talk about the emergence of a new regime. When, however, rules and decision-making procedures change then a change takes place within the regime itself.⁵⁶ Following this thought, the next question is whether 9/11 signalled the change 'of' or 'in' an international regime. The international regime created in the aftermath of the Second World War was based on the principle of non-intervention and the general prohibition of the use of force. The exceptions to the latter concerned instances embodied within Chapter VII of the UN Charter, and referred to the situation when a state has to defend itself or when the UN Security Council mandates the use of force in the name of the collective security. When we look at the current international environment these two limitations are still upheld. Thus, it cannot be said that the international regime itself was changed, as the general prohibition on the use of force still remains the main principle governing this regime. What can be noticed, nevertheless, is a change within this regime. The variation of international responses towards the two operations in question demonstrates that the changes occurred in regards to the notion of self-defence.

In addition, while the response of international society towards the 1982 Operation *Peace for Galilee* can be seen as supporting the narrow and restrictive approach to the implementation of the right to self-defence, the international approach towards the 2001

⁵⁶ Hesenclever A *et al.*, "Interests, Power, Knowledge: The Study of International Regimes," *Mershon International Studies Review* 40 (1996): 180.

Operation *Enduring Freedom* suggests growing acceptance of a wider scope of this right. Thus the way in which international society responded towards the 1982 intervention can be seen as reflecting a restrictive international regime, accepted by states, and limiting the scope of the use of force to the aforementioned instances. As states comply with an international regime out of their own interest; such restrictions are regarded as beneficial to them to uphold. According to Tarzi:

the more an international regime reflects the preferences of a large number of states as self-interested utility maximizers, the more the international system tends towards decentralization, pluralism, 'functionalist' and complex interdependence.⁵⁷

The more, however, 'the system moves towards hierarchy, the greater the centralization of the international system organization and the higher the probability that the most powerful state or states impose a high degree of order through international regimes as institutions'.⁵⁸ As will be demonstrated, such hierarchical characteristics of the international system have been observed since the collapse of the Soviet Union and particularly in relation to Operation *Enduring Freedom*.

As was already mentioned, Neo-liberals emphasise states' tendency to favour the sustainability of an existing international regime, especially if such a regime exists for some time and proved to be beneficiary to the maintenance of international order. Thus, the question is why would international society accept the change of rules, which proved to be workable during the Cold War era? The important point of departure in an attempt to

⁵⁷ Tarzi SM, "Neorealism, Neoliberalism and the International System," *International Studies Association* 41, no. 1 (2004): 128.

⁵⁸ *ibid* 128.

provide an answer to this question is the neo-liberal agreement with Neo-realism in terms of motives behind states' actions: states act in their own interest. Thus, the establishment or adherence to an international regime should be seen as an embodiment of states' interests. And as such, states create a regime through which they accept certain constraints upon their actions because in long term the sustainability of such a regime can be beneficial for them.

Therefore, the creation of the international regime and states' subsequent respect of such a regime have its grounds not in the fact that states feel obliged to do so on either ethical or moral grounds but because it is in their own self-interest to adhere to the rules of the game. Neo-liberals, here, emphasise the importance of the notion of reputation in relation to states' adherence to international regime. Keohane, however, points out that there is a certain difficulty regarding the notion of reputation especially in relation to the most powerful state in international system. He notices that:

once the United States became a great power, and particularly after it became hegemonic in the West, other countries could not avoid dealing with it. The United States was "the only game in town", and even if its reputation suffered, other governments had little choice as to with whom to transact.⁵⁹

Similarly to some Realists, the position of the US is viewed as central and dominant. According to Ikenberry, as 'no geopolitical or ideological contenders are in

⁵⁹ Keohane RO, "International Relations and International Law: Two Optics (1996)," in *Power and Governance in a Partially Globalized World*, ed. Keohane RO (London and New York: Routledge, 2002), 125.

sight', the United States 'dominated the world as no state has'.⁶⁰ The American 'global military, economic, and cultural power',⁶¹ has led Nye to refer to it as *Pax Americana*⁶² because of the inability of other states to counterbalance it.

This leads to a discussion surrounding the notion of hegemony and the relationship between the most powerful state and the international regime and the extent to which the current international system can be seen as a hierarchical one. As mentioned in chapter two, Neoliberals emphasise the crucial role of the hegemon in both the creation and sustainability of an international regime. What Keohane stresses, however, is the importance of the international acceptance of American hegemony. In his own words: 'American hegemonic leadership in the post-war period presupposed a rough consensus', which 'can be viewed (...) as the acceptance by its partners of the ideological hegemony of the United States'.⁶³ In addition, the US provides 'public goods, frameworks of cooperation, "good offices", and an enlightened but US-centered system of rules and modes of doing geopolitical business',⁶⁴ which makes other states more likely to cooperate rather than balance against it. Snyder observes that the US 'needed to gain the willing cooperation of the vanquished and other weak states by offering a mutually attractive bargain, codified on an international constitutional order'.⁶⁵ This in turn has made other states less reluctant to the hegemon's growing power and bandwagons with it rather than balances against it.⁶⁶

⁶⁰ Ikenberry GJ, "Liberalism and Empire: Logic of Order in the American Unipolar Age," *Review of International Studies* 30 (2004): 609.

⁶¹ Nye JS, "The American National Interest and Global Public Goods," *International Affairs* 78, no. 2 (2002): 233.

⁶² Nye JS, *Bound to Lead. The Changing Nature of American Power* (New York Basic Books, 1990), 17.

⁶³ Keohane RO, *After Hegemony. Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984), 137.

⁶⁴ Moravcsik A, "The New Liberalism," in *The Oxford Handbook of International Relations*, ed. Reus-Smit C Snidal D (Oxford: OUP, 2008), 248.

⁶⁵ Snyder J, "One World, Rival Theories " *Foreign Policy* 145 (2004): 58.

⁶⁶ Ikenberry (n 42).

Moreover, Keohane points out, that ‘hegemonic structures of power, dominated by a single country are most conducive to the development of strong international regimes whose rules are relatively precise and well obeyed’.⁶⁷ The benefits derived from the sustainability of the international regime are also acknowledged by dominant states, which see ‘an interest in political order, in general and are willing to pay costs and forego actions they might otherwise choose to create and sustain right to rule over others’.⁶⁸ It is also argued that the actions of the US are further restricted by the democratic system of conducting foreign policy based on liberal values as well as international institutions.⁶⁹ And therefore, ‘[t]he result has been the most stable and prosperous international system in world history’.⁷⁰

Thus, the way in which international society responded towards 9/11 and the subsequent international intervention in Afghanistan were to be expected. In the words of Keohane and Katzenstein, [t]here [was] nothing surprising about any of this. German and European mass publics and governments [saw] an effective war on terrorism and a lasting reconstruction of Afghanistan to be very much in their interest.⁷¹

⁶⁷ Keohane RO, "The Theory of Hegemonic Stability and Changes in International Economic Regimes, 1967-1977," in *Change in the International System*, ed. Holsti O *et al.* (Boulder: Westview Press, 1980), 132.

⁶⁸ Lake DA, "Authority, Coercion and Power in International Relations," (2010) in http://www.princeton.edu/~pcglobal/conferences/basics/papers/lake_paper.pdf [accessed 1 December 2012], 14-15.

⁶⁹ Ikenberry GJ, "American Power and the Empire of Capitalist Democracy," *Review of International Studies* 27 (2007): 203.

⁷⁰ Ikenberry GJ, "America's Imperial Ambition," *Foreign affairs* 81, no. 5 (2002): 49.

⁷¹ Keohane RO Katzenstein PJ, "The Political Consequences of Anti-Americanism," in *Anti-Americanisms in World Politics*, ed. Katzenstein PJ Keohane RO (New York: Cornell University Press, 2007), 282.

According to Neo-liberals, the international environment surrounding 9/11 points to wider reliance on multilateralism. This can be observed in that even the US as the world hegemon sought 'legitimacy for its military actions'.⁷² In the words of Jentleson:

as the most powerful country in the world the United States has responsibilities to support and foster peace as much as possible. Sometimes this means acting on its own, unilaterally. At other times it means providing the leadership that is critical to forging multilateral efforts.⁷³

Therefore, the fact that Russia and China supported the US in the aftermath of 9/11 was not something unusual and surprising. Indeed, it confirms the aforementioned assumptions that states tend to bandwagon with the hegemon. For Neo-liberals such behaviour is to be expected and envisaged, as it is in states' own interest to do so. States recognise the gains of cooperation or following the lead of the hegemon is for their own benefit. As Owen puts it '[a] hegemon is able to maintain its position because its subordinate states agree with it on the fundamental ends of society'.⁷⁴ Such a pivotal role fulfilled by the US is compared to that of Bismarck's Germany, but on global scale. Owen states that similar to Bismarck's Germany, 'the United States has made itself indispensable to order in most regions of the globe; most countries have a strong interest in keeping America a global power'.⁷⁵

⁷² Keohane RO Nye JS, "The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy (2001)," in *Power and Governance in a Partially Globalized World*, ed. Keohane RO (London and New York: Routledge, 2002), 280. The position of the most powerful state in the world, however, gives the hegemon a choice. Thus, according to neo-liberals 'the war against terrorism also increases incentives for unilateral action and bilateral diplomacy' (ibid).

⁷³ Jentleson BW, *American Foreign Policy. The Dynamics of Choice in the 21st Century* (New York, London: WW Norton & Company, Inc., 2000), 259.

⁷⁴ Owen JM, "Why American Hegemony Is Here to Stay," *International Politics and Society* 1 (2003): 7.

⁷⁵ ibid 7.

According to Ikenberry, not only relations between the US and Europe and Japan are governed through an established political order based on “liberal hegemonic” bargains, diffuse reciprocity, public goods provision, and an unprecedented array of intergovernmental institutions and working relationships’.⁷⁶ The same order governs the US relations with other states, most notably with Russia and China.

The variation of international responses towards the 1982 Operation *Peace for Galilee* and the 2001 Operation *Enduring Freedom* through neo-liberal lenses might be explained through the reference to the notion of states’ interest. As has been shown, the recognition of the US right to self-defence in relation to 9/11 was conditioned by the fact that, firstly it was the hegemon that was attacked and secondly that it was in states own interest to express their support for the state in such position. From a neo-liberal perspective the fact that the US actions were supported might have an impact on the existing regime governing the use of force. Following the logic of the regime theory it might be argued that although the principle of the general prohibition of the use of force is sustained, rules that govern the implementation of the right to self-defence have been noticeably modified.

As has been shown, even though Israel in 1982 relied upon similar justifications to the one presented by the US in the aftermath of 9/11, international society did not recognise its rationale as fulfilling the criteria established by the international regime governing the use of force during the Cold War. This change, however, has not occurred automatically or independently from other factors. The growing international acceptance of the wider scope of the rights to self-defence has been conditioned by the fact that it was the

⁷⁶ Ikenberry GJ, "Liberalism and Empire: Logic of Order in the American Unipolar Age," *Review of International Studies* 30 (2004): 611.

US and not another state that was attacked. What follows is that Neoliberals, similarly to some authors affiliated with Realism discussed earlier, emphasise the importance of the hegemonic status of the US. Thus, the analysis of the preponderance of the US is crucial and has to be a part of any plausible explanation of the shift in question. The following part of this chapter will demonstrate that the notion of hegemony is more complex than the utilitarian tradition account for. The more comprehensive understanding of hegemony involves looking at notions such as authority, legitimacy and the relationship with other states.

What is worth noting and can be viewed as a further support for the following understanding of hegemony is Ikenberry's portrait of the US position and role, which in turn places this author closer to the approach adopted by the English School of IR. For him, the US hegemony is more benevolent than rationalist perspectives account for through its 'unusual capacities to make commitments and restrain power' and thus in turn is regarded by other states as less threatening or intimidating.⁷⁷ He goes on even further and argues that the US should be seen as a world democratic-capitalist empire constructed through an inclusive system 'of order organised around a dominant state – and its laws, economy, military, and political institutions'.⁷⁸ Thus, the US should not be perceived as a pursuing only its own interests and objectives but as 'a producer of world order'.⁷⁹

As will be shown, hegemony should be viewed as being more embedded within the conception of international society. Being rooted within international society it envisions a greater role for other states both in making decisions and in sustainability of the hegemony. Thus, the decision of international society to support the US in the aftermath of 9/11

⁷⁷ Ikenberry (n 69) 194.

⁷⁸ *ibid* 192.

⁷⁹ Ikenberry (n 76) 609.

should be seen not only through the lens of self-interest but also of righteousness. Moreover, it will be argued that the change of international approach towards the use of force in relation to terrorism was also conditioned by the developments since the end of the Cold War in relation to the use of force in general. These developments signal a transformation of the very notion of international society. This change allowed for a greater appreciation of cooperation between states based not solely on the notion of self-interest but also on belonging to and comprising the international society and thus on willingness to act for the well-being of such society. The subsequent section of this chapter as well as chapter seven will demonstrate that the ES together with Constructivism can fill in the blanks unexplored by scholars associated with IR mainstream theories.

Part Two: Case Studies Through the Lenses of the English School Theory of IR and Constructivism

This part of the chapter will analyse the differentiated responses of international society towards the 1982 Operation *Peace for Galilee* and the 2001 Operation *Enduring Freedom* through the lenses of the English School Theory of International Relations and Constructivism. It will be demonstrated that the US was a powerful instigator of change which had crucial implications for international order. The two case studies have shown that Israel's right to self-defence, even though it had relied upon the same reasoning as the US did in 2001 was not recognised by international society and the latter criticised the former's actions. Thus, the linkage between the power relations and hegemony can be observed as an underlying factor influencing the change.

As has been indicated already this thesis argues that the changed approach of international society towards the use of force as exemplified by the 9/11 attacks has been conditioned by the fact that it was the US and not another state that was attacked. The argument, suggesting 9/11 is a cardinal factor underlying the changed approach towards the right of self-defence, can be supported by two operations in question. The fact that Israel throughout its conflict in Lebanon could not convince international society of its cause, suggests that the shift in international approach towards the use of force in self-defence was pivotally influenced by the dominant position of the US within the international environment since the end of the Cold War. As demonstrated earlier in this chapter, the end of the conflict between the two superpowers created a situation in which the US became the sole superpower.

The situation in which the primacy of the US is unquestionable invites a discussion on the actual role of the hegemon and other powerful states within the international arena. Although previous paragraphs treated these issues through the lenses of the realist and neo-liberal traditions, the English School of IR can enrich this discussion significantly through its conceptualisation of the notion of international society and its relationship with the hegemon. As mentioned earlier in this thesis, the role of great powers has been seen as crucial to the sustainability of international order and international society.⁸⁰ This traditionally was achieved through the balance of power and constraining of any occurrence of a single preponderance or dominance within the international system. Thus, does it mean that in an international system where the power of a single state cannot be counter-balanced the role of other powers and simultaneously the role of international society is diminished? This thesis argues that this is not necessarily the case. In order to

⁸⁰ See chapter two.

understand why, the correlations between the notions of hegemony and legitimacy⁸¹ need to be addressed.

It is argued that a special position and status enjoyed by great powers within an international system is 'recognized and bestowed by others, not merely a set of attributes and capabilities possessed by the claimant'.⁸² Even though it is asserted that 'the international order sustained by the great powers enjoys a wide measures of support throughout international society'⁸³ they are allowed to realise their functions within the international arena 'only if these functions are accepted clearly enough by a large enough proportion of the society of states to command legitimacy'.⁸⁴ Therefore, their rights and duties need to be not only accepted but also recognised as legitimate and desired by other members of international society. What this means is that they have the right to 'play a part in determining issues that affect the peace and security of the international system as a whole'.⁸⁵

At the same time, however, they have the duty 'of modifying their policies in the light of the managerial responsibilities'.⁸⁶ What is imperative for the sustainability of international order based on the managerial roles of the great powers is that great powers need to 'impose constraints upon their own behaviour'.⁸⁷ What follows is that in a

⁸¹ On the notion of legitimacy see, for example: Clark I, "Legitimacy in a Global Order," *Review of International Studies* 29 (2003): 75-95. --, *Legitimacy in International Society* (Oxford: Oxford University Press, 2005). --, *International Legitimacy and World Society* (Oxford: Oxford University Press, 2007). Hurrell A, "Legitimacy and the Use of Force: Can the Circle Be Squared?," *Review of International Studies* 31 (2005): 15-32.

⁸² Clark I, "Towards an English School Theory of Hegemony," *European Journal of International Relations* 15, no. 2 (2009): 214.

⁸³ Bull H, *The Anarchical Society. A Study of Order in World Politics* (3rd edn Basingstoke: Palgrave Macmillan, 2002), 221.

⁸⁴ *ibid* 221.

⁸⁵ *ibid* 196.

⁸⁶ *ibid* 196.

⁸⁷ Clark (n 82) 215.

situation when great powers act against their duty of the sustainability of an international order their status may cease to be recognised. Indeed, as has been already argued by Neo-liberals, the US, in order to pursue its own objectives, needed to acquire international support. Although the persistent view is that due to the fact the US is the sole superpower it can construct its own policy according to its wishes, as will be shown this is not an entirely accurate observation. In the words of Huntington, a dominant state 'can only exercise authority and influence over other countries if [it] can get them to go along; if [these states] need [such dominant state] in one way or another'.⁸⁸ Thus, the role of other powerful states within the international arena cannot be undermined. In fact, he argues convincingly that we should not speak of unipolarity or hegemony, but of *uni-multi-polarity*.

According to him, the global power should be seen as a four-level structure. The first level comprises of the US as the superpower with its overwhelming dominance. At the second level, however, are other powerful regional powers, which include but are not limited to, states such as those belonging to the EU - with explicit prominence of Germany and France, as well as Russia and China. The third level comprises other regional powers, such as the UK in Europe. At the last, fourth level we can find the rest of the world, which does not, in comparison with the aforementioned powers, play a significant 'role in shaping global politics'.⁸⁹ By emphasising the importance of other states within the international arena, Huntington argues that '[t]he US cannot dictate what goes on all by itself. It needs the cooperation of some of these major regional powers to accomplish

⁸⁸ Huntington S, "The Great American Myth. There Is No Us Empire, but There Is a Uni-Multi-Polar World," *Grano Series – The American Empire* (2005).

⁸⁹ *ibid.*

anything in world affairs'.⁹⁰ Although Huntington writings at first may not fit easily within the paradigm emphasising the role of international society, his understanding of the notion of unipolarity is not in contrast to the ES understanding of this notion.

Although Clark advocates the understanding of the current distribution of power in terms of hegemony, his postulations do not contradict Huntington's arguments and in fact can be seen as supportive ones. Similarly to Huntington, Clark emphasises the importance of cooperation and good relations between the hegemon and other powerful states. He argues that even though at first glance the notion of hegemony may seem to be incompatible with the existence of international society as it diminishes its role, in reality it should be seen 'not as the antithesis of international society, but as a possible institution of it'.⁹¹

For him the situation, which would be incompatible with international society, is the situation in which the primacy is unchecked.⁹² What is important is 'to ensure that the state enjoying primacy behaves in a hegemonic way, in conformity with expectations created by the institution of hegemony'.⁹³ He also points to the fact that similarly to the position of great powers, the status of the hegemon depends on recognition and its sustainability. This is because such a status is not absolute and may cease to exist. In his own words, 'any negotiation of the institution of hegemony will be permanently conditional, and subject to ongoing contestation in terms of legitimacy'.⁹⁴ Therefore, the

⁹⁰ *ibid.* See also: Roberts A, "International Relations after the Cold War," *International Affairs* 84, no. 2 (2008): 335-350.

⁹¹ Clark (n 82) 224.

⁹² Clark I, "How Hierarchical Can International Society Be?," *International Relations* 23, no. 3 (2009): 476.

⁹³ *ibid.*, 473.

⁹⁴ Clark (n 82) 223.

power of hegemon is also perceived as ‘the product of legitimacy, of the perception, on the part of other social actors, that the exercise of power is rightful’.⁹⁵

The adequacy of such an understanding of the notion of hegemony can be supported when the international environment surrounding 9/11 is scrutinised. As has been demonstrated it was the dominant position of the US that influenced the change in states’ perception on the use of force in self-defence. However, such a change would not be possible if other states did not recognise the compatibility of the US actions in accordance with the international legal provision treating the use of force. The legitimacy of the US actions can, thus, be observed by looking at the unprecedented degree of support and assistance it received in relation to the military intervention in Afghanistan.

The question to be raised is why did international society adopt the restrictive approach towards the use of force in the aftermath of the Second World War and continued to support such approach during the Cold War? Although the UN Charter includes the possibility of the use of international forces when a situation constitutes a threat to international peace and security, the provisions embodied within the Articles 39, 41 and 42⁹⁶ were rarely executed during the Cold War period. It is plausible to argue that the reason for this was not that situations that arose during that time were not in any event perceived as threatening international peace and security in the future but because international society during that time put an emphasis on the limitation on the use of force whenever possible unless it was an absolute necessity. Moreover, taking into consideration

⁹⁵ Reus-Smit (2005) cited in Clark (n 82) 204.

⁹⁶ Article 39 reads: ‘*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security*’ (Charter of the United Nations (adopted on 26 June 1945, entered into force on 24 October 1945) 892 UNTS 119 (hereinafter: UN Charter)). While Article 41 treats an employment of measures not involving the use of force, Article 42 envisages the possibility of an armed intervention under the emblem of the United Nations.

the condition of bipolarity and existing conflict between the two superpowers the rationale behind the limitation of the use of force was more reasonable than an international engagement in a situation that may have had serious and unpredictable consequences in the future. Such reasoning can be observed in relation to the 1982 Operation *Peace for Galilee*; although the UNFIL forces were established within the territory of Lebanon in March 1978 following the Israeli Operation *Litani*, it was a peacekeeping and not a peacebuilding mission. Although the mandate included the restoration of peace and security, the UNIFIL's role, especially in the aftermath of 1982 Israeli intervention, was 'limited to providing protection and humanitarian assistance to the local population to the extent possible'.⁹⁷

The fact that there was a limited international engagement in the hostilities between Israel and Lebanon on military grounds suggests that either the conflict was not seen as constituting a threat to international peace and security or that international society decided to emphasize the disapproval of the Israeli policy and treat the intervention as unlawful without getting more involved. Taking further into consideration the tensions that arose due to continuing Israeli military interventions in Lebanon as well as the unstable domestic situation caused by the on-going civil war and subsequent and continuous discussions on the UNSC forum on the matter, it seems plausible to argue that the latter explanation is more adequate and convincing.

Such a course of events delivers evidence suggesting the adequacy of the fulfillment of assumptions affiliated with the *pluralist* conception of international society, where emphases are put on the maintenance of international order and the unity of

⁹⁷ United Nations Interim Force in Lebanon (UNIFIL) in <http://www.un.org/en/peacekeeping/missions/unifil/background.shtml> [accessed 1 December 2012].

members of such a society is limited to that of respect of international rules. What needs to be noted, however, is that the society as observed during the Cold War was a modified example of the *pluralist* conception of international society. Although, at first glance, developments such as the general prohibition of the use of force suggest a dismissal of Oppenheim's postulates, the limitation on the use of force was not necessarily in contradiction with the *pluralist* conception of international society. As was already presented Oppenheim emphasized the existence of international legal rules and norms that members of international society actually *accepted* and *recognized* as binding upon them.⁹⁸

Thus, international relations between states were characterized around the notion of a minimalist commitment to recognize each others' right to exist. The notion of justice, so pivotal to the *solidarist* conception of international society, was not emphasised and did not constitute a central point of reference within the *pluralist* international society. In spite of, or due to its limitation, this conception of international society was 'built around the goal of coexistence and reflected an ethic of difference'.⁹⁹ As was elaborated in the preceding chapters¹⁰⁰ the aim of international society in the aftermath of the Second World War, which was articulated and culminated within the framework of the UN Charter was to create an international order based on the general prohibition of the use of force. Therefore it can be argued that while in the nineteenth century members of the international society accepted the use of force as a lawful tactic to achieve their variously defined objectives, they adopted an opposite approach in the twentieth century and recognized and appreciated the importance of the limitation of the warfare and imposed a general prohibition of the use of force.

⁹⁸ See chapter one, part one, subsection b.

⁹⁹ Alderson K Hurrell A, ed., *Hedley Bull on International Society* (Basingstoke and London: Macmillan Press Ltd, 2000), 7.

¹⁰⁰ See chapter one, part two and chapter two, part four.

Here the adaption of the *pluralist* conception of international society to the changes within the international arena that occurred in the aftermath of the Second World War is visible. The inapplicability of the traditional understanding of the *pluralist* conception of international society, however, was noticed by Bull, when he argued that ‘the normative ambitions of international society have expanded dramatically so that a limited, *pluralist* conception of international society is no longer adequate, either morally or pragmatically’.¹⁰¹ However, the cardinal rules postulated by the *pluralist* conception, i.e. the respect of sovereignty, independence and non-intervention were still sustained and emphasized. The above *pluralist* assumptions that international society exists because of the desire of its members to create a foundation needed for their mutual co-existence can be found in the international society of the Cold War period. Although new developments such as the aforementioned prohibition of the use of force, the right of self-determination and the notion of human rights were embodied within the UN Charter, the maintenance of international order rather than the pursuit of justice was still prioritized. Here the minimalist character of the *pluralist* conception can be observed, in that states could be ‘united in international society only for certain minimum purposes’.¹⁰²

This does not necessarily have to be seen as a failure of international society. It should, thus, be regarded as a social construction suited for its time. As the notion of justice during the Cold War was far from universally agreed upon in terms of the meaning, the *pluralist* conception of international society was well suited as it did not seek to ‘burden international law with a weight it cannot carry’.¹⁰³ What follows is that it should be understood as ‘a conception of international society founded upon the observation of the

¹⁰¹ Alderson, Hurrell (n 99) 12. (emphasis added)

¹⁰² Bull H, "The Grotian Conception of International Society (1966)," in *Hedley Bull on International Society*, ed. Alderson K Hurrell A (Basingstoke and London: Macmillan Press Ltd, 2000), 111.

¹⁰³ *ibid* 116.

actual area of agreement between states and informed by a sense of the limitation within which in this situation rules may be usefully made rules of law'.¹⁰⁴ Importantly, this conception of international society also leaves 'room for the operation of those political forces, beyond the control of law, on which the existence of international society also depends'.¹⁰⁵ Therefore, international society advocated by this conception has a 'functional character',¹⁰⁶ and should not be seen as comprising a high level of unity between its members.

However, the fact that these members did express unprecedented support for the US in the aftermath of 9/11, which eventually led to the re-evaluation of international provisions on the use of force suggests that the current international society does not easily fit the description provided by the *pluralist* conception. This in turn may suggest that society at the beginning of the twenty first century should be seen as resembling a *solidarist* rather than a *pluralist* conception of international society. For the analysis of the nature of international society to be coherent a scrutiny of the third case study, namely the 2006 Operation *Change Direction*, needs to be included.

The importance of the above analysis of the notion of international society is crucial for the understanding of the role that international law plays in international politics. As chapter two pointed out, international law reflects the identity of international society. If such an identity changes, a change can also entail an alternation in international approach towards international law. In addition, the current international approach towards international law differs from the one observable during the Cold War. Throughout the

¹⁰⁴ *ibid* 116.

¹⁰⁵ *ibid* 116.

¹⁰⁶ Souza EM de, "Re-Evaluating the Contribution and Legacy of Hedley Bull," *Brazilian Political Science Review* 2, no. 1 (2008): 110.

Cold War the role of international law was limited and might be viewed as resembling to a certain extent the neo-liberal characteristics of international regimes. Its function, especially in terms of the use of force, was limited to that of an enforcement of an established international rules and reducing the risk of an escalation of a conflict in a situation of a bipolar hostility. Nevertheless, even during that time a normative aspect of international law could be found. This supports a constructivist view that '[r]ationality cannot be separated from any political significant episode of normative influence or normative change, just as the normative context conditions any episode of rational choice. Norms and rationality are thus intimately connected'.¹⁰⁷ This can be noticed by referring to the first case study. Although a traditional ally of the state of Israel, the US criticised the Israeli government and thus risked its close relationship with that state. By doing so the US seemed to acknowledge that the actions of its ally were not appropriate ones in a given situation. The question of appropriateness brings us to the constructivist understanding of international norms. As mentioned in chapter two, Constructivists claim that international norms explain an appropriate and an inappropriate behaviour. Nevertheless states' understanding of what action can be viewed as an appropriate one is not straightforward.

As mentioned in chapter two, Constructivists not only claim that international norms explain an appropriate and an inappropriate action but they also attach to them a virtue of "oughtness". In addition, 'norms by definition embody a quality of "oughtness" and shared moral assessment' and because of this 'norms prompt justifications for action and leave an extensive trail of communication among actors'¹⁰⁸. Although this "oughtness" during the Cold War was overshadowed by the bipolarity and on-going hostility between

¹⁰⁷ Finnemore M Sikkink K, "International Norm Dynamics and Political Change," *International organization* 52, no. 4 (1998): 888.

¹⁰⁸ *ibid* 892.

the West and the East, the fact that for example Israel justified its actions in terms of self-defence means that it recognised an existence of the principle of the general prohibition of the use of force. The end of the Cold War and various developments that occurred since the 1990s can be viewed as encompassing a rebirth of the virtue of “oughtness”. The chapter seven will demonstrate that a return of natural law thinking, a growing acceptance of humanitarian intervention which shakes the notion of sovereignty and a firmer approach towards rogue states – all lean towards a more normative aspect of international law. This in turn will support the claim that the current international society no longer resembles the *pluralist* international society of the Cold War period.

A further support for the above arguments can be found through the reference to the second case study. As demonstrated, the members of international society approached 9/11 in unprecedented approach. The international solidarity with the US expressed in the aftermath of the 9/11 attacks suggests that the actions of the hegemon were seen as legitimate and righteous. This can be observed in that even states for whom the recognition of the US right to self-defence could not be explained through reference to the theory of bandwagoning did express their unity with the US claim and recognised its justification as a valid one. The recognition of the US action as appropriate and legitimate has had significant implications for the norms governing the use of force. For a comprehensive portrait of these implications the third case is nevertheless needed. The 2006 Operation *Change Direction* and an analysis of the current international society are crucial in order to present a more in-depth explanation of the status of international law in the wake of 9/11.

Conclusion

The central argument of this thesis is that throughout the last decade the international arena has witnessed a new development in international law evident through the relaxation of legal provisions regarding the use of force. The two case studies presented in this thesis aimed to demonstrate that there has been a change in the approach of international society towards the instigation of military actions directed against non-state actors operating from within the territory of the hosting state. Such change could be observed by comparing two major military operations, namely the 1982 Operation *Peace for Galilee* and the 2001 Operation *Enduring Freedom*. As has been shown, while the former was not regarded by international society as a lawful exercise of the right to self-defence, the latter was recognised as being in accordance with international law.

As has been demonstrated various theoretical perspectives can provide a plausible explanation for the variation of international responses triggering the changed international approach towards the implementation of the right to self-defence. However, for an explanation to be comprehensive the analysis of the preponderant position of the US needs to be included. This delivers evidence of limitation of the Liberal Theory of IR as it does not account for the role of hegemon.

The fact that the US is the most powerful state in the world bears consequences in that 'it creates expectations in the rest of' international society.¹⁰⁹ It is true that such strong position of the US within the international society also implies that its actions 'carry greater weight and have deeper effects on the foundations of international law than similar

¹⁰⁹Kwakwa E, "The International Community, International Law, and the United States: Three in One, Two against One, or One and the Same?," in *United States Hegemony and the Foundations of International Law*, ed. Byers M Nolte G (Cambridge: Cambridge University Press, 2003), 37.

actions by other governments'.¹¹⁰ This is evident in that it was not Israel but the US that managed to influence the perception of what is to be meant by "an armed attack" and the right to self-defence.¹¹¹ However, as has been demonstrated, the US dominance within the international arena alone did not guarantee international support and the US sought to obtain legitimacy for its actions thereby acknowledging the limitation upon the scope of its own capabilities.

Although at first glance the hegemonic position of the US may not seem compatible with the postulates of IR theory which emphasise the existence and special role of international society, as this chapter tried to argue, this is not a valid observation. In addition, the notion of international society and hegemony can co-exist as long as the latter respects its rights and duties deriving from its special status and does not pursue objectives which threaten international order.

The claim that there has been a change in the approach of international society will subsequently be strengthened by an analysis of the 2006 Operation *Change Direction*, which constitutes the third case study of this thesis. As will be demonstrated this intervention delivers evidence suggesting that the response of international society towards the events associated with the 9/11 attacks was not an example of a "double standard" but indeed can be associated with the emergence of new principles governing the use of force and rules of attribution. This chapter shows that, although as some would argue that 9/11 should not be perceived as marking a new era in world politics, it should nevertheless be seen as an important factor shaping the post-Cold War order.

¹¹⁰ *ibid* 44.

¹¹¹ Hurrell A, ""There Are No Rules" (George W. Bush): International Order after September 11," *International Relations* 16, no. 2 (2002): 188.

CHAPTER SIX

THE 2006 OPERATION *CHANGE DIRECTION*

Introduction

This chapter analyses the third case study of this thesis, namely the 2006 Operation *Change Direction* instigated by the Israeli Armed Forces within the territory of Lebanon on August 11, 2006.¹ The rationale behind the choice of this operation as a case study is that it constituted the first Israeli military intervention in Lebanon since the 9/11 attacks as well as the first instance in which Israeli right to self-defence was internationally recognised. Thus, this operation will demonstrate that not only has there been a shift in international approach towards the use of force, in that the wider scope of the right of self-defence tends to be more widely accepted, but also that such a shift was caused in a significant part by the fact that on September 11, 2001 it was the US, and not another state, that was attacked by non-state actors, which in turn has had a crucial impact on the change in international approach towards the use of force in relation to terrorism.

This chapter comprises of two parts. The first part is divided into three subsections. The first one introduces the reader to the subject through the presentation of background information on Hezbollah and Operation *Change Direction* itself and

¹ See: Appendix 5. For additional information, see, for example: Byman D Simon S, "The No-Win Zone. An after-Action Report from Lebanon," *National Interest* (2006): 55-61. Kreps SE, "The 2006 Lebanon War: Lessons Learned," *Parameters* (2007): 72-84. Levy Y, "The Second Lebanon War: Examining "Democratization of War" Theory," *Armed Forces & Society* 20, no. 10 (2010): 1-18. Matthews MM, "We Were Caught Unprepared: The 2006 Hezbollah-Israeli War," *US Army Combined Arms Center* (2008): 1-95.

also looks briefly at interventions launched by Israeli forces that constituted their response to the attacks launched by Hezbollah during the last decade of the twentieth century. The reason for the reference to these operations is that they were not recognised as constituting lawful exercises of the right to self-defence although, as it will be shown, they were based on the same justification as the 2006 Operation *Change Direction*. This is followed by the second subsection, which focuses on the Israeli justification delivered at international forums. This part is crucial as it demonstrates that the Israeli rationale for launching military operations within Lebanese territory has been constant and has not changed since the first intervention in 1968. Such continuous reliance on the same justification will be indispensable for the claim of this thesis that the 9/11 event was a crucial factor in the change of international approach towards the use of force in relation to terrorism. The last subsection of this part scrutinises the response of international society itself and involves looking firstly at the statements delivered by the permanent members of the United Nations Security Council.

In order to emphasise the argument that there has, indeed, been a shift in the approach of international society towards the use of force directed against non-state actors, the statements delivered also by other international forums will be provided. The analysis presented in this part will be undertaken from the angle of comparison with the two case studies with special emphasis on the change that occurred in the aftermath of 9/11. The second part of this thesis comprises of an analysis of whether developments that have occurred in relation to states' perception of the use of force have been translated into similar developments in the framework of international law. Such scrutiny will involve looking at the international case law and opinions expressed by various international legal scholars. Similarly to the first part of this chapter, the analysis within this part will be

conducted through a comparison with the two case studies discussed in the preceding chapters.

Part One: Operation *Change Direction* and the Response of International Society

a) Background Information

Operation *Change Direction* was instigated in the middle of July 2006 as a response to Hezbollah's Operation *True Promise* launched on July 12. The name of the operation relates to the statement of Hasan Nasrallah, the Hezbollah's Secretary General, in which he opted 'to capture Israeli soldiers in order to exchange them for Lebanese prisoners in Israeli jails'.² The Hezbollah's attack was aimed at the Israeli patrol along the border with Lebanon. As a result eight Israeli soldiers were killed and two others were captured. Israel responded quickly and in his statement, Israeli Prime Minister Olmert called the Hezbollah action 'an act of war' and declared it would be met with 'very painful and far-reaching response'.³ In addition, throughout the month of fighting, Israel's intervention into Lebanon comprised of various attacks 'from land, sea, and air' against the whole of Lebanese territory.⁴ As a result one thousand civilians were killed. At the same time northern Israeli settlements were under constant Hezbollah's rocket attacks, which led to the death of forty three civilians. Moreover, both operations led 'several hundred thousand' Israeli and around one million Lebanese civilians to become displaced persons.⁵ Taking into consideration the casualties, destruction of housing and infrastructure

² Amnesty International, "Israel/Lebanon. Under Fire: Hizbullah's Attacks on Northern Israel," (AI Index: MDE 02/025/2006: 2006), 1.

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

Operation *Change Direction* was considered as ‘the most devastating wars in Lebanon’s history’.⁶

The military operation in question was not, however, the first military response directed against Hezbollah militia undertaken within the territory of Lebanon. As will be shown, there had been two other interventions, namely Operations *Accountability* and *Grape of Wrath*, conducted by Israeli forces in Lebanon during the 1990s, which had been based on the same justification and were oriented at the suppression of Hezbollah activity.⁷ However, prior to looking at these operations it is useful to highlight some background information on Hezbollah itself. Known as the Party of God and comprised of Shia Muslims was created in 1982 ‘in the wake of the 1979 Islamic Revolution in Iran’ as well as 1982 Israeli intervention in Lebanon.⁸ Being influenced by the rhetoric of Ayatollah Khomeini, one of the main goals of this organisation was to change the political system of Lebanon and in its place establish an Islamic republic resembling the one which had been created in Iran. An ultimate aim of this organisation was an eventual destruction of the state of Israel. According to Hezbollah, the freely elected Islamic government ‘would be the most capable of guaranteeing justice and liberty and of halting imperialist aggression’.⁹ Another and more achievable aim of Hezbollah, at least in its eyes, was to free the Lebanese land from Israeli forces that were situated in the “security zone” established after the 1982 invasion.¹⁰ Subsequently with its increased power and influence, Hezbollah, like the PLO in the past, created their own “Hezbollahland” in the South Lebanon, from which the organisation has continued initiating attacks against Israel. Moreover, the South, being

⁶ Salem P, "The Future of Lebanon," *Foreign affairs* 85, no. 6 (2006): 14.

⁷ See chapter three, note 1.

⁸ *ibid* 15.

⁹ Harik P, "Between Islam and the System: Sources and Implications of Popular Support for Lebanon’s Hizballah " *Journal of Conflict Resolution* 40, no. 1 (1996): 45.

¹⁰ Shahin M, "Bombs of Wrath." See also: chapter three.

populated by the majority of Shia Muslims, eventually became its recruitment base¹¹ and indeed the main source of its support. In addition, apart from being a quasi-military/guerrilla formation, it was a political and social force that was oriented at improving the lives of the Southern Lebanese population and was able to create various social welfare programs.¹²

As already mentioned, apart from the 2006 Operation *Change Direction*, the Israeli force instigated two other military campaigns during the 1990s as responses to Hezbollah attacks. In addition, the first major operation since the 1982 Operation *Peace for Galilee* was code-named *Operation Accountability*, which began on July 25, 1993. It resulted in a destruction of ‘dozens of (...) villages in a 50-km arc from the Mediterranean coast to the slopes of Mount Hermon’.¹³ The operation was launched using heavy artillery, attack helicopters, jet fighters and navy warships. Without doubt it was the biggest and most ‘devastating attack’ on Lebanese territory by Israeli forces since the invasion in 1982.¹⁴ The intervention was a response to the increased guerrilla activities of both Hezbollah and Palestinians, which had been undertaken against Israeli forces stationed in the “security zone” and had led eventually to the death of seven Israeli soldiers in July.¹⁵ The increase of Hezbollah’s attacks since 1990 had been seen as a rationale and reason for launching the military action.¹⁶ According to the UN observers, during only the first week of the operation twenty-two thousands howitzer shells and one thousand rockets were fired by Israelis against Hezbollah north of the security zone. In comparison, Hezbollah militia

¹¹ Zisser E, "The Return of Hizbullah " *The Middle East Quarterly* 9, no. 4 (2002).

¹² Salem (n 6) 15; Zisser (n 11).

¹³ Silver E, "A War of Wills."

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ According to Murden, there were 19 Hezbollah attacks in 1990, 52 in 1991, 63 in 1992, 158 in 1993, a 187 in 1994, and 344 in 1995’ (“Understanding Israel’s Long Conflict in Lebanon: The Search for an Alternative Approach to Security During the Peace Process,” 35.)

fired two hundred seventy five Katyushas rockets.¹⁷ As a result, more than one hundred Lebanese were dead, out of which ten belonged to Hezbollah and another five hundred were wounded.¹⁸

Within the period of three years Israeli forces launched yet another military campaign, namely Operation *Grapes of Wrath*, whose name referred to ‘a phrase derived from biblical references to the vengefulness that can grow from the seeds of a distressing situation’.¹⁹ This operation was instigated by Israel on April 11, 1996 against the same target, namely Hezbollah militia. As some of the previous interventions, Operation *Grapes of Wrath* was launched in response to frequent Hezbollah rocket attacks against settlements in northern Israel. Hezbollah actions, in turn, originated as a reaction to the preceding ‘Israeli episodes involving the death of several Lebanese civilians outside’ the “security zone”.²⁰ The operation lasted seventeen days and resulted in deaths of over one hundred people and soon after the initiation of the operation approximately one hundred thousand Lebanese became internally displaced after they sought shelter up north.²¹ Moreover, Israel’s forces targeted a UN compound at Qana on April 18; at the time of the attack at least 800,000 Lebanese civilians, for whom the compound constituted a shelter, were present within the premises and as a result one hundred and two civilians were killed and many more wounded, including UN personnel.²²

As will be demonstrated, both of the Israeli interventions launched in the 1990s were criticised by international society and were not seen as constituting a lawful use of

¹⁷ Steele, Silver (n 13).

¹⁸ Beyer L, "What's Peace Got to Do with It."

¹⁹ Morris, Shahin (n 10).

²⁰ Beyer L, "Operation Grapes of Wrath," 67.

²¹ *ibid.*

²² Amnesty International, "Israel/Lebanon. Unlawful Killings During Operation "Grapes of Wrath"," (AI Index: MDE 15/42/96: 1996), 15.

force in accordance with the UN Charter and the criteria needed for justification based on the right to self-defence. In addition, the UN Security Council in relation to the 1993 Operation *Accountability* adopted Resolution 852, in which it reiterated ‘its strong support for the territorial integrity, sovereignty and independence of Lebanon within its internationally recognised boundaries’.²³ Moreover, in his statement, the President of the UN Security Council stated that ‘any State shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations’.²⁴

Similarly, the 1996 Operation *Grapes of Wrath* was not recognised as constituting a lawful exercise of the right of self-defence. During the meeting of the UN Security Council there were few attempts to provide a response in the form of the drafting of a resolution. One of these attempts was a draft resolution submitted by Arab states that would have ‘called on Israel to (...) withdraw its forces from all Lebanese territory’ and ‘strongly condemned the Israeli aggression against Lebanon, which had brought about high tolls of civilian casualties’ as well as ‘called for redress to Lebanon for the destruction suffered from the Israeli aggression’.²⁵ The draft resolution sponsored by the nineteen Arab states was not, however, adopted. At the voting only four other countries were in favour with eleven abstentions.²⁶ Subsequently the UN Security Council adopted unanimously Resolution 1052 in which it stated that it was gravely concerned both ‘at the consequences which the ongoing fighting could have for the peace and security of the region’ and ‘at all attacks on civilian targets, including residential areas, and at the loss of life and suffering

²³ UNSC Res 852 (28 July 1993) UN Doc S/RES/852.

²⁴ Yearbook of the United Nations, vol. 47 (1993), 547.

²⁵ UN Doc S/1996/292 cited in Yearbook of the United Nations, vol. 50 (1996), 429.

²⁶ States in favour: China, Egypt, Guinea-Bissau, Indonesia.

among civilians'.²⁷ It also stressed 'the need for all concerned to respect fully the rules of international humanitarian law with regard to the protection of civilians'.²⁸

The representative of China in his statement expressed his concern regarding 'the large-scale military action' undertaken by Israel and 'was shocked at the large number of casualties'.²⁹ He also 'condemned any action that violated international law' and called for the exercise of 'restraint and work for a cease-fire'.³⁰ The representative of France referred to the situation as 'the intense drama' and called for an immediate cessation of hostilities.³¹ In the opinion of the Russian representative, 'Israel's actions were undermining the integrity of Lebanon, hurting its civilian population, and threatening the peace process'.³² The representative of the United Kingdom appraised the UNSC for the adoption of 'a clear, strong and balanced resolution that would underpin the efforts being made to resolve the crisis'.³³ Moreover, he also 'condemned the rockets attacks by Hezbollah in northern Israel, which had led to civilian casualties and started the present crisis'.³⁴ In a similar manner, the representative of the US stated that 'the process needed restraint from the parties, and a willingness to confront directly the source of violence'.³⁵ Furthermore, '[i]t would require from the Council a sense of fairness and balance that was present in the resolution that had been adopted, but not in the one that had not been approved'.³⁶

²⁷ UNSC Res 1052 (18 April 1996) UN Doc S/RES/1052.

²⁸ *ibid.*

²⁹ Qin Huasun, Representative of China to the UN, cited in UNSC 'Security Council calls for Immediate End to Hostilities in Lebanon, Expresses Support for Diplomatic Efforts' (18th April 1996) Press Release SC/6208.

³⁰ *ibid.*

³¹ Alain Dejammet, Representative of France to the UN, cited in UNSC (n 29).

³² Gennadi M. Gatilov, Representative of Russian Federation to the UN, cited in UNSC (n 29).

³³ Derek Plumbly, Representative of the United Kingdom to the UN, cited in UNSC (n 29).

³⁴ *ibid.*

³⁵ Madeleine Albright, Representative of the United States of America to the UN, cited in UNSC (n 29).

³⁶ *ibid.*

A stronger response came from the General Assembly, which in a way echoed the draft resolution proposed by the Arab states at the meeting of the UNSC. The General Assembly in Resolution 50/22c condemned

the Israeli military attacks against the civilian population in Lebanon, especially against the United Nations base at Qana, which violate[d] the rules of international humanitarian law pertaining to the protection of civilians, and expresse[d] its grave concern and sorrow over the loss of lives and serious injuries to innocent men, women and children.³⁷

However, apart from Israel, the US voted against an adoption of this resolution.

b) Israeli Justification

The justification behind the 2006 Operation *Change Direction* did not differ from the ones delivered by Israel at the UN forum in relation to previous operations launched within the territory of Lebanon since 1968. In a similar manner, Israel claimed it had been attacked and thus had the right to exercise its inherent right to self-defence in accordance with international law.

In addition, on July 14, 2006, the Israeli representative to the UN stated that the actions of the state of Israel ‘were in direct response to an act of war from Lebanon’ and that Israel for six years had shown ‘unparalleled restraint (...) while bearing the brunt of countless attacks’ and that his government ‘had to respond to this absolutely unprovoked

³⁷ UNGA Res 50/22 C (25 April 1996) UN Doc A/RES/50/22.

assault, whose scale and depth was unprecedented in recent years'.³⁸ The representative also stressed the fact that while Israel held the Lebanese government responsible, it was 'concentrating its response carefully, mainly on Hizbollah strongholds, positions and infrastructure'.³⁹

The Lebanese representative, in contrast, in a letter to the President of the UNSC, accused Israel of committing 'acts of aggression',⁴⁰ which destroyed 'Lebanon's infrastructure' and caused 'the deaths of innocent civilians in full view of the international community'.⁴¹ Moreover, despite the fact that Lebanese government immediately 'declared that it was not aware of the incident that occurred on the Blue Line' and that 'it did not take responsibility for it' and 'it did not endorse that act', Israel held the Lebanese government responsible for these actions.⁴² He continued saying that Israeli aggression targeted innocent civilians 'thereby violating all human rights' and was 'a flagrant violation of all international resolutions, laws, norms and conventions'.⁴³

c) The Response of International Society Towards Operation *Change Direction*

The following paragraphs presents statements delivered by various states surrounding the instigation of Operation *Change Direction* by Israeli armed forces. It is noteworthy that there has been a shift in the language of many of the most powerful states. As will be demonstrated the way in which international society responded towards this intervention differs substantially from its reaction towards the 1982 Operation *Peace for*

³⁸ Gillerman (Israeli representative to the UN) UNSC 5489th meeting (14th July 2006) UN Doc S/PV.5489, 6.

³⁹ *ibid.*

⁴⁰ C Ziade (Chargé d'affaires a.i. of the Permanent Mission of Lebanon to the UN) Letter (13 July 2006) UNSC Doc S/2006/517.

⁴¹ Mahmoud (Lebanese representative to the UN) UNSC 5489th meeting (n 38) 4.

⁴² *ibid.*

⁴³ *ibid* 5.

Galilee or in fact all other Israeli interventions in Lebanon throughout the second half of the twentieth century. Indeed the following statements demonstrate international support for Israel's claim, which in turn delivers further evidence of a changed approach towards the use of force in relation to terrorist attacks observable since 9/11. In fact, this operation constitutes the first intervention instigated by Israeli forces within the territory of Lebanon, that was recognised as a lawful exercise of the right of self-defence.

The recognition of Israel's right to self-defence was delivered during the summit in St Petersburg, when states participating in the event declared that

it is (...) critical that Israel, while exercising the right to defend itself be mindful of the strategic and humanitarian consequences of its actions. We call upon Israel to exercise utmost restraint, seeking to avoid casualties among innocent civilians and damage to civilian infrastructure and to refrain from acts that would destabilize the Lebanese government.⁴⁴

The Permanent Members of the UNSC responded in a similar manner in that the actions of Hezbollah were condemned and the Israeli right to defend itself was recognised. Although Israel was criticised for noncompliance with the principle of proportionality,⁴⁵ its right to self-defence was not questioned: for the whole operation to be seen as in accordance with international law, the use of force should have been proportional to the threat by Hezbollah. What is significant for this thesis is the fact that the initial rationale for the use of force, i.e. the right to self-defence, was recognised as a justification within

⁴⁴ G7/G8 Summit 'St Petersburg Summit Documents: Middle East' (16 July 2006). (emphasis added)

⁴⁵ For a discussion, see, for example: Bottoms JB, "When Close Doesn't Count: An Analysis of Israel's *Jus Ad Bellum* and *Jus in Bello* in the 2006 Israel-Lebanon War," *Army Lawyer* (2009): 23-54. Gross ML, "The Second Lebanon War: The Question of Proportionality and the Prospect of Non-Lethal Warfare," *Journal of Military Ethics* 7, no. 1 (2008): 1-22.

the scope of international law. In addition, the representative of Russian Federation stated that ‘Russia strongly condemn[ed] the kidnapping of the soldiers and the firing on Israeli territory’. ⁴⁶ However the scale of Israeli response was viewed as ‘disproportionate and inappropriate’. ⁴⁷

The representative of the US referred to the Hezbollah actions as ‘deliberate and premeditated’, which were ‘intended to undermine regional stability and [were] contrary to the interests of both the Lebanese and Israeli peoples’. ⁴⁸ He also brought attention to the concern caused by ‘the presence of terrorist groups on’ the Lebanese soil and ‘the periodic attacks against Israel from groups and individuals in southern Lebanon’. ⁴⁹ He further called for an immediate disarmament and disbandment of all militia operating in Lebanon. ⁵⁰

The representative of China condemned the attacks undertaken by Hezbollah by saying that his government was ‘against the practice of Hizbollah militias who cross the borders to attack Israel and launch rockets on Israeli cities’. ⁵¹ At the same time, however, he declared that the Israeli military actions were regarded as disproportionate and had ‘caused massive destruction of infrastructure in Lebanon’. ⁵² In the view of the United Kingdom: ‘Israel has every right to act in self-defence. But it must exercise restraint and ensure that its actions are proportionate and measured, conform to international law and avoid civilian death and suffering’. ⁵³ The representative also stated that ‘[d]isproportionate

⁴⁶ Dolgov, UNSC 5489th meeting (n 38) 7.

⁴⁷ *ibid.*

⁴⁸ Bolton, UNSC 5489th meeting (n 38) 10.

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ Zhengmin, UNSC 5489th meeting (n 38) 11.

⁵² *ibid.* 11.

⁵³ Sir E Jones Parry, UNSC 5489th meeting (n 38) 12.

action will only escalate an already dangerous situation'.⁵⁴ The representative of France pointed out that Hezbollah 'bears responsibility for the outbreak of hostilities' and that 'Israel has the right to defend its territory and its citizens when they are attacked – and they [had] been attacked'.⁵⁵ Nevertheless France condemned 'the disproportionate nature of the response, which has already claimed many civilian victims and [had] caused significant material damage'.⁵⁶ Additionally, '[t]he Lebanese people must not be taken hostage'.⁵⁷

What needs to be further pointed and what might be important for the unbiased claim suggesting a changed approach towards Israel's justification is the fact that even the Arab League openly criticised Hezbollah's actions.⁵⁸ In addition, during the summit in Cairo states such as Saudi Arabia, Jordan, Egypt together with other Gulf States, and the Palestinian Authority condemned Hezbollah for 'unexpected, inappropriate and irresponsible acts'.⁵⁹

In summary, this part of the chapter has demonstrated that although Israel was criticised for non-compliance with the principle of proportionality,⁶⁰ its right to self-defence was internationally recognised. This, in itself, delivers evidence suggesting that the international approach towards the use of force in relation to terrorism has changed significantly since 9/11. As has been and will be further argued, this change was not only

⁵⁴ *ibid.*

⁵⁵ De La Sablière, UNSC 5489th meeting (n 38) 17.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ See for example: Fattah HM, "Arab League Criticizes Hezbollah for Attacks," *International Herald Tribune* 17th July 2006.

⁵⁹ Cited in Fattah (n 58).

⁶⁰ For example, the Under-Secretary-General for Political Affairs speaking on the behalf of the Secretary-General in relation to the hostilities occurring in 2006 condemned 'all actions which target civilians or which unduly endanger them owing to their disproportionate or indiscriminate character'. He further postulated that the parties to the conflict 'have an obligation to exercise caution and to respect the proportionality principle in all military operations so as to prevent unnecessary suffering, particularly among the civilian population' (Gambari I, UNSC 5489th meeting (n 38) 4).

visible in relation to 9/11, which, as it has been argued by some, might have been regarded as constituting an armed attack but actually in relation to acts of terrorism in general.

As has been demonstrated, the 2006 Operation *Change Direction* was instigated as a response to the Hezbollah attack that would not have amounted to an armed attack traditionally understood. Yet, international society recognised Israel's right to self-defence. This thesis thus, argues that what has been witnessed since 9/11 is the growing acceptance of a new customary principle relating to the implementation of the right to self-defence made explicit in the relaxation of international rules governing the use of force in relation to terrorism. The analysis of this shift would not be complete, however, without investigating whether such a changed approach is also visible within international case law and international legal scholarship. In addition, for a particular policy to become a part of international customary law it needs to be consolidated within state practice. Such consolidation inevitably requires evidentiary repetition and thus can take a substantial amount of time. Thus the confirmation shown by these other sources of international law would unquestionably speed-up the process of consolidation. This scrutiny is also important when taking into consideration the limits and scope of this thesis, in that it focuses only on two cases when the right of self-defence in relation to terrorism was recognised.

Part Two: The 2006 Operation *Change Direction* Under the Scope of International Law

This part of the chapter treats Israel's justification from the angle of international law. It analyses, in particular, whether the rationale delivered by Israel's government

fulfilled international legal requirements necessary for a state to act lawfully in self-defence. Thus, it is firstly oriented at answering the question of if the Operation *Change Direction* had been launched prior to 9/11 would it have been regarded as lawful? Secondly, it looks at changes that occurred since 9/11 and whether they have been acknowledged by international case law and international legal scholarship.

As has been demonstrated, Israel's right to self-defence was, for the first time, internationally recognised. There are a few possible reasons for the change in this approach. First, it might be argued that Israel acted in accordance with the international legal order governing the use of force as known even prior to 9/11. In addition, it might be implied that Hezbollah actions met the "gravity" requirement and the relationship between the government of Lebanon and Hezbollah was established, which subsequently meant that Lebanon was held responsible for Hezbollah actions. The second scenario may imply that the Israel actions were lawful because they were directed against the bases of Hezbollah militia and not the property of Lebanon. Thirdly, it might be suggested that Israel had the right to use force in accordance with *Nadelstichtaktik* theory. As will be argued, however, the shift in the response of international society towards Israel's actions can also be explained, most convincingly, by a change in the general international treatment of cases involving attacks by non-state actors. Indeed, as will be shown, the international recognition of Israel's right to self-defence has been caused by a change in the international approach towards the use of force in relation to terrorism, which has been observed since 9/11. Thus, suggesting an emergence of a new trend towards the broader right to self-defence evident through recent state practice.

However, before delivering evidence supporting the aforementioned argument, it is necessary to evaluate other possible explanations mentioned above. In relation to the first scenario it is difficult to understand why the deaths of eight soldiers and the abduction of two would amount to an armed attack. Considering the fact that some of previous interventions were responses to attacks of non-state actors, which resulted in far greater deaths of civilians than in comparison with the casualties in 2006, this assumption sounds unreasonable.⁶¹ As demonstrated, neither the assassination attempt nor attacks upon the civilian population of Northern Israel had been recognised as constituting attacks amounting to an armed attack traditionally understood. Thus, looking at Operation *Change Direction* from the angle of previous military operations instigated by Israel within the territory of Lebanon, it can be argued that the terrorist attack launched by Hezbollah in 2006 did not meet the “gravity requirement” necessary for an implementation of the right to self-defence.

In relation to the possible responsibility of the government of Lebanon, it was argued that ‘[t]he effective behaviour of Hezbollah in South Lebanon suggests an inferred link between the Government of Lebanon and Hezbollah’.⁶² Moreover, ‘Hezbollah is a legally recognised political party, whose members are both nationals and a constituent part of its population’.⁶³ This in turn, could mean that Hezbollah whose party is in the parliament was acting on behalf of Lebanon when launching attacks against Israelis. This argument is further based on the fact that the Lebanese government, in its statement

⁶¹ For a different view see, Schmitt MN, ““Change Direction” 2006: Israeli Operations in Lebanon and the International Law of Self-Defence,” *Michigan Journal of International Law* 29 (2008): 150.

⁶² UNHRC, “Human Rights Council: Report of the Commission of Inquiry on Lebanon Pursuant to Human Rights Council Resolution S-2/1,” (UN Doc A/HRC/3/2 23 November 2006), 22.

⁶³ *ibid.*

regarding the continuing occupation of Shab's farms,⁶⁴ expressed support for the fight against Israel.⁶⁵ Although Israel withdrew its armed forces from most of the Lebanese territory, including the "security zone",⁶⁶ in 2000 following the voting in the cabinet on March 5 Israelis remained present in the aforementioned small strip of Lebanese territory.⁶⁷

In addition, the Lebanese government claimed that 'the Lebanese resistance [is] as a true and natural expression of the right of the Lebanese people in defending its territory and dignity by confronting the Israeli threat and aggression'.⁶⁸ Considering the fact that this area of Lebanon was unlawfully occupied by Israelis and the resistance of such occupation can be understandable, it is therefore reasonable that the government provided such an approach.

However, such solidarity with the population opposing Israel's occupation cannot in itself be seen as enough evidence necessary for triggering the right to self-defence. As has been demonstrated throughout this thesis, the international legal order governing the use of force throughout the second half of the twentieth century necessitated a delivery of

⁶⁴ The Shab's farms are a small part of the territory in the Southern Lebanon amounting to approximately 22 km², which has been occupied by Israel since the 1967 Six-Day War. For more information see, for example: Gilboa A. "Shab'a Farms," in *The Second Lebanon War: Strategic Perspectives*, ed. Brom S Elran M (Tel Aviv: Institute for National Security Studies), 215-222.

⁶⁵ Schmitt (n 61) 141.

⁶⁶ Osmańczyk EJ, *Encyclopedia of the United Nations and International Agreements*, 1310.

⁶⁷ The withdrawal brought both criticism and support within Israel. For some the security zone was seen as 'the only way to protect the Jewish settlements in northern Israel'. (Luft G, "Israel's Security Zone in Lebanon – a Tragedy?," *Middle East Quarterly* 7, no. 3 (2000).) In addition '[t]hey believed that an "insulation layer" between Israel and the non-Christian population of Lebanon would deny terrorist groups access to the border and would reduce the threat of artillery fire against targets in Israel' (ibid). Those in favour argued that throughout the time of the security zone existence 'only nine guerrilla squads succeeded in reaching the border; of those nine, just two successfully crossed into Israel' (ibid). Moreover 'the great success of the security zone in preventing infiltration enhanced the sense of security among the residents of northern Israel' (ibid). However, according to the critics the existence of the security layer did not succeed in bringing to an end Hezbollah rocket and mortar attack. In fact they criticised the Israeli forces, which indisputably have a technological and logistic superiority over the Hezbollah, for their failure 'to supply a decisive answer to the Katyusha threat' (ibid.). See also: Zisser (n 11).

⁶⁸ UNHRC (n 62) 23.

evidence pointing to a close relationship between a state and a non-state actor. The international case law explored the requirements further and claimed that it must be proved that a state either has had the “effective” or “overall” control over the non-state actors in order for a victim state to act lawfully in self-defence.⁶⁹ The evidence collected suggests that the “effective control” requirement explicit in the *Nicaragua* case was not satisfied and overall the proof that Hezbollah was acting on behalf of the Lebanese government was not delivered. In addition ‘there [was] no evidence that Hezbollah parliamentarians or cabinet members directed or were otherwise involved in the attacks, or that the Lebanese government controlled the organisation’.⁷⁰ What follows is that the criteria established by international treaty law and judgments delivered by international courts, particularly the ICJ judgement in *Nicaragua* case and the ICTY judgement in *Tadić* case were not met and therefore Lebanon could not be held responsible for Hezbollah actions.

Moreover, a lack of credibility in the evidence suggesting the responsibility of Lebanon can be further observed by looking at the ILC Articles on Responsibility, which according to the *Genocide* case obtained the status of customary law.⁷¹ In addition, it was argued that Hezbollah ‘did not qualify as an “organ” in the meaning of the [art 6-responsibility]’⁷² i.e. it did not possess authority granted by the state of Lebanon, ‘nor was that situation in southern Lebanon of the nature envisioned by [art. 9]’, which refers to *de facto* governmental authority.⁷³ However, it was also pointed that ‘[e]ven when actions

⁶⁹ See chapter three, part one and chapter four, part one, subsection c and part two, subsection c.

⁷⁰ Schmitt (n 61) 142.

⁷¹ Further explained in the subsequent paragraphs.

⁷² This article reads: ‘The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed’ (ILC, *Articles on Responsibility of States for International Wrongful Acts* (2001) Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10) (hereinafter ILC Articles).

⁷³ Schmitt (n 61) 142. Article 9 reads: ‘The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the

qualify as acts of State for responsibility purposes, Article 50 bars the use of forceful countermeasures in response to a breach short of an “armed attack” under Article 51’.⁷⁴

What follows is that even when such responsibility is established an occurrence of an armed attack is pivotal in order for the use of force to be lawful.

What is also crucial in relation to this scenario is the fact that soon after the attacks on July 12, Israelis retracted their statement regarding the responsibility of the Lebanese government; on July 16, the Israeli Cabinet in its communiqué stated that ‘Israel is not fighting Lebanon but the terrorist element there, led by Nasrallah and his cohorts, who have made Lebanon a hostage and created (...) terrorists enclaves of murder’.⁷⁵ As a support for this statement the Ministry of Foreign Affairs noted that ‘Israel did not attack the government of Lebanon but rather Hizbullah military assets within Lebanon. Israel avoided striking at Lebanese military installations, unless these were used to assist the Hizbullah’.⁷⁶ This is undoubtedly in contradiction to the previous statement when the Israeli government ‘authorised “severe and harsh” retaliation on Lebanon’.⁷⁷ Moreover, the lack of responsibility of the Lebanese government was also recognised by the UN Secretary-General who said that ‘Hizbollah’s provocative attack on 12 July was the trigger for this crisis. It is clear that the Lebanese Government had no advance knowledge of the attack’.⁷⁸ And in fact, he pointed out that ‘whatever Israel’s operations may be doing to Hizbollah’s military capabilities, they are doing little or nothing to decrease popular

governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority’ (ILC Articles (n 72)).

⁷⁴ Schmitt (n 61) 142.

⁷⁵ Israeli Cabinet Communiqué (16th July 2006) in <http://www.mfa.gov.il/MFA/Government/Communiques/2006/Cabinet+Communique+16-Jul-2006.htm> [accessed 1 December 2012].

⁷⁶ Cited in Schmitt (n 61) 138.

⁷⁷ UNHRC (n 62) 20.

⁷⁸ Kofi Annan UNSG, UNSC meeting 5492, UNSC Doc. S/PV.5492, 3.

support for Hizbollah in Lebanon or the region but are doing a great deal to weaken the Government of Lebanon'.⁷⁹

The argument suggesting that Israel's actions were lawful because they were directed against the bases of the Hezbollah militia and not the property of Lebanon can also be discredited. Although Israel's officials and some authors claimed that the IDF aimed at Hezbollah bases, it was soon proven that the consequences for the whole country would be far reaching.⁸⁰ The Israeli military response resulted in an obliteration of a military airport, radar installations and the army barracks.⁸¹ The destruction of the property of the Lebanese Armed Forces and engagement in fights with Lebanese soldiers further discredited the Israeli argument that the IDF military actions were not undertaken against the Lebanese state. Moreover, as highlighted earlier, the Israeli army did not even distinguish between the militia and the UN. Accordingly, the attack launched by the IDF upon the United Nations Observer post in southern Lebanon on 25 July 'caused the death of four United Nations military observers'.⁸² The continuing presence of Israelis and far reaching destruction caused by the war made it very difficult for the UNIFIL to conduct their work especially in relation 'to provide humanitarian escorts for displaced persons'.⁸³ Further, the excessive use of force was condemned by the UN Secretary-General who

⁷⁹ *ibid* 3.

⁸⁰ According to Remba, 'Hezbollah is legally (and morally) responsible for any Lebanese civilian casualties which result from Israeli bombardment of villages, homes or urban areas containing missiles, rockets or armed Hezbollah guerrilla forces – so long as Israeli is aiming at these military targets, as it has' ('Are Israel's Military Operations in Lebanon Proportional? Is Israel Guilty of War Crimes? What International Law Really Says?', " (2006) in <http://www.zionism-israel.com/log/archives/00000170.html> [accessed 1 December 2010]).

⁸¹ UNHRC (n 62) 22.

⁸² UNSC Presidential Statement 34 (27 July 2006) UNSC Doc S/PRST/2006/34.

⁸³ UNSG (n 78) 2.

argued that '[w]hile Hizbollah's actions are deplorable and, as I have said, Israel has a right to defend itself, the excessive use of force is to be condemned'.⁸⁴

In relation to the possible explanation using the *Nadelstichtaktik* theory, it may be argued that Israel had a right to use force as a response to the continuing attacks undertaken by Hezbollah against Northern Israel. As has been shown, Israel has been relying on this rationale since the beginning of the conflict with Lebanon and as the second case study demonstrated there has been a growing acceptance of the merits of this theory during the first decade of twentieth first century.⁸⁵ Indeed, this scenario offers the most plausible reasoning. In a support of this, it can be reminded that the Hezbollah's tactic of kidnapping and launching rocket attacks is not novel. In addition, both Operations *Accountability* and *Grapes of Wrath* were undertaken as a response to Hezbollah's rockets attacks. Moreover between 1996 and 2006 there were also several attacks that did not result in major Israeli military operations. Finally, in October 2000 Hezbollah kidnapped three Israeli soldieries and exchanged their bodies for Lebanese prisoners held in Israel. The bodies of the captured soldiers were returned in 2003.⁸⁶ As Schmitt observes, '[h]istory seemed to be repeating itself'.⁸⁷ Accordingly, 'the Hezbollah actions of July 12 must be assessed contextually. The organisation had been attacking Israel for a period measured in decades; no indication existed that it would desist from doing so in the future'.⁸⁸ In a similar light, Reinold states that:

⁸⁴ *ibid* 3. For a discussion, see, for example: Makdisi K, "Constructing Security Council Resolution 1701 for Lebanon in the Shadow of the "War on Terror", *International Peacekeeping* 18, no. 1 (2011): 4-20.

⁸⁵ Indeed, the ICJ judgement in *Congo Case* suggests the acceptance of the accumulation of events theory (*Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* [2005] ICJ Rep. section 146, 53). See also: Reinold T, "State Weakness, Irregular Warfare, and the Right to Self-Defence Post-9/11," *American Journal of International Law* 105, no. 2 (2011): 259.

⁸⁶ UNSG 'Report of the Secretary-General on the Middle East' UNSC Doc S/2006/956, 8.

⁸⁷ Schmitt (n 61) 152.

⁸⁸ *ibid* 156. For a different view see, for example: Heinze EA, "Nonstate Actors in the International Legal Order: The Israeli-Hezbollah Conflict and the Law of Self-Defence," *Global Governance* 15 (2009): 87-105. According to Kattan, '[i]f Israel is permitted to invoke the *Nadelstichtaktik* theory, it could just as easily be

the international community seems to viewed [Hezbollah's actions] in the context of [its] broader campaign against Israel, which cumulatively qualified as an armed attack. While states did not explicitly embrace the accumulation doctrine their acquiescence in Israel's invocation of the right to self-defence could be read as tacit acceptance of the doctrine.⁸⁹

The recognition of the accumulation of events theory can reasonably be seen as a part of the bigger picture, namely the shift in general international approach towards the use of force in relation to terrorism, delivering evidence suggesting an acceptance of the broader notion of the right to self-defence. What needs to be emphasised is that such recognition was conditioned by the US reliance upon it in delivering its justification behind the intervention in Afghanistan.

In addition, this thesis argues that there has been a change in procedures or in the evolution of principles of international law regarding the treatment of cases involving attacks by non-state actors. For the first time in the history of conflict between Israel and the militia operating from Lebanon, the right to self-defence of the former was internationally recognised. As was mentioned earlier various states expressed their support for Israel and 'gingerly accepted Israel's need to defend itself against the increasing frequent Hezbollah attacks'⁹⁰ as well as condemned Hezbollah actions. The UN Secretary-General also recognised Israel's right to self-defence.⁹¹ Thus, the following paragraphs investigate why international society's response towards the Operation *Change Direction* should be seen as delivering evidence suggesting the relaxation of the legal provisions

used by Lebanon, for Israel frequently enters Lebanon's territorial waters without its consent' ("The Use and Abuse of Self-Defence in International Law: The Israel-Hezbollah Conflict as a Case Study," 44.)

⁸⁹ Reinold (n 85) 266.

⁹⁰ *ibid* 139.

⁹¹ UNSG (n 78) 3.

established in the aftermath of the WWII and governing the use of force throughout the second half of the twentieth century.

As has been demonstrated, neither the “effective control” requirement of the *Nicaragua* case nor the “overall control” requirement of the *Tadić* case was met. The majority of states and scholars referred to throughout this chapter agreed that the government of Lebanon could not have been accountable for the action of Hezbollah as their relationship was not on a scale that triggered the responsibility of the former.⁹² What follows is that the criteria established by international customary law as well as by the international court judgments were not met and therefore had the Operation *Change Direction* been launched before 2001 it would have very likely been regarded as unlawful. What needs to be mentioned is that some commentators argue that if the provisions of international law have been relaxed and the right of self-defence has become wider in scope then Lebanon could have been held responsible for Hezbollah actions as the Taliban regime had been held responsible for the actions of al-Qaeda. According to Schmitt:

[L]ike the Taliban, the Lebanese government allowed Hezbollah sanctuary when it failed to move south (...) [w]ith organised armed forces under its control, Lebanon presumably had more capacity to deny sanctuary to Hezbollah than did the Taliban vis-à-vis al Qaeda.⁹³

This, however, would be in contradiction with the UN Secretary-General who argued that ‘any analogy with Afghanistan under the Taliban is wholly misleading. Mr

⁹² See, for example: Schmitt (n 61). Kattan (n 88). For a different view see, for example: Ducheine P Pouw E, "Operation Change Direction: A Short Survey of the Legal Basis and the Applicable Legal Regimes," *NL-ARMS* (2009): 51-96.

⁹³ Schmitt (n 61) 144.

Siniora's Government clearly espouses democratic value. It deserves, and must receive, all possible support from the international community'.⁹⁴ He supported this claim by saying that 'Hizbollah's provocative attack on 12 July was the trigger for this crisis. It is clear that the Lebanese Government had no advance knowledge of the attack'.⁹⁵

Although from the case studies presented throughout this thesis it may be assumed that there has been a relaxation of provisions treating the use of force, international case law provides a different though ambiguous view. The International Court of Justice in the *Genocide* case delivered an important judgment in 2007, crucial for the claim that suggests a relaxation in the international principle governing the use of force. The Court deliberated on the question of Srebrenica massacres committed by the Bosnian Serbs military groups that occurred in 1995 on the territory of Former Yugoslavia. Once it was established that the massacres were in fact acts of genocide the ICJ contended whether these acts were attributable to the state of Serbia and Montenegro. The Court decided that although the state in question was responsible for not preventing the occurrence of genocide, it was neither directly responsible for the Srebrenica massacres nor it was complicit in its commission.⁹⁶ From its judgment it can be observed that the ICJ continues to uphold the rules governing states' responsibility for actions of non-state actors, which were recognised and applicable throughout the second half of the twentieth century.⁹⁷ And, as

⁹⁴ UNSG (n 78) 3.

⁹⁵ *ibid.*

⁹⁶ For a commentary and a discussion about the case, see, for example: Gill TD, "The Genocide case: Reflections on the ICJ's Decision in Bosnia-Herzegovina v Serbia," *The Hague Justice Portal* (2007) in <http://www.haguejusticeportal.net/index.php?id=7266> [accessed on 1 December 2012]. Shany Y, "Bosnia, Serbia and the Politics of International Adjudication," *Justice* 45 (2008): 21-26. Talmon S, "The Responsibility of Outside Powers for Acts of Secessionist Entities," *International & Comparative Law Quarterly* 58 (2009): 493-517.

⁹⁷ *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* [2007] ICJ Rep. (Merits) section 406, 144-145. See also: Plücker M, "New Developments Regarding the Rules of Attribution? The International Court of Justice's Decision in Bosnia V. Serbia," 320. See, however: Milanović M, "State Responsibility for Acts of Non-State Actors: A Comment on Griebel and Plücker," 307-324.

such, the Court brought attention to the importance of the ILC Articles on State Responsibility as reflecting international customary law:⁹⁸ of special importance for this chapter is Article 8, which treats conduct directed or controlled by a state.⁹⁹ Accordingly, a state may be held responsible for an action of non-state actors if it instructed, directed or controlled such actors. Moreover, the Court also emphasised the authority of the *Nicaragua* case and the on-going relevance of the “effective control” test, at the same time that it negated the applicability of the “overall control” test adopted by the ICTY in the *Tadić* case.¹⁰⁰ The judgment in the *Genocide* case has been met with some criticism,¹⁰¹ of which the most sound is the one delivered by Cassese.¹⁰² According to him, the Court in the *Nicaragua* case when setting the “effective control” test did not analyse it in reference to either ‘state practice or (...) other authorities’ and therefore ‘the grounds on which it was based’ are not known.¹⁰³ In his view, the overall control test adopted by the ICTY is ‘a valid standard for making those states accountable’.¹⁰⁴ What should be mentioned, nevertheless, is that these tests (i.e. “effective” and “overall” control) might be viewed as applicable to two different actors, i.e. state and individuals. Moreover, taking into consideration the development of international criminal law since 1990s and the creation

⁹⁸ *Genocide* case (n 97) section 406, 145.

⁹⁹ The Article reads: ‘*The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct*’ (ILC Articles (n 72)).

¹⁰⁰ *Genocide* case (n 97) section 404, 144.

¹⁰¹ See, for example: Schmitt MN, “21st Century Conflict: Can the Law Survive?,” *Melbourne Journal of International Law* 8 (2007): 443-476.

¹⁰² Cassese’s opinion might be seen as controversial as he participated in *Tadić* Appeal. Nevertheless, his analysis was sound and coherent as well as explanatory. Thus an inclusion of his critique is reasonable.

¹⁰³ Cassese A, “The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgement in Bosnia,” *European Journal of International Law* 18, no. 4 (2007): 653. See also: Cassese A, “A Judicial Massacre,” *The Guardian* (27 February 2007) in <http://www.guardian.co.uk/commentisfree/2007/feb/27/thejudicialmassacreofrebr> [accessed 1 December 2012].

¹⁰⁴ Cassese (n 103) 665. Cassese criticised the “effective control” test on the grounds that it applies state’s control of each action undertaken by non-state actors. In his opinion, the very nature of non-state actors makes it ‘virtually impossible to prove the issuance of instructions or directions relating to each terrorist operation’. In comparison, the “overall control” test implies more reasonably the need to ‘demonstrate that certain terrorist units or groups are not only armed or financed (...) by a specific state or benefit from its strong support, but also that such state generally speaking organizes or coordinates or at any rate takes a hand in coordinating or planning its terrorist actions (not necessarily each individual terrorist operation)’ (ibid 666).

of various international courts and tribunals treating the cases of individual responsibility, it might be argued that individuals themselves might be held accountable for actions that traditionally had to be attributed to a state. Thus, the argument that non-state actors responsible for acts of terrorism should be dealt with under international criminal law sounds more reasonable than in the past.¹⁰⁵

The judgment in the *Genocide* case was also under the scrutiny of Griebel and Plücken, who criticised the Court for its lack of regard for the recent development in state practice and that ‘it is regrettable that the Court did not see the international community’s need for less restrictive attribution rules as well as the need to address this problem’.¹⁰⁶ What the authors had in mind is the changing international approach towards the use of force as observed since 9/11. The fact that the Court ruled that the failure to prevent the commission of genocide was not enough to trigger the responsibility of Serbia and Montenegro suggests that in the Court’s view the “effective control” test remains the fundamental factor in determining whether a state might be held accountable for the actions of non-state actors. The continuity in the ICJ’s reliance upon the judgement in the *Nicaragua* case might be viewed as surprising especially taking into consideration the overwhelming support for the US intervention in Afghanistan evident both in the statements delivered by various states and in the legal scholarship. As this case study has demonstrated the recognition of Israeli right to self-defence in 2006 can be seen as an example of the consolidation of this shifted approach. The controversy surrounding the judgement in the *Genocide* case was enhanced by the fact that the decision was not reached unanimously.¹⁰⁷

¹⁰⁵ See chapter four, part one, subsection c.

¹⁰⁶ Griebel, Plücken (n 97) 620. See, however: Milanović (n 97) 307-324.

¹⁰⁷ By thirteen votes to two, the Court decided that ‘Serbia has not committed genocide, through its organs or persons whose acts engage its responsibility under customary international law, in violation of its obligations

This chapter has demonstrated that Operation *Change Direction* can be seen as an example of the growing acceptance of the relaxation of international rules governing the use of force in relation to terrorism. Although international case law does not deliver evidence of the recognition of such consolidation, the two case studies presented in this thesis together with the response of international society and scholars' opinion demonstrate that indeed the international approach towards the broader notion of the right of self-defence has changed significantly since 9/11. This is in agreement with Schmitt, who argues that the 2006 military intervention in Lebanon serves firstly as 'further evidence of an operational code extending the reach of self-defence to armed attacks conducted by non-State actors' and secondly as 'an excellent illustration of the growing acceptability of cross-border counter-terrorist operations when the State in which terrorists are located fails to comply with the duty to police its own territory'.¹⁰⁸ This is in agreement with Tams and Devaney according to whom, 'recent practice indicates that acts of self-defence can even be considered necessary where the host state is merely unable to suppress terrorist activities on its territory'.¹⁰⁹

Conclusion

The two first case studies delivered evidence suggesting a shift in the international approach towards the use of force in relation to terrorism observed since 9/11. This claim has been strengthened by an analysis of the 2006 Operation *Change Direction* which demonstrated that the response of international society towards the events associated with

under the Convention on the Prevention and Punishment of the crime of Genocide' *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* [2007] ICJ Rep (Summary).

¹⁰⁸ Schmitt (n 61) 164.

¹⁰⁹ Tams CJ Devaney JG, "Applying Necessity and Proportionality to Anti-Terrorist Self-Defence," *Israel Law Review* 45, no. 1 (2012): 100.

the 9/11 attacks was not an exceptional instance or an example of a “double standard” approach but indeed can be viewed as giving a place for the emergence of new principles governing the use of force and rules of attribution. As has been claimed, the change, although not yet consolidated in international case law, has been observed in recent state practice and *opinio juris*. As has been shown, not only international society but also various scholars, whose writings were referred to throughout this chapter, recognised, for the first time, Israel’s right to self-defence. This, in itself, suggests a growing acceptance of the broader notion of the right to self-defence. Moreover, it also supports the claim that international society has adopted a stronger and pertinacious approach towards states, which willingly or unwillingly allow for their territory to be used for acts contrary to the rights of other states.

This chapter also serves as a basis for the analysis that will be conducted subsequently. Indeed, the fact that Operation *Change Direction* supports the claim suggesting the changed international approach towards the right to self-defence as response to terrorism is necessary for the broader contextual analysis of the focus of this study, namely the status of international law in current world affairs, which will be scrutinised in the next chapter.

CHAPTER SEVEN

THE 2006 OPERATION *CHANGE DIRECTION* AND THE NATURE OF
INTERNATIONAL SOCIETY

Introduction

This chapter analyses the change in international approach towards the use of force evident since 9/11 and confirmed by the members of international society in 2006 in relation to Operation *Change Direction* instigated by Israeli forces within the Lebanese territory. It begins by looking at the international approach towards the 2006 Operation *Change Direction* and the way in which firstly it differed from the one observed in relation to the 1982 Operation *Peace for Galilee* and secondly it resembled the international response towards the 2001 Operation *Enduring Freedom*. This is followed by an analysis of such shift conducted from the angles of traditional IR theoretical perspectives, namely Realism, Liberalism and Neo-liberalism.

It will be demonstrated that the most comprehensive understanding of the change in international approach towards the use of force can be found in the symbiotic approach of the English School of IR and Constructivism. While the latter is influential due to its distinctive understanding of notions such as identity and interest, the former's extensive definition and analysis of the idea of international society is crucial for explaining not only why the international changed approach happened but also why it has been sustained. Thus, the final part of this chapter will analyse the 2006 Operation *Change Direction* through the premises of the very conception of international society. In addition, it investigates the developments that have occurred since 9/11 and whether these

developments have given a rise to the emergence of the *solidarist* conception of international society.

Part One: Operation *Change Direction* Through the Angles of Earlier Case Studies

As the preceding chapter has demonstrated the 2006 Operation *Change Direction* delivers further evidence supporting the claim that international society has changed its approach towards the use of force in relation to terrorism during the first decade of the twenty first century. It has been shown that international society, for the first time, recognised Israel's right to self-defence exercised in response to a terrorist attack instigated by non-state actor operating from a foreign state. Although the rationale behind the 2006 military intervention in Lebanon did not differ from the one delivered in relation to other interventions, most notably the 1982 Operation *Peace for Galilee*, the approach of international society altered significantly. While the former was treated as justifiable use of force (yet still disproportional) and in accordance with requirements governing the implementation of the right to self-defence, the latter had been seen as unlawful intervention.

As the second case study, that is the 2001 Operation *Enduring Freedom*, has demonstrated such changed approach was influenced firstly by the September 11 attacks and secondly by the fact that the victim of these attack was the US. This case study can be seen as the first example of the recognition of the state's right to self-defence in relation to terrorism since the adoption of the UN Charter and the establishment of the modern international legal order governing the use of force. The international approach towards the 9/11 attacks and the subsequent intervention in Afghanistan has demonstrated that

international society was prompted to re-evaluate its approach towards the use of force. In addition, what can be observed since 9/11 is a trend suggesting relaxation of international rules governing the right to self-defence. This refers, firstly to the fact that a terrorist attack can amount to an armed attack and thus implying that a victim state can justifiably use force in response to such an attack. This, in turn, suggests that the threshold for what actions constitute an armed attack in a traditional sense has been lowered. The recognition of Israeli right to self-defence may also suggest that the merits of the accumulation of events theory upon which Israel had relied in relation to the earlier interventions have found a certain level of recognition or acceptance. Secondly, it also suggests that international society has adopted a firmer approach towards states that willingly or unwillingly harbour non-state actors or are not able to effectively suppress their activities within their own borders. This can be observed in that the victim state can justifiably instigate a military operation within their territory.

The third case study also shows, however, that 9/11 alone cannot be treated as the sole reason for such shift in international approach. As has been demonstrated this shift was influenced by the dominant position of the US within international arena. The implication of the US preponderance can be observed in the fact that although Israel had been the victim of various attacks instigated by non-state actors operating from within the territory of hosting state, it was not capable of convincing international society that its actions were justifiable and lawful. The two case studies, thus demonstrated that even though both victim states relied upon similar justifications, international recognition was only present in relation to Operation *Enduring Freedom*.

Although the 2001 intervention has in itself delivered evidence supporting the aforementioned arguments the inclusion of the third case study was necessitated by a number of factors. It was needed in order to show that the response of international society towards 9/11 was not an example of a “double standard” but can be seen as suggesting an emergence of new principles governing the use of force and rules of attribution. In addition, for the 2001 Operation not to be seen as an instance of exception from international rules and norms governing the right to self-defence, another example of the recognised and justified use of force in self-defence had to be presented. Evidentially the 2006 Operation *Change Direction* can be seen as constituting such an example.

Part Two: Operation Change Direction From the Angles of Traditional IR

Theoretical Perspectives

1. Realist Interpretations

For authors associated with the Realist Theory of International Relations¹ the way in which states responded to the 2006 Operation *Change Direction* was to be expected as

¹ Although the following analysis in this part of the chapter focuses on a more traditional realist approach to international politics the newly established Democratic Realism is worth mentioning. This theoretical strand is said to be ‘the marriage of realism and liberalism’ in that it links liberal promotion of democracy with realist reason d’être. Democracy promotion for these realists has ‘ultimately not just moral but geopolitical value’ (Krauthammer C, “In Defence of Democratic Realism,” *National Interest* (2004): 16.). Representatives of this strand, most particularly Krauthammer, advocate a more active or even aggressive policies aimed at not only terrorist organisations but also states, which willingly or unwillingly harbour such organisations. For these authors, ‘democracy was the antidote to terror’ (Ish-Shalom P, “‘The Civilisation of Clashes’: Misapplying the Democratic Peace in the Middle East,” *Political Science Quarterly* 122, no. 4 (2007-08): 539.). Such a firmer approach assumes that all states, particularly democratic ones, should join the struggle aimed at the total suppression of terrorism. An explicit and clear message can be found in the Bush doctrine. The 2006 Operation *Change Direction* therefore was widely regarded by democratic realists as an adequate and necessary response and step to suppress Hezbollah’s terrorist activity (Lieber KA Alexander G, “Waiting for Balancing Why the World Is Not Pushing Back,” *International Security* 30, no. 10 (2005): 109-139.). Although this strand of Realism relies upon certain principles derived from liberalism, most particularly those associated with democratic peace theory and democracy promotion, the fact that Lebanon is a democracy did not constrain these authors from postulating the aforementioned more active if not aggressive approach. For more information on Democratic Realism, see for example: Dumbrell J, “The

most states support the idea of terrorism's suppression. Indeed, the solidarity with Israel can be seen as mirroring the one observed in the aftermath of 9/11 and which was associated with an idea that for other states 'Islamist radicalism [is also seen] as a genuine threat'.² In fact, for some authors the 2006 Operation *Change Direction* can be seen as 'a defining battle, even a proxy war, in the "war on terror"'.³

From this view, the operation in question can be seen as a continuation or a part of the global war on terror and thus the explicit US support for Israel was not surprising and indeed to be expected. The war on terror has tightened an already close and special relationship and alliance between the US and Israel. This relationship has been further strengthened by the more offensive stand towards non-state actors and harbouring states so advocated by democratic realists.⁴ From a neo-realist perspective, however, the way in which other states responded towards Operation *Change Direction* should not be seen as straightforward and instead should encompass a certain level of balancing. Although as chapter five demonstrated the events surrounding the 9/11 attacks has questioned the applicability of the theory of balance of power, certain realist theorists have continued to advocate its relevance even in the aftermath of 9/11.

This balancing, however, does not involve traditional tactics but its lighter version, namely "soft-balancing", which refers to 'actions that do not directly challenge US military

Neoconservative Roots of the War in Iraq," in *Intelligence and National Security Policymaking on Iraq*, ed. Dumbrell J (Manchester: Manchester University Press, 2008). Mearsheimer JJ, "Hans Morgenthau and the Iraq war: Realism versus neo-conservatism," in www.openDemocracy.net [accessed 1 December 2012]. Muravchik J, "The Future Is Neocon," *National Interest* (2008): 20-25. Vaïsse J, "Why Neoconservatism Still Matters," *Foreign Policy* 20 (2010): 1-11.

² Lieber, Alexander (n 1) 134.

³ Makdisi K, "Constructing Security Council Resolution 1701 for Lebanon in the Shadow of the "War on Terror"," *International Peacekeeping* 18, no. 1 (2011): 12. See also: Perthes V, "Analytical Perspectives on the War in Lebanon," *International Spectator* 12, no. 1 (2007): 115.

⁴ See, however: Mearsheimer JJ Walt SM, *The Israeli Lobby and US Foreign Policy* (Farrar, Straus and Giroux, 2007). Authors present a different perspective on Israel-US alliance and argue that the US support for Israel instead of improving US position in the region it actually worsen it.

preponderance but that use nonmilitary tools to delay, frustrate, and undermine aggressive unilateral US military policies'.⁵ These policies tend to be undertaken through the usage of 'international institutions, economic statecraft, and diplomatic arrangements', which could be noticed in relation to the US planning to invade Iraq.⁶ What should be pointed out, however, is that the tactic of 'soft balancing is likely to become more intense if the United States continues to pursue an aggressively unilateralist national security policy'.⁷

Although Neo-realists admit that the initiation of the war on terror was widely supported, the broadening of the scope of what this fight actually included, i.e. forceful change of an established regime, was not welcomed and in fact was widely criticised. Moreover, an expressed support for Israel would mean an indirect green light for the more active US campaign, which in turn could have weighty consequences for other states' alliances and interests in the region.

⁵ Pape RA, "Soft Balancing against the United States," *International Security* 30, no. 1 (2005): 10.

⁶ *ibid* 10. The rationale behind the occurrence of such policies is that other powerful states do not deem it necessary to engage in "hard balancing", based upon 'countervailing alliances and arms buildups', which in fact is said to be abandoned by these states. They abandoned these traditional tactics 'primarily because they do not fear losing their sovereignty for such balancing to occur' (Paul TV, "Soft Balancing in the Age of US Primacy," *International Security* 30, no. 1 (2005): 47.). This does not, however, mean that these states will tolerate any behaviour and will cooperate with the US on every occasion. It is argued that these states have become increasingly concerned about the unilateralist shift, in particular the US 'post-September 11 tendency to intervene militarily in sovereign states and forcibly change regimes that pursue anti-US policies' (*ibid*). However, the fact that the balancing occurs does not mean that other states are threatened by the US preponderance but 'rather because they sincerely disagree with specific US policies' (Brooks SG Wohlforth WC, "Hard Times for Soft Balancing," *International Security* 30, no. 1 (2005): 80.) It is also argued that these states want 'to be in a better position to bargain over the appropriate responses to security challenges from other states or actors' (*ibid* 105).

⁷ *ibid* 10. It is also postulated that although the policies of soft balancing do not challenge the US preponderance, they eventually make it difficult for the US to exercise its power. According to RA Pape they 'impose immediate costs and constraints on the application of US power by entangling the United States in diplomatic maneuvers, reducing the pressure on regional states to cooperate with its military plans, and bolstering the claims of target states that US military threats justify the acceleration of their own military programs' (Pape (n 5) 40). Even though at this time there are no serious contestants who could challenge the US hegemonic position, the continuing disdain can eventually have negative consequences. It is observed that the hegemon can follow this path at least in relation to significantly less powerful states but 'the situation changes when discontent is to be found within a great power or when a discontent power starts to rise' (Rauch C Wurm I, "'It's the Hegemony, Stupid': Why a Sophisticated Power Transition Theory Needs Liberal Hegemony," *Peace Research Institute Frankfurt* (2010): 8). According to Jervis, the unilateralist shift in the US policies is said to confirm the assumption that states, particularly the European powers, 'fear a world in which their values and interests are served only at Washington's sufferance' and thus reasonably will attempt to balance against the US power (Jervis R, "The Compulsive Empire," *Foreign Policy* (2003): 85).

An engagement in the tactics of soft balancing in relation to the 2006 Operation *Change Direction* is not however so explicit and in fact it can be coupled together with another realist claim, namely the pursuit of self-interest. Although the Israeli right to self-defence was recognised the intervention exemplified certain differences amongst especially those states, which saw the intervention as having potential consequences for their interests in the region. These differences arose mostly in relation to the call for an immediate ceasefire and actions in accordance with the principles of the law of armed conflict. In addition, France due to its longstanding relationship with Lebanon as the former colony 'maintains a special relationship with the state and considers itself, in a sense, the country's protector' and thus opted for an immediate cessation of hostilities.⁸ Chirac, the French President at the time urged not only for the ending of the conflict but also for a more active and 'accentuated role' for the EU in its resolution.⁹

The United Kingdom, on the other hand, chose to back up its Atlantic partner and to distance itself from the EU co-members. According to Podrazik, 'Britain's traditional alliance with America prevented it from pushing for an immediate ceasefire, while that was exactly what France demanded from the beginning on account of its special relationship with Lebanon'.¹⁰ The way in which Germany and France responded to the 2006 intervention shows that especially since 2003 these states seek to 'create a European counterweight' for the US position.¹¹

⁸ Podrazik P, "Reluctant to Lead: The Lebanese Conflict and the EU's Common Security Policy, " *Yale Journal of International Affairs* (2007): 9.

⁹ Lindholm Shulz H, "Security as an Interregional Concern: The EU and the Middle East, " *Bruges Regional Intergration and Global Governance Papers* 1 (2010): 10.

¹⁰ Podrazik (n 8) 11.

¹¹ Layne C, "America as European Hegemon," *National Interest* (2003): 25. See also: Oest KJN, "The EU and the Promotion and Stabilisation of Conflict Settlements, " *The British Academy, Specialist Group Ethnopolitics* (2007): 1-20.

Chapter five has demonstrated the theory of balance of power, either in this or in a more traditional understanding, does not provide a compelling explanation as to why international society decided to change its approach towards the use of force. Even though the premises of this theory can to a certain degree be applicable to the 1982 Operation *Peace for Galilee*, its insightfulness for an analysis of the growing international acceptance of the broadening of the scope of the right to self-defence is questionable. As has been shown, states, even those from which some form of balancing should have been expected, expressed their solidarity and support for the US in the aftermath of 9/11. Although certain evidence of soft balancing might be apparent in the relation to the 2006 Operation *Change Direction*, what is crucial for this thesis is the fact that the Israeli right to self-defence was recognised, which in turn suggests the lack of an expected balancing. Although the theory of soft balancing is useful in looking at the way in which states responded towards the Israel's actions once the conflict already started, it does not explain why the aforementioned states and most particularly Russia did recognise for the first time Israeli right to self-defence. According to the theory of balancing, Russia with its close relationship with Syria¹² most likely would have condemned Israel's intervention as it did in 1982 in relation to Operation *Peace for Galilee*. Such condemnation did not however occur and instead Israel's right to self-defence and its military response was deemed to be in accordance with principles of international law.

2. Liberal Interpretations

The way in which Liberals approached the 2006 Operation *Change Direction* is somehow puzzling and in fact can be seen as exemplifying a certain inconsistency in

¹² See, for example: Drezner DW, "Dear Realists: Please explain Russia, " (2012) in http://drezner.foreignpolicy.com/posts/2012/06/28/dear_realists_conservatives_running_russian_foreign_policy_too [accessed 1 December 2012].

liberal reasoning and thinking. On the one hand, looking at this intervention from the angle of 9/11 and an unprecedented support for the global war on terror the way in which international society responded was to be expected. In addition, the recognition of Israeli right to self-defence can be viewed as an example of solidarity among democracies with Israel's cause and a broader support for the suppression of terrorism. Indeed, as was already mentioned, the fight against Hezbollah can be viewed as a part of the global struggle to suppress terrorist activity. Shortly after 9/11 some Liberals, including Fukuyama, advocated a more active and firm approach towards terrorist organisations and states that willingly or unwillingly allow for its terrorist to be used as bases for these organisations. Such an uncompromising position was noticed by Shani,

societies without liberal-democratic institutions whose leaders prefer to remain insulated from the fluctuations of the world market, stand "outside of history" waiting to be brought in, perhaps coercively, by those more "advanced" states which best embody liberal ideals.¹³

Such support for a fellow democracy does not explain why other states, most particularly Russia, despite its more liberal outlook, with its continuous interest in the Middle East and traditional support and alliance with Arab states, also recognised Israel's right to self-defence.

Moreover, this argument is controversial as Lebanon is considered one of a few examples of democracies in the Middle East. And according to the Liberal Theory of International Relations democracies do not fight with each other. Some authors argued that

¹³ Shani G, "The Liberal Project: Globalisation, Modernity and Identity," *Ritsumeikan Annual Review of International Studies* 14, no. 2 (2003): 48.

Lebanon should not be considered a state with a democratic system of government that is comparable to other well-established world democracies. Nevertheless, such an argument is disputable as the Lebanese government was recognised internationally as legitimate and democratic.¹⁴ This is in agreement with the statement of UN Secretary-General, highlighted in the previous chapter, for whom the state of Lebanon should not be comparable with the Taliban regime of Afghanistan. Moreover, the process of democratisation in Lebanon through elections strengthened Hezbollah as a recognised party and a legitimate political actor. This, in turn, questions the liberal argument that democracies do not fight each other. On the other hand, the fact that Hezbollah participated in elections and won seats in the Parliament could also increase Israeli incentive to intervene. The recognition of Hezbollah as a legitimate party in the parliament could be viewed as a legitimisation of its fight against Israel and thus threatened a possible resolution of the conflict in the future. Nevertheless, the fact that Israel continues its occupation of Shab's farms, which constitutes the reason behind Hezbollah's attacks and a basis for wider support within Lebanese territory, further questions the basis of the liberal argument that democracies tend to cooperate with each other and seek to resolve their disputes peacefully.

Another argument associated with Liberalism, namely a growing economic interdependence, influential to a certain degree when an international response towards 9/11 was analysed,¹⁵ can also be disputed by looking at an international reaction towards the 2006 Israeli intervention in Lebanon. Taking into consideration an established and explicit relationship between the US and Israel this argument can be persuasive in

¹⁴ According to Fukuyama and McFaul, whose writings appear to support this claim '[i]n the long term, the consolidation of democratic regimes in the greater Middle East would be expected to increase the legitimacy of the governments and thereby reduce the appeal of antisystemic movements such as al Qaeda' ("Should Democracy Be Promoted or Demoted? ", *The Washington Quarterly* (2007-08): 26.)

¹⁵ See chapter five, part one, subsection 2.

explaining why the former supported the latter in 2006. The limitation of its premise can be observed, however, by looking at other states, most notably Russia and France and their expressed recognition of Israeli right to self-defence. Both countries have developed close ties within the region. France, as a former colonial power has a close and lasting relationship with Lebanon. Thus, following the logic of this liberal argument, which emphasises benefits derived from a sustained economic and trading relationships, it would be unprofitable for France to risk close ties with Lebanon. In a similar manner, it would not be beneficial for Russia to put into jeopardy an established relationship with various Arab states in the region, usually hostile towards Israel's policies.

Thus, the most convincing liberal explanation for the international response towards Israel's intervention can be found in its firmer stand towards the protection of international rules and states' obligations. As chapter five has showed the overwhelming support for the war on terror was based on international agreement that terrorism cannot be tolerated and states, even those which cannot suppress terrorist activity within their own borders, will not be immune from actions, even military ones. Although this support seemed to be unconditional in the aftermath of 9/11, the controversial and far reaching Bush doctrine has led even the most expressive supporters of the global war on terror to question the rationale behind such approach. Indeed, although at the beginning Liberals, most profoundly Fukuyama, expressed their support for the doctrine, during the debate surrounding the 2003 war in Iraq, the majority of Liberals distanced themselves from the Bush administration and in fact argued that 'the model of external intervention to produce democratic regime change in Iraq is inconsistent with most of what we know about democratization as well as with the theory of democratic peace'.¹⁶ Indeed, such a unilateral

¹⁶ Russett B, "Bushwhacking the Democratic Peace," *International Studies Perspectives* 6 (2005): 397.

shift in the US policy has led some Liberals to opt for the abandonment of the so-called “active” promotion or spread of democracy, affiliated with liberalism of imposition and instead, ‘return to fundamental liberal principles of non-intervention and a commitment to free trade’.¹⁷

Such inconsistency in the liberal treatment of a more active engagement in the promotion of democracy and the fight against terrorism is visible in relation to the 2006 Operation *Change Direction*. As Anderson observes ‘the administration faithfully teed up the Fukuyamian football of liberal democracy in Iraq and the Middle East only to have Fukuyama himself snatch the ball away at the last moment’.¹⁸ Indeed, during the debate surrounding the war in Lebanon, he expressed the view that the US should not unconditionally support Israel. According to him, ‘siding so openly and closely with the Israelis in their war against Lebanon does the US no favours’.¹⁹ What is more he also argues that:

[w]ithout coherent states in places, the use of hard military power does not have the same kind of political effect, because you cannot deter or coerce or compel states to act on the actors that operate out of their territory. Lebanon is a good example.²⁰

¹⁷ Boettke PJ Coyne CJ, "Liberalism in the Post-9/11 World, " (2005) in http://www.ccoyne.com/liberalism_in_the_post-9-11_world.pdf. [accessed 1 December 2012].

¹⁸ Anderson K, "Goodbye to All That? A Requiem for Neoconservatism " *American University International Law Review* 22, no. 2 (2007): 285.

¹⁹ Ruiz Devesa D, "Fukuyama: “Europe’s ‘Soft Force’ Disappears Outside Its Borders, " (2007) in <http://www.cafebabel.co.uk/article/fukuyama-europes-soft-force-disappears-outside-its-borders.html> [accessed 1 December 2012].

²⁰ Fukuyama F, "US Foreign Policy after the Bush Administration, " *Cornell International Affairs Review* 2, no.1 (2008): 16.

This does not mean that Liberals have abandoned the so-called “liberal project”.²¹ Indeed, they still advocate promotion of democracy. According to Fukuyama and McFaul:

[t]he United States (...) has a moral interest in promoting democracy and a strategic interest to be on the side of moral policies. If democracy is the best system of government and demanded by the majority of people around the world, then the United States should help promote its advance.²²

Their promotion of democracy is no longer, however, consistent with the Bush doctrine but with a more balanced multilateral approach. In the light of this changed stand on the “liberal project” both authors argued that ‘democracy promotion does not imply the imposition of liberalism or democracy on a society’.²³ On the other hand, they still admit the possibility of the use of force in such an instance. Such use of force, however, is conditioned by external circumstances, i.e. whether or not such action will be internationally supported.²⁴ Indeed, Fukuyama argues that suppression of terrorism can only be achievable through international cooperation. In his own words, ‘[the] lesson that we should have learned from the experience of the last few years is that one needs to deal with this series of foreign policy challenges in a much more multilateral way’.²⁵ And thus currently Liberals appraise more expressly Europe’s active policy based around the notion of diplomatic intervention rather than a military one.²⁶

²¹ Shani (n 13) 45.

²² Fukuyama, McFaul (n 14) 33-34.

²³ *ibid* 28.

²⁴ Macmillan J, “Liberalism and the Democratic Peace,” *Review of International Studies* 30, no. 2 (2004): 180.

²⁵ Fukuyama (n 20) 18.

²⁶ Moravcsik A, “Europe: The Quiet Superpower,” *French Politics* 7, no. 3/4 (2009): 410.

3. Neoliberal Interpretations

Neo-liberals in their approach towards the way in which international society responded towards the 2006 Operation *Change Direction* would emphasise a consolidation of a change within the international regime governing the use of force instigated by the hegemon. In addition, as chapter five demonstrated, the role of the hegemon in a creation of international regimes or in an initiation of a change within an existing regime is crucial. Due to its predominant position within international system the US was able to influence other states in that its right to self-defence in relation to the 2001 Operation *Enduring Freedom* was recognised. This in turn prompted an emergence of a change within the international regime governing the use of force established in the aftermath of the Second World War. Thus, the way in which international society responded towards the 2006 intervention confirms the possible neo-liberal interpretation about the change within the aforementioned international regime. What is more, it actually signals a certain level of consolidation of such change in that Israel's right to self-defence was recognised.

As stated earlier in this thesis,²⁷ international regimes tend to be established or initiated by a hegemonic state however, what is significant is that once the international regime is consolidated that states (including the hegemon) tend to restrain themselves 'from pursuing short-terms interests at the expense of shared long-term goals'.²⁸ And thus such regimes embody a certain level of continuity. In addition, the continuity remains as long as a particular regime 'still reflect[s] shared purposes'.²⁹ It is further argued that once

²⁷ See chapter two, part three and chapter five, part one, subsection 3.

²⁸ Hathaway OA, "Between Power and Principle: An Integrated Theory of International Law," *University of Chicago Law Review* 72 (2005): 479.

²⁹ Ruggie JG, "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order," *International organization* 36, no. 2 (1982): 404-405.

a regime acquires 'its own dynamic' it expresses 'only incompletely the interests and purposes of the hegemonic state'.³⁰

Moreover, although the role of the hegemon in a creation of an international regime is, indeed, important, the consolidation of such a regime necessitates international recognition and rests upon the principle of reciprocity. What is crucial here is that once an international regime is recognised and embedded within the international arena then states tend to protect the existing regime and prevent any substantial change, i.e. precedent from occurring or being legitimised. If, however, a particular state acts not in accordance with the rules established by such regime then there is an increased likelihood that members of a particular regime 'will attempt to punish defectors'.³¹

Neo-liberals stress further the role of institutions in sustaining and enforcing international regimes. For instance, Keohane and Nye emphasise the role of institutions in giving legitimacy to states' actions. In addition, they point to the fact that even the hegemon seeks legitimacy for its actions, as was explicit in the aftermath of 9/11. The importance of acquiring such legitimacy can be observed in that 'people will voluntarily support a legitimate policy, without requiring material inducements'.³² States' support for such a legitimate policy should not, however, be linked to the persuasion that, for example, the UNSC action is that 'of the wisdom or righteousness'.³³ Thus Neo-liberals tend to

³⁰ Katzenstein PJ, "Analyzing Change in International Politics: The New Institutionalism and the Interpretive Approach," *MPIFG Discussion Paper Guest Lecture 90/10* (1990): 15.

³¹ Axelrod R Keohane RO, "Achieving Cooperation under Anarchy: Strategies and Institutions," in *Neorealism and Neoliberalism: The Contemporary Debate*, ed. Baldwin DA (New York and Chichester: Columbia University Press, 1993), 94.

³² Keohane RO Nye JS, "The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy (2001)," in *Power and Governance in a Partially Globalized World*, ed. Keohane RO (London and New York: Routledge, 2002), 279.

³³ *ibid* 279.

analyse such policy through the reference to costs and benefits. As the aforementioned authors suggest:

[t]o explain the impact of Security Council resolutions, we need also to look for self-interested benefits for leaders. Even if the leaders are entirely cynical, the adoption of a legitimate UN resolution will change their calculations.³⁴

From the neo-liberal perspective, the way in which international society responded towards the 2006 Operation *Change Direction* is not surprising. It can be viewed as an example of a consolidation of the change that occurred in the international regime in the aftermath of the 9/11 attacks. Although a certain controversy arose in relation to the Israeli adherence to the principles governing the *jus in bello*, most importantly the principles of proportionality, what is significant is that the Israeli right to self-defence was recognised and thus the use of force was deemed to be perceived as a legitimate response. As was shown, the change in international regime governing the use of force was initiated by the US, the most dominant state in the system. Scholars associated with this theoretical perspective appreciate the role of hegemon in a creation of international regime and view it as a stabilising factor. As mentioned for a particular regime to be consolidated other states need to recognise it as a valid and necessary one.

This brings the question why would other states see such a change as a necessary one? Neo-liberals argue that, in essence, states' actions are based upon national interest. As the cooperation with the hegemon in the aftermath of 9/11 was in states' own interest so is

³⁴ *ibid* 279.

the consolidation of such a change. Such assumption invites a discussion about the meaning of the term national interest. Neo-liberal approach resembles the realist one in that it resides within the notion of the *Self*. George and Keohane classify three national interests – ‘physical survival or life’, ‘autonomy or liberty’ and ‘economic well-being or property’.³⁵ Wendt, however, importantly for this thesis, add one more, namely *collective self-esteem*. He defines it as ‘a group’s need to feel about itself, for respect or status’.³⁶ This notion of interest places Constructivism closer to the English School of IR in that it assumes that states should not be seen merely as autonomous actors but as comprising a group or in the language of the ES a society. Rational understanding of the idea of interest does not appreciate the fact that states’ identity and interests should also be seen through a collective lens. This is in an agreement with Finnemore and Sikkink, for whom:

[n]eorealist and neoliberal theories that flowed from economic approaches to social analysis tended to understand interests consistently as self-interest; other-regarding behaviour was an anomaly to be explained. Consequently, social construction projects that were not obviously self-interested (...) were difficult for dominant theories to explain.³⁷

The neo-liberal explanation of the way in which international society responded towards Operation *Change Direction* resides within the thin understanding of the notion of interest and emphasising the self. States recognised the Israeli right to self-defence because it was in their own interest. For example, the US, Russia, and some European states had

³⁵ George A Keohane RO, "The Concept of National Interests: Uses and Limitations," in *Presidential Decisionmaking in Foreign Policy*, ed. George A (Westview: Boulder, 1980), 217-391. For a discussion, see, for example: Wendt A, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 233-238.

³⁶ Wendt (n 35) 237.

³⁷ Finnemore M Sikkink K, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics," *Annual Review of Political Science* 4 (2001): 403.

been targets of terrorist organisations, thus the support for Israel was understandable as in the future they may need to rely on a similar justification and would expect the same support. However, there are three questions that need to be raised and that make such an interpretation of notion of interest problematic. Firstly, why would states, which in the past had not been targets of acts of terrorism support first the US and then Israel, especially taking into consideration that in the future such support might put them on the list of target states? Secondly, why would states, such as Russia and France, which have had well-established interests within Middle East, express their support for Israel? Thirdly, why would some Arab states, which had a history of conflict with Israel, condemned Hezbollah actions? Such international response questions the notion of interest understood purely through a reference to the *Self*. It suggests that in certain, vital to the international security, instances, states actions reflect also the interests of international society. According to Wendt:

[s]elf-interest is about motivation, not behaviour. As long as cooperation is purely instrumental – a state helps another state only because its own security is also threatened, for example – then it is egoistic. On the other hand, if a state helps another because it identifies with it, such that even when its own security is not threatened it still perceives a threat to the *Self*, then it is acting from collective interest.³⁸

The fact that states expressed firstly such an unprecedented solidarity with the US in 2001 and secondly for the first time recognised Israel's right to self-defence suggests that they identified with them and perceived their behaviour as an appropriate one. This

³⁸ Wendt (n 35) 240.

also gives credit to the ES perception that states belong to international society and that in situations pivotal for international order they will pursue the objective of such society. Such a development further challenges the existence of the narrow, *pluralist* conception of international society.

Part Three: Operation *Change Direction* From the Angle of the English School

Theory of International Relations and Constructivism

The international support for Israel surrounding the 2006 Operation *Change Direction* evident in international recognition of its right to self-defence not only gives further evidence of the changed approach towards the use of force but also supports the claim that the very notion of international society has altered since the end of the Cold War and most particularly since 9/11. This part of the chapter will demonstrate that this reasoning is based upon the following, complementary factors. Firstly, the unity amongst members of international society exemplified in an overwhelming support for the US in the aftermath of 9/11 indeed leads to a suggestion that that current international society can no longer be seen as identical to the society of the Cold War period. Secondly, although the shift in relation to the use of force has been instigated by the US, other members of international society had to recognise such change. Thirdly, the Operation *Change Direction* delivers certain level of consolidation of this perception as Israel's right to self-defence was for the first time recognised.

Before looking at the current international society it is important why such a conceptualisation is needed for an analysis of the status of international law in the aftermath of 9/11. A study of the nature of international society is crucial because it

provides a more in-depth understanding of the process of norms' formation and consolidation. Norms at the international level similar as at the domestic level are embedded within a society. Such a society decides which norms are valid at the particular time and which need to be changed. In a constructivist view norms are defined as 'a set of intersubjective understanding and collective expectations regarding the proper behaviour of states and other actors in a given *context* or *identity*'.³⁹ Björkdahl, in agreement with the ES, further argues that '[w]hat is appropriate is known only by reference to a social community'.⁴⁰ What follows is that without looking at the society within which norms are embedded the portrait of international norms and thus international law is not complete. The international society therefore gives a background for an understanding of the role of international law and offers a broader, more in-depth perspective.

As will be shown in the following paragraphs, if the nature of international society changes the likelihood that international norms change is increased. The changes that occur within the nature of international society as well as changes of international norms are best observed by looking at state practice. As Frederking notices, '[s]ocial rules are constantly negotiated and mediated through the actions of many agents'.⁴¹ In addition, '[n]orms played a key role in the formation and transformation of states identities, and hence their interests. Thus (...) "the emergence or strengthening of a global (...) norm is likely to lead to change in actors' interests and identities"'.⁴² According to Wendt, '[s]tructure change occurs when actors redefine who they are and what they want'.⁴³ This argument can be

³⁹ Björkdahl A, "Norms in International Relations: Some Conceptual and Methodological Reflections," *Cambridge Review of International Affairs* 15, no. 1 (2002): 15. (emphasis added)

⁴⁰ *ibid* 15.

⁴¹ Frederking B, "Constructing Post-Cold War Collective Security," *American Political Science Review* 97, no. 3 (2003): 376-377.

⁴² Clark I, *International Legitimacy and World Society* (Oxford: Oxford University Press, 2007), 177.

⁴³ Wendt (n 35) 336. See also: Klotz A, "Norms Reconstituting Interests: Global Racial Equality and US Sanctions against South Africa," *International Organisation* 49, no. 3 (1995): 460.

used in relation to the changes that occur within the nature of international society. As mentioned in chapter five and what will be explored later in this chapter, the end of the Cold War created a suitable platform for a re-definition and a re-formation of the nature of international society and what the aims of such a society would be. Before proceeding to the explanation of the nature of the current international society, it is important to remind the basic features of international society that existed during the Cold War.

Chapter five of this thesis argued that the conception of international society, which could best describe the society during the Cold War was a *pluralist* one. As has been shown, this conception sees the relationship between states on a basic level. As this relationship is based on the very fundamental rules of international conduct, the very idea of international society is based on the same principle. The role of such society is, quite straightforwardly, to limit the scope of possible conflict, maintain the status quo and sustain internationally accepted rules of behaviour. This conception, thus, does not suggest that its members are bonded together to pursue a higher level of solidarity, unity or universal values.

The preceding chapter together with chapter five demonstrated that there has been a growing unity among states relating to the firmer approach towards non-state actors and states that willingly or unwilling allow for their territories to be used as shelters for these actors. What is crucial here is the question of whether such unity and solidarity exemplified by a firmer approach gives basis for the claim suggesting that the contemporary society be described as fulfilling the criteria set up by the *solidarist* conception of international society? In order to answer this question, the very idea of *solidarist* international society needs to be elaborated.

As mentioned in earlier chapters various interventions since the end of the Cold War give evidence of growing international acceptance of the implementation of the provisions embodied within Chapter VII of the UN Charter as well as intervention on humanitarian grounds.⁴⁴ This, in turn, suggests that the last decade of the twentieth century should be seen as giving evidence supporting the notion of *solidarist* conception of international society, which confirms and upholds certain liberal assumptions. As was already mentioned, such society is based on the assumption 'of solidarity, or potential solidarity, of states comprising international society, with respect to the enforcement of the law'.⁴⁵ It emphasises that members of the international society 'share a common commitment to the maintenance of the society and its institutions against challenges to them'.⁴⁶

This conception puts emphasis on the protection of human rights, as it places them 'at the centre of its ethical code',⁴⁷ which entails a burden on the notion of sovereignty because the ultimate goal is the well-being of the international society as a whole rather than 'the independence of the states of which it is made up'.⁴⁸ The traditional understanding of sovereignty involved an absolute freedom and right of state to act within its own borders. The perception of this conception of international society, however,

⁴⁴ For more information see chapter one, note 104. See also: Bull H, ed., *Intervention in World Politics* (Oxford: Oxford University Press, 1984). Davis C et al., ed., *International Intervention in the Post-Cold War World. Moral Responsibility and Power Politics* (Armonk: M.E Sharpe, Inc., 2004). Hurrell A, *On Global Order. Power, Values, and the Constitution of International Society* (Oxford: Oxford University Press, 2007). Minear L, *The Humanitarian Enterprise. Dilemmas & Discoveries* (Bloomfield: Kumarian Press, Inc., 2001). Ramsbotham O Woodhouse T, *Humanitarian Intervention in Contemporary Conflict. A Reconceptualization* (Cambridge: Polity Press, 1996).

⁴⁵ Bull H, "The Grotian Conception of International Society (1966)," in *Hedley Bull on International Society*, ed. Alderson K Hurrell A (Basingstoke and London: Macmillan Press Ltd, 2000), 97. See also: Buzan B, *From International to World Society? English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2004). Linklater A Suganami H, *The English School of International Relations. A Contemporary Reassessment* (Cambridge: Cambridge University Press, 2006).

⁴⁶ Bull (1966) cited in Linklater A, "English School," in *Theories of International Relations*, ed. Burchill S et al. (3rd edn Palgrave Macmillan: Basingstoke, 2005), 93.

⁴⁷ *ibid* 95.

⁴⁸ Alderson K Hurrell A, ed., *Hedley Bull on International Society* (Basingstoke and London: Macmillan Press Ltd, 2000), 9.

prioritises the rights of individuals rather than those of states. Thus, the well-being of a society is linked to the well-being of individuals. This is reflected in the Report of the International Commission on Intervention and State Sovereignty, where it is stated that '[s]tate sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself'.⁴⁹ The report further stresses that '[w]here a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect'.⁵⁰ Thus, it advocates the shift in the notion of sovereignty so that it allows international society to act in order to protect these rights, even if it involves the use of force. From here it may be suggested that sovereignty should not be treated only as a right of internal and external independence but also as a duty to govern the internal affairs in accordance with international law. Here the constructivist contribution to this study can be highlighted. As already explained throughout the thesis, a constructivist understanding of norm entails a normative aspect, i.e. the virtue of "oughtness". The notion of intervention to uphold human rights presents an excellent example of such "oughtness". In addition, a notion of humanitarian intervention is not to be found in any international treaty or international case discussed by international courts, a growing international acceptance of such a notion means that states believe they are morally obliged to act when severe atrocities occur. The shift in understanding of the principle of sovereignty visible since the end of the Cold War demands an inclusion of the notion of responsibility. It refers not only to the state's responsibility towards its own population but also towards other states. According to Reinold, '[s]overeign states have a responsibility not only to protect their own citizens, but also to protect – within their own territory – the rights and fundamental security interests of

⁴⁹ ICISS, "The Responsibility to Protect, " (International Development Research Centre: Ottawa, 2001), xi.

⁵⁰ *ibid.*

other states'.⁵¹ The inclusion of the notion of responsibility within the definition of sovereignty strengthens the claim that the current international society stresses to a greater extent the importance of states' adherence to the rules and principles of international law. This emphasis has been reinforced in the aftermath of 9/11, especially in relation to weak or failed states. The scrutiny of the whole problématique relating to the notion of humanitarian intervention and failed states is beyond the objectives of this thesis. What is crucial, however, is that the shift in perception of the principle of sovereignty has important implication on the understanding of the right to self-defence. According to the aforementioned author, '[t]he global fight against terrorism (...) has strengthened the notion that sovereignty entails responsibility for the effective control of one's territory and that failure to discharge this obligation legitimate a military response'.⁵²

Such developments influence the concept of international society in general. This, in turn, has certain implications. Firstly, it gives evidence of the existence of a different type of international society when compared with the international society explicit during the Cold War. The international society during the Cold War emphasised the incontrovertibility of the notions of sovereignty and non-intervention. At the time states tended to be reluctant to the possibility of acceptance of the use of force on bases different than those embodied within Chapter VII of the UN Charter. However, the stronger emphasis on the adherence and enforcement of international law since the end of the Cold War suggests that the identity of international society changed and that states deem to actually comprise international society on a higher level. This indeed indicates that, at least in relation to the issues pivotal to states' security, there is wider cooperation and dialogue

⁵¹ Reinold T, "State Weakness, Irregular Warfare, and the Right to Self-Defence Post-9/11," *American Journal of International Law* 105, no. 2 (2011): 244.

⁵² *ibid* 245.

between members of “international society” and that there are certain bonds that bind these members together.

Such a development may have potentially both strengthening and dangerous consequences on international order, which has been built upon the very notion of non-intervention within the domestic affairs of a sovereign state.⁵³ Secondly, it suggests that international society has adopted a stronger approach towards law-breaking or the so-called “rogue” states. The events during the 1990s showed that the violations of cardinal principles and norms might result in serious consequences including the use of force. This indicates that international society in a more explicit way acts as a judge and an agent. It might decide that when a situation cannot be resolved internally it might adopt a more active approach and choose the kinds of measures, which should be adopted. It, thus, gives power to members of international society to act as the guardian of that law and to enforce it through various means including most importantly even the use of force. Therefore the collective will of states constitute the main determinant behind their chosen path.⁵⁴ By doing so it vests in members of international society the power to act as a judge and as an agent. Therefore, it is the role of states to decide which actions ‘violate the cardinal rules and norms of the society of states’ and what actions should be taken against states, which break these rules.⁵⁵ By this, the *solidarist* conception entails that certain states should act as ‘local agents of a world common good’,⁵⁶ which would mean that ‘international law and

⁵³ See, for example: Bull H, "Justice in International Relations: The 1983 Hagey Lectures (1984)," in *Hedley Bull on International Society*, ed. Alderson K Hurrell A (Basingstoke and London: Macmillan Press Ltd, 2000), 223. Bull (n 44) 193. Dunne T *et al.*, ed., *International Relations Theory. Discipline and Diversity* (Oxford: Oxford University Press, 2007), 137. Wheeler NJ Dunne T, "Hedley Bull's Pluralism of the Intellect and Solidarism of the Will," *International Affairs* 72, no. 1 (1996): 102.

⁵⁴ Wheeler, Dunne (n 53) 95.

⁵⁵ *ibid* 95.

⁵⁶ Bull (n 53) 223.

morality are not merely the instruments of dominant powers to be upheld only when it suits them, but are the cement that binds the society of state together'.⁵⁷

This conception also indicates that international anarchy can be mitigated when international society decides to take the enforcement of international law in its own hands. This brings a constructivist argument that international *anarchy is what states make of it*. What follows is that '[s]tructures constitute actors in terms of their interests and identities, but structures are also produced, reproduced, and altered by the discursive practices of agents'.⁵⁸ Such a changed approach towards the law-breaking states and the possibility of the use of force gave suitable grounds for further developments. And as has been argued throughout this thesis it created a foundation for broadening the notion of the right to self-defence in the beginning of the twenty-first century. The very fact that in a case, when a state commits atrocities within its own borders, other states may decide collectively to intervene in order to stop the violence from happening or continuing supports the aforementioned notion of the *solidarist* conception of international society.

As was indicated the unity among states in supporting the US in the aftermath of 9/11 suggests that the existence of special bonds between members of international society, so emphasised by this conception, is indeed evident. The solidarity with the US was on such a scale that it has led to the restructuring of the scope of the right to self-defence. Moreover, such unity was further strengthened by international reaction towards the 2006 intervention in Lebanon instigated by Israel. This level of unity is linked to the understanding of interest adopted in this thesis. As elaborated earlier, the notion of interest

⁵⁷ Wheeler, Dunne (n 53) 102.

⁵⁸ Copeland DC, "The Constructivist Challenge to Structural Realism: A Review Essay," *International Security* 25, no. 2 (2000): 190.

understood through the reference to the *Self* so explicit in writings of authors affiliated with both realist and neo-liberal traditions do not give sufficient grounds for that kind of unity to occur. Such unity or solidarity from the theoretical perspective advocated in this thesis should be viewed as reflecting the identity of the current international society. Such society differs from the one of the Cold War era, when the notion of the *Self* was given a priority and resembled the *pluralist* conception of international society. This change has influenced the way states portray themselves. For example, in relation to Russia '[t]he "peaceful influence of liberal ideas" completely reoriented [its] perspectives on the world'.⁵⁹ Eventually it

renounced regional hegemony, withdrew troops from neighbouring states, slashed defence budgets, sought alliance with the European powers and the United States, and in general shaped its foreign policies on the premise that its interests were the same as those of the West.⁶⁰

As has been demonstrated, the relaxation of international rules has allowed the US and subsequently Israel firstly to use their armed forces in self-defence and subsequently to legitimately intervene within territories of sovereign states. The fact that the right to self-defence of these states was recognised in relation to terrorism suggests that since 9/11 states' action is no longer as constrained as it was during the Cold War. Such change was influenced by the fact that in 2001 the victim of the terrorist attacks was the world's most powerful state. This is in agreement with Hurrell, according to whom:

⁵⁹ Kagan R, *The Return of History and the End of Dreams* (London: Atlantic Books, 2008), 7.

⁶⁰ *ibid* 7.

it is likely that the US actions have helped to crystallize the legality of more expansive notions of self-defence in response to terrorist attacks – providing a clear illustration of the particular power of a hegemonic state to influence the character of customary legal norms.⁶¹

The fact that it was the US and not Israel, which instigated the changed approach towards the use of force, does not negate the aforementioned argument about a transformation of international society. As chapter five showed a certain level of inequality is to be expected. As Dunne puts it, '[i]n a system characterised as anarchic, order requires a stable distribution of power and a commitment on the part of the great powers to manage the system. An anarchical society therefore requires some inequality'.⁶² Clark, further argues that 'international society is most effective precisely because it offers the prospect of the successful institutionalisation of disparities of power'.⁶³ Therefore, such inequality is generally accepted 'but not to such an extent that, in Vattel's words, one state is able to "lay down the law to others"'.⁶⁴

The fact that international society first expressed an unprecedented support for the US in the aftermath of 9/11, which eventually has led to the evaluation of international provisions treating the use of force and second recognised for the first time Israeli right to self-defence suggests that the current international society does not easily fit the description provided by the *pluralist* conception either. These changes coupled with aforementioned developments that have occurred since the end of the Cold War questions

⁶¹ Hurrell A, "'There Are No Rules'" (George W. Bush): International Order after September 11," *International Relations* 16, no. 2 (2002): 188.

⁶² Dunne T, "Society and Hierarchy in International Relations," *International Relations* 17, no. 3 (2003): 315.

⁶³ Clark I, "Towards an English School Theory of Hegemony," *European Journal of International Relations* 15, no. 2 (2009): 222.

⁶⁴ Dunne (n 62) 315.

the *pluralist* idea of a society based only minimal commitment to basic rules of co-existence.

As has been demonstrated, the collapse of the Soviet Union has created a platform for not only the broadening of cooperation between states but also for the increasing and widening of policies intended not only to provide a basis for co-existence. The growth in support for the implementation of provisions embodied within the Chapter VII of the UN Charter together with an explicitly firmer approach towards non-state actors and rogue states gives evidence that the relationship between members of international society has reached a higher level. This is supported by the way in which international society responded towards the 2006 Israeli intervention in Lebanon. In addition, Operation *Change Direction* and the recognition of Israeli right to self-defence shows that the change in international approach towards the use of force has been sustained.

What this thesis demonstrated is that the current international society does not fit within a thin, *pluralist* conception of international society, which resides around the notion of co-existence. Instead, it embodies certain characteristics of the *solidarist* conception. However, the scope of the problématique of this thesis does not allow for the forthright answer whether the current international society resembles this conception. The all-encompassing analysis of the current international society would involve an in-depth analysis of the notion of human rights and their protection.

Conclusion

The aim of the third case study was to deliver further evidence that there has been a change of international approach towards the use of force observed since 9/11.

This chapter confirms that the response of the international society towards the 2001 Operation *Enduring Freedom* was not an example of a “double standard” approach but indeed can be viewed as giving a place for the emergence of new principles governing the use of force and rules of attribution. This changed approach, however, was conditioned by the fact that it was the US and not another state that was a victim of a terrorist attack. Although as conflict between Israel and Lebanon has shown terrorist attacks were not novel, the implementation of the right to self-defence by Israel was not perceived by international society as legitimate.

The 9/11 attacks, on the other hand, triggered unprecedented international support and led members of international society to re-evaluate its approach towards non-state actors and states that either willingly harbour them or are not able to suppress their activities within their own territory. This changed approach, as the third case study demonstrated, has been sustained. The 2006 Operation *Change Direction* can be seen as the clearest example of the sustainability of this change as the Israeli right to self-defence has been recognised for the first time in relation to terrorist attack instigated from Lebanese territory.

This chapter has also demonstrated that such a changed approach has certain implications upon the very notion of international society. The fact that majority of states backed the US and supported the claim that it is necessary to adopt a firmer approach to

both non-state actors and hosting states suggested a certain level of unity. This claim can be supported by the way in which international society responded towards the 2006 Operation *Change Direction*. The third case study indeed delivers evidence that a certain level of unity and solidarity amongst members of international society does exist. Thus this thesis argues that it is more accurate to portray international society as in a transitional stage, i.e. no longer *pluralist* but not yet in the stage embodying *solidarist* features. As has been already mentioned the analysis of the very nature of international society is crucial for the understanding of the status of international law. Thus, this chapter, especially its last part is treated as a foundation for the portrait of international law at the beginning of the twenty first century.

CONCLUSION

The analysis conducted in this thesis via reference to case studies and the way in which they can be seen as being crucial in the scrutiny of not only the standing of international law in world politics but also the role and understanding of international society. The preceding chapters have looked at three similar military interventions instigated within territories of sovereign and foreign states. This thesis argues that 9/11 has marked a change in the approach of the UNSC and the international society towards the use of military force as a response to non-state actors responsible for terrorist attacks. Such a change in approach has had an impact on the existing rules governing the use of force in international politics. More specifically, the threshold of what actions can constitute an armed attack and, therefore, the basis for exercising the right of self-defence in accordance with the Article 51 of the UN Charter has been lowered. Moreover, this change of approach has also had an impact on the rules governing the attribution of acts committed by non-state actors to a state. While prior to 9/11, the UNSC had been reluctant to recognise the legality of the use of force against the territory of a state, which willingly or unwillingly allowed its territory to be used as a base for non-state actors, in the aftermath of 9/11 there has been growing acceptance of the lawfulness of such use of force.

As has been demonstrated justification delivered by both Israel and the US was based on the same reasoning yet international society chose to respond to these operations in different ways. The 1982 Operation *Peace for Galilee* was treated as an illegal and illegitimate abuse of the use of force, and thus not in accordance with international rules and principles governing the use of force. All five permanent members of the UN Security Council were in agreement that Israel did not have legitimate grounds for intervening

within Lebanese territory. Even though Israeli justification was, as 9/11 demonstrated, similar to the one relied upon by the US, it was not recognised as constituting a legitimate use of force in self-defence.

Although Israel has had a long practice in dealing with international terrorism, it was not able to convince the international society to change its approach and opt for the acceptance of a wider definition of the right to self-defence. The recognition was forthcoming, however, when the US was attacked by al-Qaeda and the subsequent military intervention in Afghanistan was seen as a legitimate and lawful reaction. The 2001 Operation *Enduring Freedom* marks the first instance when a state's right to self-defence was recognised in relation to a terrorist attack. Although as chapter one showed, international rules governing the use of force did not preclude an action in self-defence in such instances, it had been very difficult prior to 9/11 for a victim state to achieve an international recognition of the lawfulness of its military actions. What this implies is that none of the terrorist attacks committed prior to 9/11 were seen as being of such gravity as to amounting to an armed attack traditionally understood. Moreover, none of the states, which willingly or unwillingly allowed their territories to be used as bases for terrorist activity, were treated as being responsible for such activity.

The analysis of the 2001 Operation *Enduring Freedom* has shown that currently a state, which breaks its international obligation, i.e. allows for a terrorist activity to be instigated from within its territory can be seen as being indirectly responsible for such activity. Although various cases, mostly notably the *Nicaragua* case already treated the notion of state responsibility for a wrongful act, the threshold for attribution was much higher, in that it had to be proved that an accused state instigated such terrorist activity or

had an ultimate control over the non-state actor in question. The Taliban control over al-Qaeda was, however, not proved: it was suggested that the latter sponsored the former. The international recognition of the US right to self-defence delivers, thus, evidence that the rules of attribution have indeed been lowered.

This argument has been further supported by an analysis of the 2006 Operation *Change Direction*, which presents the first instance in which Israel's right to self-defence in relation to a terrorist attack instigated from within Lebanese territory was recognised. The significance of this operation can be seen in that it not only delivers evidence supporting the changed approach towards the use of force, but it also confirms the claim that international support for the military intervention in Afghanistan was not merely a reply on a one-off basis to the US postulates, but, in fact, international society recognised the necessity of changing the rules governing the use of force in relation to acts of terrorism, and states that willingly or unwillingly permit the non-state actors to operate within their territories. Thus, the 9/11 attacks should, indeed, be seen as setting a new precedence.

Chapter five and seven have demonstrated that only some mainstream theories of International Relations can provide a plausible explanation for the variation of international responses triggering the changed international approach towards the implementation of the right to self-defence. What is significant is that scholars, associated Neo-liberalism and the symbiotic approach of the English School of IR and Constructivism cited throughout those chapters emphasise the hegemonic position of the US and its ability to instigate and force through various policies, which eventually can have long-lasting effects on international order. The foundation behind such a preponderant position can be

seen as being influenced by the change of international system in the aftermath of the end of the Cold War. The international system based on the notion of balance of power was replaced by a unipolar world with only one state, that can be classified as a superpower. Such a precondition has generated suitable and favourable grounds for the US to pursue its policies and convince other states about the adequacy and necessity of such policies. This is evident in that it was not Israel but the US that managed to influence the perception of what is to be meant by “an armed attack” and the right of self-defence.¹

As has been argued, however, although the status of hegemon places the US in a favourable position it nevertheless needs, as the war on terror exemplified, the cooperation between itself and other members of the international society. Although the US is capable of forcing through its views and policies, international society stills necessitates the need for evidence supporting the claim that policies, which aim to change existing rules, are indeed essential for maintenance of international order. What needs to be emphasised further is that the US predominance on the world stage alone did not guarantee international support. As has been shown, the US seeks to obtain legitimacy for its actions and thus, acknowledging the limitation upon the scope of its own capabilities.

Even though the notion of the US’s hegemonic position may seem incompatible with the postulates of IR theory which emphasises the existence and special role of international society this is not an accurate reflection. The notion of international society and hegemony can co-exist as long as the latter respects its rights and duties deriving from its special status and does not pursue objectives, which threaten international order. What is more, hegemony can in fact be seen as the institution of international society, possessing

¹ Hurrell A, ““There Are No Rules” (George W. Bush): International Order after September 11,” 188.

a special role and duty to sustain international order and ensure an enforcement of international rules.

This thesis argues that change in the international approach towards the use of force evident in the way in which international society responded towards 9/11 and its overwhelming support and engagement in the war on terror gives evidence of a transformation or reinvention of international society itself. It supports the claim that the notion of international society no longer encompasses characteristics of the *pluralist* conception of international society. A more realist or utilitarian reading would question such an interpretation. As was pointed out in chapter five some of the mainstream theories of International Relations would argue that taking into consideration the US international position it is not surprising that in contrast with Israel its right to self-defence was recognised. This is because states calculated that their lack of support for the US might have possible negative repercussions in the future and thus it was in their own self-interest to recognise the 2001 Operation *Enduring Freedom* as a lawful use of force. This thesis argues, however, that such a reading does not allow for a thorough understanding and appreciation of a comprehensiveness of the topic in question. Accordingly, it is submitted that the narrow perception of interest understood purely through a reference to the *Self* is limited. Moreover, an international recognition of the right to self-defence in the aftermath of 9/11 should not be viewed as an exception reserved for the US. The fact that Israel's right to self-defence was recognised for the first in relation to the 2006 Operation *Change Direction* supports this claim and can be viewed as delivering evidence suggesting a certain level of consolidation of international acceptance of the broader right to self-defence.

A modified version of the *pluralist* conception was explicit during the Cold War period when the predominant role of such society was to maintain international order and protect as well as enforce basic and fundamental international rules and principles governing the relations between states. As chapter five demonstrated, international relations during that period can be the most accurately described as surrounding the notion of a minimalist commitment to recognize each others' right to exist. Although the conflict between the East and the West did exist, an emphasis on the limitation on the use of force whenever possible unless it was an absolute necessity was one of the predominant features of such society. The existence of such a minimalist approach means that the objectives of international society were limited to a desire of its members to create a foundation needed for their mutual co-existence. Although new developments such as the right of self-determination and the notion of human rights, which can be seen as expressing objectives of the *solidarist* conception of international society were embodied within the UN Charter, the maintenance of international order rather than the pursuit of justice was still prioritized.

An unprecedented solidarity with the US and an expressed support for the instigation of the 2001 Operation *Enduring Freedom* and the wider war on terror, which eventually has led to the re-evaluation of international provisions treating the use of force suggests that the current international society does not embody the assumptions of the *pluralist* conception. Indeed, the fact that members of international society expressed their support for the implementation of the broader notion of the right to self-defence gives evidence of an adoption of the firmer approach towards law breaking states and other international actors. This in turn reflects certain characteristics of the *solidarist* conception of international society.

The fact that the majority of states backed the US and supported the claim that it is necessary to adopt a firmer approach to both non-state actors and hosting states suggested a certain level of unity. Indeed an observed wider and closer cooperation between members of international society since 9/11 gives evidence that there are certain bonds that bind these members together. The existence of these special bonds between members of international society, so emphasised by this conception, is indeed evident in an expressed solidarity and unity among states in supporting the US in the aftermath of 9/11. The solidarity with the US was on such a scale that it has led to restructuring the scope of the right to self-defence. Moreover such unity was further strengthened by international reaction towards Operation *Change Direction* launched by Israel in 2006 within Lebanese territory. The acceptance of the relaxation of international rules has allowed firstly the US and then Israel firstly to use their armed forces in self-defence and subsequently to legitimately intervene within territories of sovereign states. The fact that the right to self-defence of these states was recognised in relation to terrorism suggests that since 9/11 states' manoeuvre is no longer as constrained as it was during the Cold War.

The argument suggesting an existence of international society on a higher level can be strengthened by a reference to a greater emphasis on the adherence and enforcement of international law observed since the end of the Cold War. It has been shown throughout this thesis that international society in a more explicit way acts as a judge and an agent in that it decides what kinds of measures need to be adopted in a crisis situation. Such an active approach can be observed not only in the way international society responded towards the military interventions in question but also in decisions to instigate various interventions since the end of the Cold War, which in turn has given evidence of a growing

international acceptance of the implementation of the provisions embodied within Chapter VII of the UN Charter as well as intervention on humanitarian grounds.

Moreover, the 2006 Operation *Change Direction* leads to a suggestion that a certain level of unity and solidarity amongst members of international society does exist and thus minimalist, *pluralist* conception of international society no longer provides an adequate understanding of the contemporary international society. This thesis argues, thus, that it is more accurate to portray the current international society as exhibiting elements of both, i.e. *pluralist* and *solidarist* conceptions. Nevertheless, the focus of this study does not give a suitable ground for a straightforward answer whether the current international society resembles the *solidarist* conception in its in-depth understanding.

As the scope of this thesis was limited only to those instances in which states used force in response to terrorist attacks it did not allow for a comprehensive and a more in-depth scrutiny of the hegemonic status of the US and whether international law possesses a constraining power over the most dominant state in the international society. Such an analysis could constitute an interesting area of future research and enrich the study of the current status of international law. As will be noticed the 2003 war in Iraq would be crucial in such an analysis. Although this intervention was beyond the scope of this study a certain introductory assumptions can be derived from a concluding chapter of this thesis.

As has been demonstrated throughout the thesis although the status of hegemon places the US in a favourable position it nevertheless needs, as the war on terror exemplified, the cooperation between itself and other members of the international society. There is evidence suggesting that international rules and institutions do constrain actions

even of the most powerful state. International society, as the 2003 war in Iraq demonstrates, does not remain passive towards the actions of the US. The reasons underpinning the decision of the US to launch a military campaign in Iraq were not accepted by the UNSC as strong and convincing and thus the operation was not sanctioned by the UN Security Council. Although the US is capable of forcing through its views and policies, international society still necessitates the need for evidence supporting the claim that policies, which aim to change existing rules, are indeed essential for maintenance of international order. What needs to be emphasised further is that US predominance on the world stage alone did not guarantee international support. The US seeks to obtain legitimacy for its actions and thus, acknowledging the limitation upon the scope of its own capabilities.

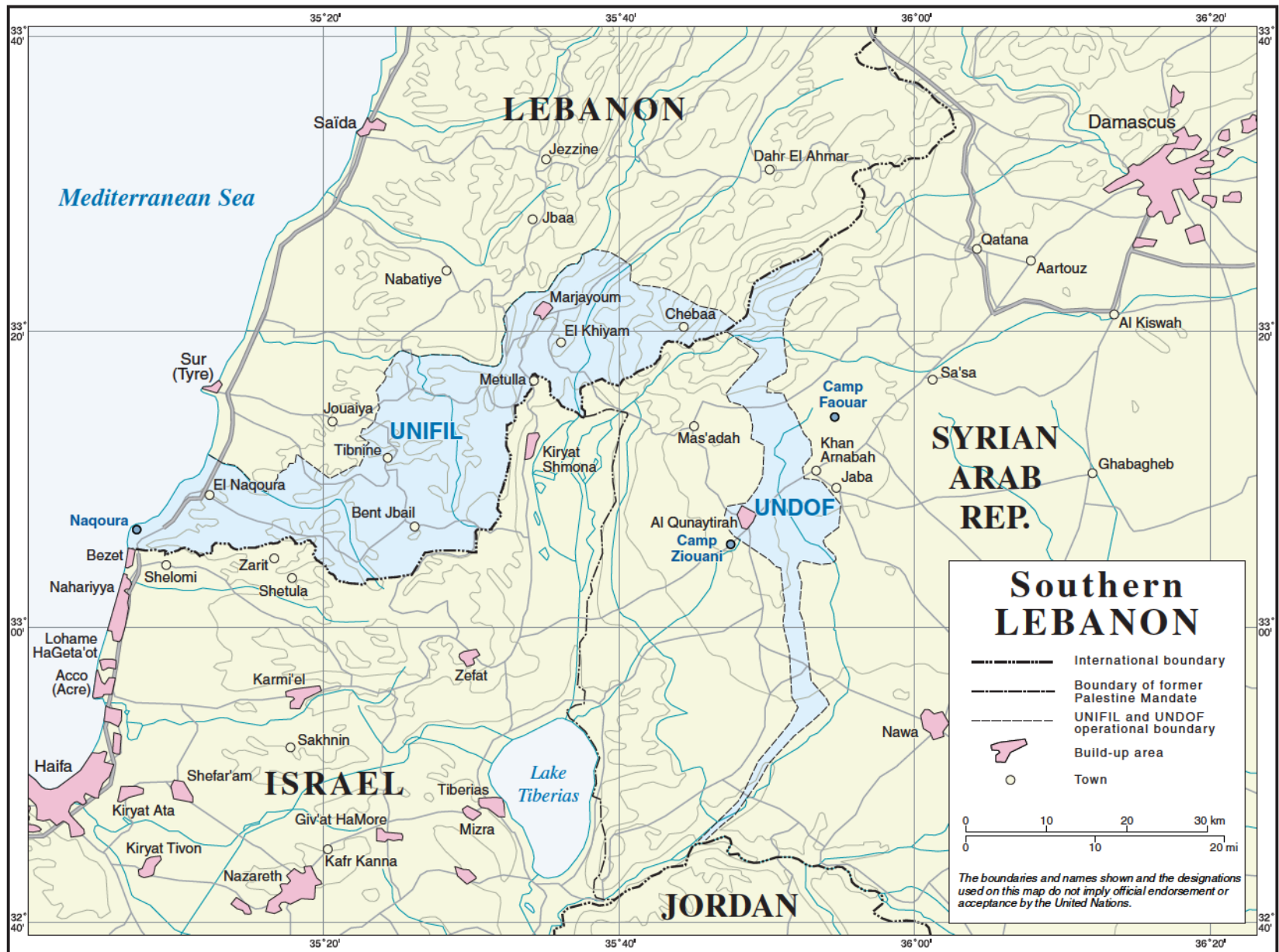
Although such a special role has acquired international legitimacy it remains a conditional structure subject to recognition. It means that when the primacy is unchecked and the hegemon continues to pursue its unilateral policies, such legitimacy may cease. Indeed, the debate surrounding the 2003 war in Iraq can be viewed as an example of questioning such legitimacy. The US by deciding to act unilaterally with disregard for other states' opinions demonstrated that its dominant international position gives it a choice in deciding what type of policy should be adopted. From the other angle, however, the fact that prior to the intervention, the US attempted to acquire support from other states means that it pursued legitimacy for its own policy. This, in turn, gives further evidence that the most powerful state is not immune and indeed recognises that it is bound by international law. Although the debate surrounding the war in Iraq exhibited the dangers of an unchecked hegemony, it also showed that unity amongst members of international society could survive a problematic environment. This can be observed in that the newly-

established approach towards the use of force adopted in the aftermath of 9/11 has been sustained. And the 2006 Operation *Change Direction* with the recognition of Israel's right to self-defence can be viewed as an explicit example.

Appendix 1: The 1982 Operation *Peace for Galilee*



Available at <http://israelipalestinian.procon.org/files/1982lebanon.gif>



Map 4140 Rev.1 United Nations
July 2006

Department of Peacekeeping Operations
Cartographic Section

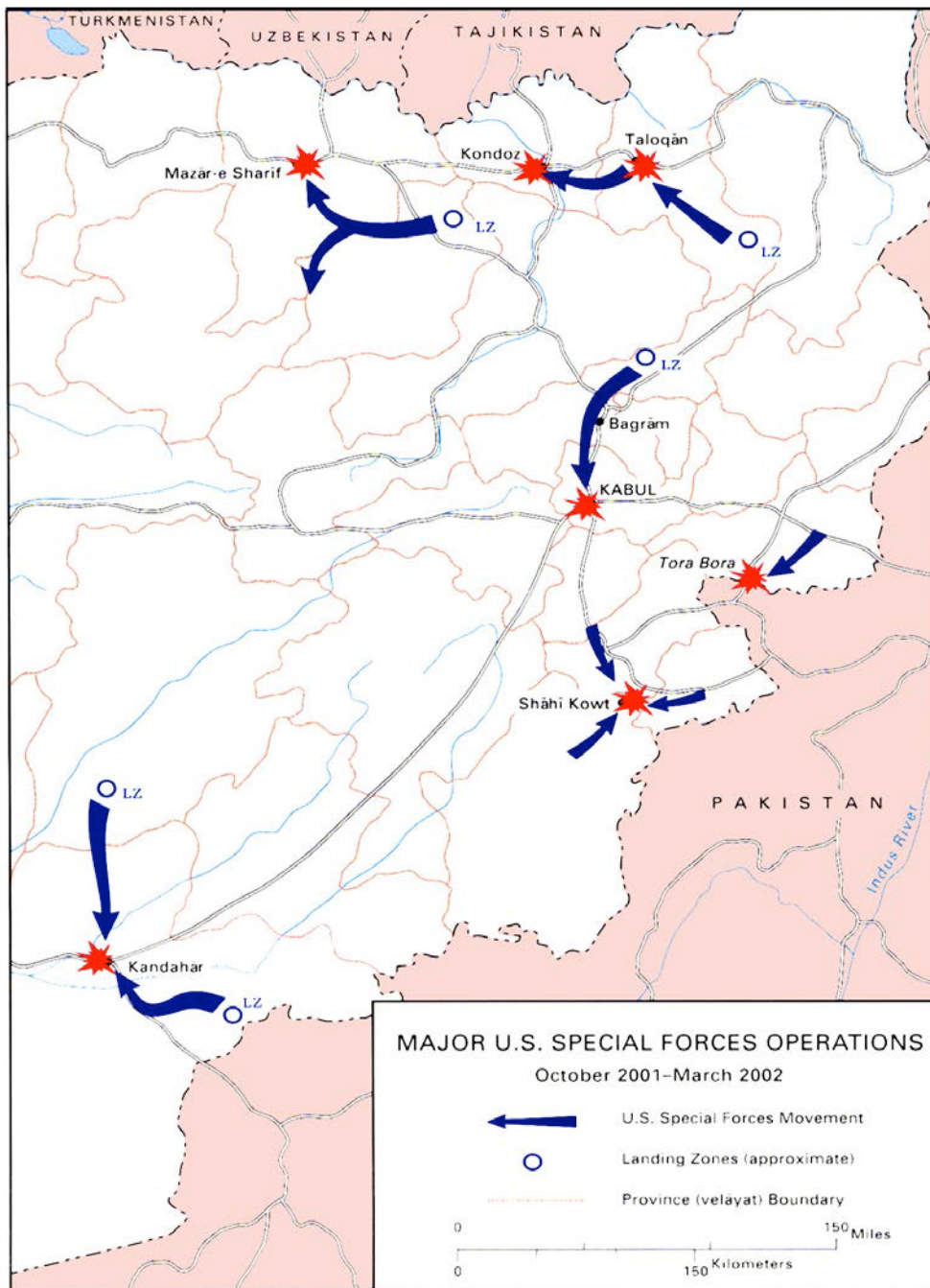
Appendix 3: Litani River



Source: Map Resources. Adapted by CRS. (K.Yancey 8/7/06).

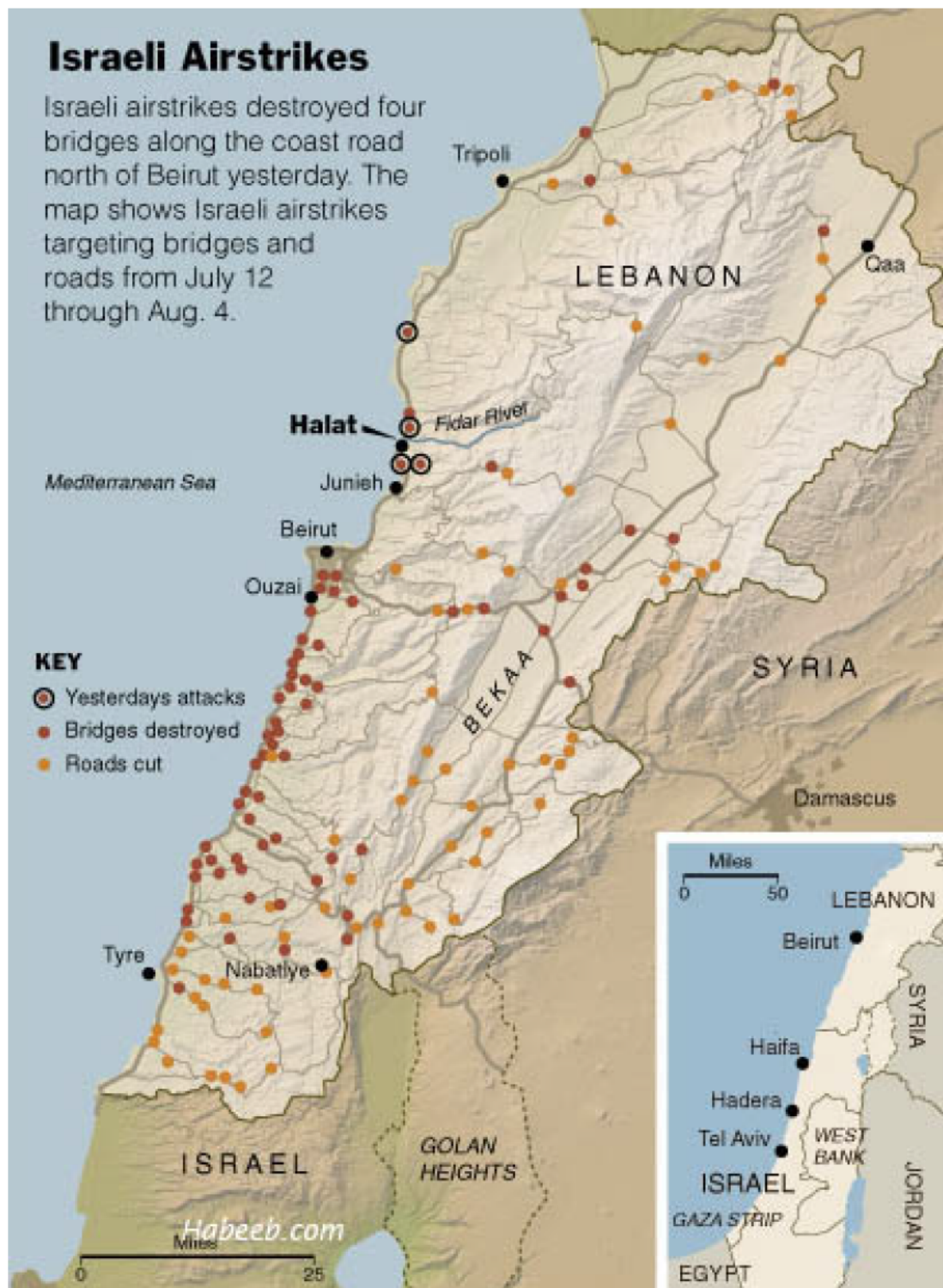
CRS Report for Congress: 'Lebanon: The Israel-Hamas-Hezbollah Conflict' (2006)

Appendix 4: The 2001 Operation *Enduring Freedom*



Air University available at <http://www.au.af.mil/au/aul/maps/enduring.htm>

Appendix 5: The 2006 Operation *Change Direction*



Available at
<http://www.habbib.com/lebanon.photos.18.beirut.war.destruction.html>

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