

**A Thesis Submitted for the Degree of PhD at the University of Warwick**

**Permanent WRAP URL:**

<http://wrap.warwick.ac.uk/166236>

**Copyright and reuse:**

This thesis is made available online and is protected by original copyright.

Please scroll down to view the document itself.

Please refer to the repository record for this item for information to help you to cite it.

Our policy information is available from the repository home page.

For more information, please contact the WRAP Team at: [wrap@warwick.ac.uk](mailto:wrap@warwick.ac.uk)

**INTERNATIONAL LAW AND THE TERRITORIAL  
CONTROLS OF NON-STATE ARMED GROUPS IN  
YEMEN AND LIBYA (2011-2015)**

By

**Mahmoud M A Abdou**

**A thesis submitted in partial fulfilment of the requirement for  
the degree of Doctor of Philosophy in Politics and International  
Studies**

**University of Warwick  
Department of Politics and International Studies**

**Submitted: 2 October 2021  
Successfully Defended: 10 January 2022  
Revised: 21 February 2022**

## Table of Contents

<i>List of Illustrations and Tables</i> .....	3
<i>List of Acronyms and their Definitions</i> .....	4
<i>Acknowledgment</i> .....	6
<i>Declaration</i> .....	7
<i>Abstract</i> .....	8
<b>Chapter I: Introduction</b> .....	9
<b>I.I. State of Research</b> .....	12
<b>I.II. Main Contribution: The Territories of NSAGs as <i>Terra Nullius</i></b> .....	19
<b>I.III. Research Design and Chapter Outline</b> .....	22
<b>PART I: LITERATURE REVIEW</b> .....	26
<b>Chapter II: Applicable International Legal Framework</b> .....	27
<b>II.I. Territory, Sovereignty, Territoriality, and the Territories of NSAGs</b> .....	27
<b>II.II. Public International Law and the Int. Status of the Territories of NSAGs</b> .....	34
II.II.a. Territorial Integrity, Self-Determination, Remedial Secession, and Humanitarian Interventions .....	34
II.II.b. Statehood as a Result of the Breakup of Political Unions, and the Case of Unrecognised <i>de facto</i> States.....	43
<b>II.III. Public International Law and the Governance of the Territories of NSAGs</b> ..	47
II.III.a. IHL and the Territorial Possessions of NSAGs.....	47
II.III.b. IHRL’s Applicability to the Territorial Enclaves of NSAGs.....	55
<b>II.IV. Conclusion: PIL’s Applicability and the Utility of <i>Terra Nullius</i></b> .....	59
<b>Chapter III: IR Theory and the Territorial Controls of NSAGs</b> .....	64
<b>III.I. The Evolution of IR Theory and Unaddressed Issues of Territoriality</b> .....	64
<b>III.II. The Constructivist Turn and the International Society Framework</b> .....	69
<b>III.III. The International Society Framework at the Regional Level of MENA</b> .....	77
<b>III.IV. Critical Theory &amp; the Conservative End of Problem-Solving IR Theory</b> .....	84
<b>III.V. Postcolonialism and <i>Terra Nullius</i>: Towards an Alternative Approach to the Study of PIL’s Applicability to the Territorial Enclaves of NSAGs</b> .....	89
<b>III.VI. Conclusion: IR Theory and the Study of PIL’s Applicability</b> .....	94
<b>PART II: CASE STUDIES</b> .....	98
<b>Chapter IV: Analytical Framework and Methodology</b> .....	99
<b>IV.I. Yemen</b> .....	107

IV.II. Libya .....	116
Chapter V: The Situation in Yemen (2011-2015).....	123
V.I. The GCC and the 2011 Yemeni Uprising.....	126
V.II. The Central Role of ‘the Tribe’ on the Yemeni Political Scene.....	133
V.III. South Yemen, the War on Al Qaeda, and Hirak .....	135
V.IV. North Yemen and the Faustian Bargains to Empower the Houthis .....	143
V.V. Houthi <i>Irredentism</i> and the Instability of Yemeni-Saudi Borders .....	153
V.VI. Yemen’s Catastrophic Humanitarian Affairs (2011-2015).....	158
V.VII. Conclusion: International Law and the Situation in Yemen (2011-2015) ....	170
Chapter VI: The Situation in Libya (2011–2015) & the Feasibility of ..... <i>Terra Nullius</i> .....	174
VI.I. The 2011 Libyan Uprising and the International Response .....	1766
VI.II. The GCC, Libya’s Oil Resources and the County’s Islamists.....	183
VI.III. Libya’s Tribal Politics and Cyrenaica’s Call for Federalism .....	192
VI.IV. East Libya’s War on Terrorism.....	197
VI.V. Colonial Legacies and Libya’s other Pre-existing Regions: Fezzan and Tripolitania .....	205
VI.VI. The Humanitarian Impact of the Libyan Uprising & its Aftermath .....	213
VI.VII. The Situation in Libya and the Refugee Crisis in the Mediterranean.....	219
VI.VIII. Conclusion: The Situation in Libya (2011-2015).....	230
<i>Chapter VII: Reflections and General Concluding Remarks</i> .....	234
VII.I. The International Status of the Territorial Enclaves of NSAGs.....	238
VII.II. PIL and Notions of Non-State Territoriality .....	241
VII.III. Summary of Findings: The Situation in Yemen and Libya (2011-2015).....	247
VII.IV. The Territorial Controls of NSAGs as <i>Terra Nullius</i> and Some of the Possible Limitations of this Approach .....	252
VII.V. On Methodology and the Decolonisation of Knowledge.....	257
<i>Bibliography</i> .....	261

## List of Illustrations and Tables

<b><u>Figure 1:</u></b> Relevant Bodies of PIL: IHL, IHRL and the UN Charter	33
<b><u>Table 1:</u></b> A Possible Illustration of the Different Types of NSAGs	49
<b><u>Table 2:</u></b> International Law via Realist, Liberal and Constructivist Lenses	71
<b><u>Table 3:</u></b> The Primary and Secondary Institutions of International Society	74
<b><u>Table 4:</u></b> Relevant Primary Institutions of the Middle Eastern Inter-State Society	81
<b><u>Table 5:</u></b> Yemen's Dataset	109
<b><u>Table 6:</u></b> The Top 30 Main Categories of Reports from Yemen	110
<b><u>Table 7:</u></b> All Codes, Yemen	112
<b><u>Table 8:</u></b> Libya's Dataset	118
<b><u>Table 9:</u></b> Main Codes, Libya	119
<b><u>Table 10:</u></b> All Codes, Libya	121
<b><u>Map 1:</u></b> Yemen's Historical Sub-Division Lines	137
<b><u>Map 2:</u></b> The Territorial Campaigns of the Houthis in Yemen	144
<b><u>Figure 2:</u></b> Members of the Saudi – Led Coalition in Yemen	146
<b><u>Map 3:</u></b> Yemen's Present Territorial Sub-divides	152
<b><u>Map 4:</u></b> Yemen's Ethnic Division Lines	152
<b><u>Map 5:</u></b> The Parts of Yemen (in Yellow) that Became Administered by Saudi Arabia in 1934	155
<b><u>Map 6:</u></b> The Territorial Fragmentation of Libya (as of March 2016)	175
<b><u>Map 7:</u></b> Libya's Historical Division Lines	185
<b><u>Map 8:</u></b> Libya's Current Territorial Division Lines (as of June 2020)	202 & 210

## **List of Acronyms and their Definitions**

Civil Society Organisations (CSOs)  
European Union (EU)  
General National Congress [of Libya] (GNC)  
Geneva Conventions – Additional Protocol II (APII)  
Government of National Accords [of Libya] (GNA)  
Gulf Cooperation Council (GCC)  
Internally Displaced People (IDPs)  
International Committee of the Red Cross (ICRC)  
International Court of Justice (ICJ)  
International Covenant on Civil and Political Rights (ICCPR)  
International Covenant on Economic, Social and Cultural Rights (ICESCR)  
International Criminal Court (ICC)  
International Criminal Tribunal for Yugoslavia (ICTY)  
International Criminal Tribunals for Rwanda (ICTR)  
International Human Rights Law (IHRL)  
International Humanitarian Law (IHL)  
International Monetary Fund (IMF)  
International Organisation for Migration (IOM)  
International Relations (IR)  
Islamic State of Iraq and Syria (ISIS)  
Middle East and North Africa (MENA)  
National Transitional Council [of Libya] (NTC)  
Non-Governmental Organisations (NGOs)  
Non-International Armed Conflict (NIAC)  
Non-State Armed Groups (NSAGs)  
North Atlantic Treaty Organisation (NATO)  
Organization of the Petroleum Exporting Countries (OPEC)  
Private Military Contractors (PMCs)  
Public International Law (PIL)  
Responsibility to Protect (R2P)  
Third World Approach to International Law (TWAIL)

Transnational Corporations (TNCs)  
UN Office for the Coordination of Humanitarian Affairs (OCHA)  
Union of Soviet Socialist Republics (USSR)  
United Arab Emirates (UAE)  
United Kingdom (UK)  
United Nations (UN)  
United Nations Children's Fund (UNICEF)  
United Nations General Assembly (UNGA)  
United Nations High Commissioner for Refugees (UNHCR)  
United Nations Security Council (UNSC)  
Universal Declaration of Human Rights (UDHR)  
World Health Organisation (WHO)  
World Trade Organisation (WTO)  
World War I (WWI)  
World War II (WWII)

## **Acknowledgment**

This thesis is the result of four years of PhD research at the Department of Politics and International Studies of the University of Warwick in Coventry, United Kingdom, which has been funded through Warwick's Sanctuary Scholarship.

Falling at the intersections of the two cognate disciplinary fields of international law and international relations theory; I have presented this research at various avenues of relevance across Europe and the UK. Those avenues include an online Postgraduate Symposium on "New Approaches to Interdisciplinarity in MENA Studies," organised by the Irish Network for MENA Studies (12-13 November 2021); an online workshop of the Interdisciplinary Peace & Conflict Research Network, University of Warwick (10 November 2021); "Arab Spring Ten Years on: a Webinar on the Intersections of Arab Studies and International Law," co-organised by the Contemporary Arab World Centre of the Eötvös Loránd University and the Department of Public International Law of the Pázmány Péter Catholic University - both based in Hungary (14 June 2021); "Sharing the State for Peace," a panel of the European Consortium for Political Research's 2020 online "General Conference" (24-28 August 2020); the research conference of Queen's University Belfast's on "New Perspectives on Non-State Political Violence" (22-23 November 2019); the "Annual Conference" of the University of Warwick's Law School (27 July 2019), and of the University's Politics and International Studies Department (2 July 2019); the PGR Conference of the University of Liverpool, "Hope in International Law" (17-18 June 2019); a "Law and Development" Workshop co-organised in Cardiff by the law departments of Cardiff University, University of Kent and the University of Warwick (13-14 June 2019); the PGR Conference of Durham University, "Human Rights in a Changing Context" (9-10 May 2019); the PGR Conference of Nottingham University, "Contesting Boundaries: Understanding our Increasingly Complex World" (21 June 2018); and the University of Warwick's Law Department's "PhD Symposium" (1 May 2018), and "Law and Development" Workshop (10-11 May 2018).

I am grateful for all the questions, comments, and feedback that I received at the above-mentioned research gatherings. I am also grateful for all the comments and feedback of my PhD supervisors and colleagues at the University of Warwick.



## Declaration

This thesis is the candidate's own work, and it has not been submitted for a degree at another university.

I am in the process of exploring the prospects of publishing various parts of this thesis through leading journals in the field of politics and international studies, currently *Third World Quarterly*, but this thesis remains unpublished in its entirety. However, I have received eight helpful, anonymous reviews from three different journals: two from *International Organisations*, four from *Territory, Politics, Governance*, and by the time of writing, two from *Third World Quarterly*. In addition, I have just made 655 pages of my research notes publicly available in the form of two lengthy events timelines covering the developments in Yemen and Libya (2011-2015).<sup>1</sup> I intend to also explore the prospect of publishing this thesis as a book soon.

As a desk-based research project that is informed by publicly available information, no ethical issues have arisen while I was conducting this research. Any work that is reproduced from existing literature is herein cited using footnotes and the accompanying bibliography.

---

<sup>1</sup> See Mahmoud M A Abdou, "Libya Events Timeline (2011-2015)," *Figshare*, 01/06/2021, available via [https://figshare.com/articles/thesis/Libya\\_Events\\_Timeline\\_2011-2015\\_/14706141](https://figshare.com/articles/thesis/Libya_Events_Timeline_2011-2015_/14706141) (accessed 21 June 2021); and Mahmoud M A Abdou, "Yemen Events Timeline (2011-2015)," *Figshare*, 01/06/2021, available via [https://figshare.com/articles/thesis/Untitled\\_Item/14706123](https://figshare.com/articles/thesis/Untitled_Item/14706123) (accessed 21 June 2021).

## Abstract

This thesis examines the paucity of international legal and theoretical frameworks that are applicable to the governance and overall status of the territorial enclaves of non-state armed groups (NSAGs), and the territorial fragmentation of Yemen and Libya by and through such actors in the years immediately following the Arab Uprisings (2011-2015). In addition to increasing our knowledge about the complex interplay between ‘sovereignty,’ ‘territoriality,’ and ‘self-determination’ on the one hand, and the state-centric nature of such prominent conceptual frameworks on the other, the thesis puts the fate of populations living within the territorial enclaves of NSAGs centre stage. This thesis thus seeks to offer an alternative to the heavily securitised lenses of studying NSAGs and their territorial enclaves in the Middle East and North Africa (MENA) region and beyond, underscoring instead the devastating humanitarian outcomes.

Beyond any ethnic claims to ‘self-determination,’ the thesis highlights that the historical subdivisions of already established states such as Yemen and Libya are often exploited by external players in a manner that evidences the continuation of colonialism by other means. Informed by the Third World Approach to International Law (TWAIL) and ‘postcolonial’ IR theory, the thesis therefore proposes the utilisation of the conceptual framework of ‘*terra nullius*’ in our study of the territorial enclaves of NSAGs to 1) overcome deficiencies arising from readily available frameworks such as ‘self-determination,’ 2) accentuate the prominence of Great Power politics in all such situations of civil war and the continued existence of divisive colonial politics such as ‘*terra nullius*’ in our contemporary international affairs, and 3) address their largely unaccounted for humanitarian outcome. The thesis further responds to the call to ‘decolonise’ the curriculum, and by implication the generation of knowledge itself, pioneering in its methodological approach the qualitative analysis of 43,492 news reports from Yemen and Libya (18,759 reports from Yemen and 24,733 reports from Libya) using ‘NVIVO.’

## Chapter I: Introduction

Following the self-immolation of the Tunisian fruit vendor Mohammed Bouazizi on 17 December 2010, public demonstrations demanding socio-economic change erupted in twelve countries in the Middle East and North Africa (MENA), or in more than half of the Member States of the Arab League.<sup>2</sup> In seven of those twelve countries: Morocco, Algeria, Tunisia, Egypt, Jordan, Saudi Arabia, and Oman, either a regime change, or a series of institutional reforms followed quickly. In the remaining five countries, a military intervention led by Saudi Arabia brought popular revolts in Bahrain to an end, while Syria, Iraq, Yemen, and Libya became fragmented through the territorial gains (and losses) of non-state armed groups (NSAGs) such as the so-called Islamic State of Iraq and Syria (ISIS).

By 2018 ISIS was largely defeated,<sup>3</sup> but at the highest point of this NSAG's territorial campaigns between 2013-2018 nearly ten million people in Iraq and Syria fell under its effective control. The basic necessities of those populations were severely impacted, from their provisions of food, education, healthcare, and housing to their access to government institutions for the purposes of claiming the likes of birth and marriage certificates.<sup>4</sup> Paradoxically, however, while those inhabitants of significant parts of Iraq and Syria lived in a state of legal limbo for more than five years, they were collaterally punished as the international community dealt with the group in control of their territory through heavily securitised means. Resultant international efforts were indeed mostly focused on either reclaiming and preventing any further territorial acquisitions by ISIS, or on containing the secondary impact of the situation such as 'terrorism' in Europe.<sup>5</sup> This situation has most notably rendered the humanitarian realities on the ground unaccounted for. For example, the "liberation"

---

<sup>2</sup> For an account on the events of the Arab revolts, see the various chapters of Jillian Schwedler's edited book *Understanding the Contemporary Middle East*, 4<sup>th</sup> ed. (Lynne Rienner Publishers, 2013). Also see Fawaz Gerges (ed.), *The New Middle East: Protest and Revolution in the Arab World* (Cambridge University Press, 2014).

<sup>3</sup> See for instance "Syria Situation Report: May 2 – May 29, 2018 [MAP]" *Institute for the Study of War*, 01/06/2018, available at <http://www.understandingwar.org/sites/default/files/Syria%20Situation%20Report%20-%20May%20Activity.pdf> (accessed 10/03/2021).

<sup>4</sup> See Stephanie Nebehay, "Islamic State-Controlled Parts of Syria, Iraq Largely Out of Reach – Red Cross," *Reuters*, 13/03/2015, <https://uk.reuters.com/article/mideast-crisis-syria-icrc/islamic-state-controlled-parts-of-syria-iraq-largely-out-of-reach-red-cross-idUKKBN0M921X20150313> (accessed 10/03/2021).

<sup>5</sup> For a discussion, see Anne Clunan and Trinkunas A. Harold (eds.), *Un governed Spaces: Alternatives to State Authority in an Era of Softened Sovereignty* (Stanford Security Studies, 2010).

of a city like Mosul from ISIS led to its somewhat barbaric levelling to the ground. In other words, the nature of currently applicable international norms has allowed for a merely reactive, as opposed to a proactive response by the international community. Similarly, more than twenty million people are presently under the control of the Houthis within the historic region of North Yemen. Many parts of Yemen have also been controlled by Al-Qaeda in the Arabian Peninsula, which is heavily present throughout the territory of South Yemen, but recent reports have indicated that Saudi Arabia and the United Arab Emirates (UAE) have even collaborated with Al-Qaeda as part of their military campaigns against the Houthis.<sup>6</sup> And despite the fact that by 2018 nearly twenty-two million Yemenis in both parts of Yemen became either in desperate need of “aid and protection” or in danger of starvation, the security dimension has continued to receive a higher degree of importance by such key external players. As highlighted by UN Secretary General Antonio Guterres: the Yemeni conflict has become the “world’s worst humanitarian crisis.”<sup>7</sup>

Indeed, the magnitude of the humanitarian aftermath of the 2011 Arab Uprisings has underscored an acute level of shortcomings in applicable international legal and theoretical frameworks. Like Yemen, Libya seems to be returning to its pre-existing territorial subdivisions of Tripolitania in the Northwest, Fezzan in the Southwest, and Cyrenaica in the East, but hardly any immediately available international legal frameworks could help us contemplate the future status of those other sub-state territorial divisions. Neither does there seem to be any international guiding principles on how they can or are being administered in the interim to the benefit of affected populations. As in any other state being territorially fragmented because of civil war, previously applicable domestic legal frameworks in Libya have been widely disregarded by every NSAG that took control of a given part of the country and were replaced by the NSAG’s own systems of governance; Sharia-based, tribal, or otherwise. Concurrently, the United Nations High Commissioner for Refugees (UNHCR) has stated that at least 15,486 people fleeing civil war in MENA have been reported as either dead or missing in the Mediterranean between 2014 and 2017

---

<sup>6</sup> See “Are Saudi Arabia and UAE Forces Collaborating with Al-Qaeda in Yemen?” *Aljazeera Arabic*, 06/08/2018, available at <https://youtu.be/SeaBbGXyIBk> (accessed 10/03/2021).

<sup>7</sup> See for instance Daniel Nikbakht and Sheena McKenzie, “The Yemen War is the World’s Worst Humanitarian Crisis, UN Says,” *CNN*, 03/04/2018, available at <https://edition.cnn.com/2018/04/03/middleeast/yemen-worlds-worst-humanitarian-crisis-un-intl/index.html> (accessed 10/03/2021).

alone, and migrant boats have continued to make their way into Europe out of Libya even though the Mediterranean has become widely classified as “the deadliest sea in the world.”<sup>8</sup>

The response of the regional as well as the international community to popular revolts in MENA has been notably divisive, which is arguably one of the main reasons behind the Uprisings’ bleak humanitarian outcomes. For example, it is strikingly odd that 41,490 foreign fighters from more than 80 countries (18,852 from MENA, 13,156 from Europe, 8,485 from Asia, and 997 from the Americas, Australia, New Zealand, and Sub-Saharan Africa) were either permitted or in some cases even encouraged to travel to Iraq and Syria and join ISIS.<sup>9</sup> In addition, Syria, Iraq, Yemen, and Libya became theatres of ‘proxy war’ amongst and in-between various international players such as Russia and the US and their respective regional allies of Iran and Saudi Arabia. While Iran backed Bashar Al Assad’s regime in Syria; the monarchies of Saudi Arabia and the UAE orchestrated a counter-revolution in various other Arab countries from Bahrain to Yemen, Egypt, and Libya to protect their thrones against the tsunami of popular revolts as it engulfed the region. Further, due to the conflicting interests of the five Permanent Members of the United Nations Security Council (UNSC), an international intervention was authorised in Libya, but the UNSC failed to bring about any resolution to the worst humanitarian crises since WWII in Yemen and Syria. Even when the UNSC authorised the use of force in Libya, Libya slowly disintegrated into its pre-existing territorial subdivisions due to the absence of any post-intervention international stabilisation strategies.

With ISIS defeated, the main geopolitical impact of the Arab Uprisings on Iraq and Syria pertains to the accentuation of Kurdish autonomy and the *de-facto* acceptance of Kurdish ‘self-rule’ by the current governments of both countries. Similarly, the impact of the resultant fragmentation of Yemen and Libya is historically rooted and long-lasting, as both countries have seemingly been returning to their pre-existing

---

<sup>8</sup> “2017 Shown Highest Ratio of Deaths to Migrant Arrivals by Sea in the Mediterranean in Years,” *Euro-Mediterranean Human Rights Monitor*, 20/01/2018 available at <https://euromedmonitor.org/en/article/2222/2017-shown-highest-ratio-of-deaths-to-migrant-arrivals-by-sea-in-the-Mediterranean-in-Years> (accessed 09/09/2018).

<sup>9</sup> See Joana Cook and Gina Vale, “From Daesh to ‘Diaspora’: Women and Minors of Islamic State,” *International Centre for the Study of Radicalisation*, Kings College, 2018. Available at [https://icsr.info/wp-content/uploads/2018/07/Women-in-ISIS-report\\_20180719\\_web.pdf](https://icsr.info/wp-content/uploads/2018/07/Women-in-ISIS-report_20180719_web.pdf) (accessed 27/06/2021).

sub-state divisions within their contemporary external boundaries. However, while the status of Kurdistan has been extensively examined in existing literature before and after the Arab Uprisings,<sup>10</sup> little has been said about possibly ongoing processes of ‘irredentism’ and/or ‘secession’ in Yemen and Libya from the perspective of international law and/or IR theory. The need to do so is urgent, especially when considering the magnitude of humanitarian suffering within and at the forefront of the territorial enclaves of NSAGs and their various law-making institutions. In particular, the use of ‘critical’ theory could enable the arrival at a more population-centric approach to the study of the dominions of NSAGs in contemporary intra-state conflicts.<sup>11</sup>

Accordingly, this thesis offers an alternative to the heavily securitised lenses of studying contemporary contestations over territory by (and through) NSAGs, placing instead the fate of populations living within such sub-territorial entities in Yemen and Libya centre stage of the analysis. The thesis is therefore built around the following, central research question:

*How does international law apply to the territorial controls of NSAGs in post-Uprising Yemen and Libya, and how can the nature of its applicability be studied through IR theory?*

### **I.I. State of Research**

The question of ‘territory’ and ‘boundary demarcation’ has always been a question of international concern, even if the terminology of ‘civil war’ may suggest otherwise. This is demonstrated by the preceding discussion and the far-reaching impact of the Arab Uprisings e.g., the resultant refugee crisis in the Mediterranean, the fragmentation of four territorial states, and the overly destabilising effect of the popular revolts at the regional and international levels. According to the Charter of

---

<sup>10</sup> See in particular Umit Cizre, “Turkey’s Kurdish Problem: Borders, Identity, and Hegemony,” Ch.8 in Brendan O’Leary, Ian S. Lustick, and Thomas Callaghy (eds.), *Right-sizing the State: The Politics of Moving Borders* (Oxford University Press, 2001), pp.223-252; Denise Natali, “Manufacturing Identity and Managing Kurds in Iraq,” Ch.9 in O’Leary et. al. (2001), pp.254-288; Asli S. Okyay, “Turkey’s post-2011 Approach to its Syrian Border and its Implications for Domestic Politics,” *International Affairs* 93:4 (2017), pp.829-846; and Johannes Jude, “Contesting Borders? The Formation of Iraqi Kurdistan’s de fact State,” *International Affairs* 93:4 (2017), pp.847-863. Also see Denise Natali, “Settlers and State-Building: the Kirkuk Case,” Ch.6 in Haklai, Oded and Neophytos, Loizides (eds.) *Settlers in Contested Lands: Territorial Disputes and Ethnic Conflicts* (Stanford University Press, 2015), pp.114-140.

<sup>11</sup> See Chapter IV – Analytical Framework and Methodology, of this thesis, on how a critical theory approach is operationalised in the empirical study of the situation in Yemen and Libya (2011-2015).

the UN, “the maintenance of international peace and security” is indeed one of the main mandates of the UNSC. Scholars of international law and international politics have therefore long engaged with questions of ‘boundary demarcation,’ ‘sovereignty,’ ‘territoriality,’ ‘secession’ and/or ‘self-determination’ in many sub-disciplinary fields. Yet they offer only partial insights into ongoing processes of state fragmentation in the MENA region, and they have not addressed specific challenges posed by the emergence of a territorial enclave under the control of a NSAG; most prominently the implications that this may have for affected populations.

A key contribution from the field of geopolitics is that of Stuart Elden in *Terror and Territory: The Spatial Extent of Sovereignty* (2009).<sup>12</sup> However, this book was published before the Arab Uprisings, and it examines the territorial possessions of NSAGs in different parts of Africa and the Middle East through a critique of U.S. foreign policy and the U.S. War on Terror. Even then, *Terror and Territory* still lacks a much-needed focus on the administrative aspects of such territories vis-à-vis the populations that came under the control of the likes of Taliban and other NSAGs in Afghanistan.

Additional contributions within the field of geopolitics, for examples those of Gerard Toal through various publications have also addressed the question of *de facto* states within the post-Cold War context of the caucis; the classic buffer zone between Europe and Russia.<sup>13</sup> While useful parallels between *de facto* states and the territorial controls of NSAGs could be possible to establish by a different research project, it is important to highlight for the purposes of this thesis that not all NSAGs are seeking independence in their own state. Indeed, as the examples of the Houthis’ territorial campaigns into South Yemen in 2015, East Libya’s march towards Tripoli in 2019, and the more recent example of Taliban in Afghanistan demonstrate, many NSAGs are even eager to take over the rest of their respective countries once they have consolidated their control over a certain territory. Nor do the territorial controls of NSAGs typically involve a movement of populations in the manner that is eloquently

---

<sup>12</sup> Stuart Elden, *Terror and Territory: The Spatial Extent of Sovereignty* (University of Minnesota Press, 2009).

<sup>13</sup> See in particular Gerard Toal, *Near Abroad: Putin, the West and the Contest over Ukraine and the Caucasus* (Oxford University Press, 2017). Also see John O’Loughlin, Vladimir Kolossov, and Gerard Toal, “Inside the post-Soviet *de facto* States: A Comparison of Attitudes in Abkhazia, Nagorny Karabakh, South Ossetia, and Transnistria,” *European Geography and Economics*, 55:5 (2014), pp.423-456.

identified by Oded Haklai and Neophytos Loizides (eds.) in *Settlers in Contested Lands* (2015).<sup>14</sup> As the analysis of the two case studies of Yemen and Libya (2011-2015) will demonstrate, the territorial controls of NSAGs are instead largely driven by various processes of co-optation that are directed principally at local agents.

Elden's second relevant book, *The Birth of Territory* (2013) traces the origins of 'territory' from Ancient Greece to the Peace of Westphalia (1648), but from the perspective of political history. While this further contribution does provide a useful entry point into the tensions between 'territory,' 'territoriality,' 'sovereignty' and/or 'jurisdiction' that are central to this thesis, legal aspects remain at the side-lines, and they merely serve to highlight the historical and legal "significance" of the term 'territory' within the context of the Peace of Westphalia (1648).<sup>15</sup>

A further contribution within the field of "political science, and in the adjacent fields of political history and political sociology"<sup>16</sup> is that of Brendan O'Leary, Ian S. Lustick, and Thomas Callaghy: *Right-sizing the State: The Politics of Moving Borders* (2001). While this edited volume offers valuable insights into the emergence and internal (in)cohesion of the post-colonial state in different parts of the Global South, it is written from a domestic institutionalist perspective, and one that is primarily concerned with outlining the different options that state "managers" have historically taken when e.g., considering 'downsizing' the state and permitting secession. In other words, it is not the domestic decision-making process of the territorial state vis-a-vis the secessionary attempt, but more precisely how the populations living within such a potential breakaway region are governed by the relevant NSAG until their fate is decided that this thesis is concerned with. In particular, the international normative and theoretical frameworks that address the latter relationship are squarely within the research scope of this thesis.

In this latter regard, a review essay by Monica Duffy Toft (2014) on the theme of "Territory and War" in 198 articles in peace and conflict studies published by the *Journal of Peace Research* and 21 other leading Journals, including *International Affairs*, *International Studies Quarterly*, *International Organisations* and

---

<sup>14</sup> See in particular Oded Haklai and Neophytos Loizides, "Settlers and Conflict over Contested Territories," Ch.1 in Haklai et. al. (2015), pp.1-16.

<sup>15</sup> Stuart Elden, *The Birth of Territory* (University of Chicago Press, 2013), pp.213-241 & p.278.

<sup>16</sup> Brendan O'Leary, "Introduction," in O'Leary et. al. (2001), pp.1-14, p.11; also see Ian Lustick, "Conclusion" in O'Leary et. al. (2001), pp.387-406, p.390.



*International Security* (amongst others) is worth highlighting. Despite the extensive methodological and theoretical contributions of this broad body of research, Toft (2014) has notably underlined that “further research is needed with regard to what causes some external states to support self-determination beyond their borders. There is...a status quo bias amongst states when it comes to borders, and given this bias, they are expected to show restraint and not support secessionists.”<sup>17</sup> As explained by the next subsection of this introductory Chapter, this thesis proposes the ‘critical’ application of ‘*terra nullius*’ in our study of the territories of NSAGs as one possible theoretical bridge to those and other existing gaps in the relevant literature. For example, the politics of ‘*terra nullius*’ could be added as the external factor, next to the three main criteria that one of the articles reviewed by this essay, Hassner (2006/07), considers important along the path of “intractability time and entrenchment of territorial disputes:” material (e.g. infrastructure networks), functional (e.g. boundary fixation), and the symbolic value of the territory in question to the parties concerned.<sup>18</sup>

Similarly, while many contributions have been written on the Arab Uprisings, including the book edited by Fawaz Gerges, *The New Middle East* (2014),<sup>19</sup> the territorial landscape of NSAGs in post-Arab Uprisings MENA has been left under-examined in contemporary Middle Eastern Studies. Important contributions like those of Gerges have tended to examine the situation in MENA through prominent lenses such as ‘democratisation,’ the persistence of ‘authoritarianism’ in MENA, ‘terrorism’ and/or a ‘socio-economic’ analysis of the root causes of the Arab Uprisings themselves. For example, they either critique the pre-Uprising neo-liberal reforms of the region or try to explain the ideological basis of the recruitment strategies of Al-Qaeda and ISIS.<sup>20</sup> In addition, while many contributions in Middle Eastern Studies have addressed the rise of the Muslim Brotherhood to power positions in MENA after 2011, this has still been carried out without taking into

---

<sup>17</sup> Monica Duffy Toft, “Territory and War,” *Journal of Peace Research*, 51:2 (2013), pp.185-198, p.191.

<sup>18</sup> Ron E. Hassner, “The Path to Intractability Time and the Entrenchment of Territorial Disputes,” *International Security* 31:3 (Winter 2006/2007), pp.107-138.

<sup>19</sup> Fawaz Gerges (ed.), *The New Middle East: Protest and Revolution in the Arab World* (Cambridge University Press, 2014).

<sup>20</sup> Also see Fawaz Gerges, *The Far Enemy: Why Jihad Went Global* (Cambridge University Press: 2005); and Fawaz Gerges, *ISIS: A History* (Princeton University Press, 2017).

account the resultant territorial fragmentation of major parts of the region due to the reactions of Saudi Arabia and the UAE.

In addition, contributions by other prominent Middle East analysts such as Raymond Hinnebusch and Fred Halliday are mostly written based on a dissection of the foreign policies of the different states of the region through ‘realist,’ ‘constructivist’ and/or ‘neo-Marxist’ footings. Otherwise, they would typically be written from a starting point of an inquiry aiming to analyse contemporary regional conflicts and ideological movements such as the Arab-Israeli conflict, ‘Arab nationalism,’ and/or ‘political Islam.’<sup>21</sup> Hinnebusch’s book on *The International Politics of the Middle East* (2015) does contain a chapter on the Arab Uprisings, but his pre-occupations with the political economy dimension e.g., the region’s oil resources reduce its relevance for this research project.

Even in an extensive theoretical undertaking within the English school of IR theory such as that of Barry Buzan and Ana Gonzalez-Pelaez (eds.) (2009) on *International Society and the Middle East*, Buzan notes that “there is a serious shortage of guidance on” how the ‘primary institutions’ of international society look like “in the non-state domains” of MENA “and how these might relate to those in the interstate domain.”<sup>22</sup>

When considering literature informed by international law and its own various branches or bodies of law, existing work does examine the various processes of globalisation and the rise of non-state actors on the global scene e.g. the volume of the *Netherlands Yearbook of International Law* that is conveniently entitled “The Changing Nature of Territoriality in International Law” (2016).<sup>23</sup> However, this has typically been carried out from either an international political economy perspective and/or a private international law approach that ignores the particularity of the territorial possessions of NSAGs in situations of civil war. To some extent, even prominent Third World Approach to International Law (TWAAIL) contributions such as Antony Anghie’s *Imperialism, Sovereignty, and the Making of International Law*

---

<sup>21</sup> Raymond Hinnebusch, *The International Relations of the Middle East* 2<sup>nd</sup> ed. (Manchester University Press, 2015); Fred Halliday, *The Middle East in International Relations: Power, Politics, and Ideology* (Cambridge University Press, 2005).

<sup>22</sup> Barry Busan, “The Middle East Through English School Theory,” p.43 in Ch.2 of *The International Society and the Middle East: English School Theory at the Regional Level*, Buzan and Gonzalez-Pelaez (eds.) (Palgrave Macmillan, 2009), pp.24-44.

<sup>23</sup> Martin Kuijper and Wouter Werner (eds) “The Changing Nature of Territoriality in International Law,” *Netherlands Yearbook of International Law*, 47 (Asser Press: Springer, 2016).

(2012) have mostly addressed the issue of ‘territoriality’ from the perspective of private international law and/or the international political economy.<sup>24</sup> This is due to the heavy focus of such publications on the global economic and material dependencies that are resulting from imperialism, the capitalist state system and/or globalisation. As this thesis will shortly demonstrate, this is problematic as the concepts of ‘territory’ and ‘territoriality’ are rooted more strongly in the sphere of public international law.

From the literature that is written based on public international law itself, major contributions such as James Crawford’s book *The Creation of States in International Law* (2007) explicitly exclude the territorial dimensions of NSAGs.<sup>25</sup> And while many contributions have been written on the human rights obligations of NSAGs, such as those of Andrew Clapham through various publications, those contributions are either speculative or policy-oriented in their nature.<sup>26</sup> For example, they typically ponder on whether state-signed human rights treaties should also bind NSAGs operating within the territory of a state-signatory, irrespective of the broader geopolitical interests at play.

In summary, there is a very limited number of contributions in literature within the various sub-disciplinary fields of Politics and International Studies that examine the territories that have fallen under the control of NSAGs in the aftermath of the Arab Uprisings. Indeed, to date there has not been any serious attempts within the fields of geopolitics, political science/history, peace and conflict studies, Middle Eastern studies, IR theory, and/or international law to address the conceptual and legal frictions between notions of civil war, ‘territoriality,’ ‘sovereignty,’ and ‘statehood,’ and how these are maybe linked to the unfolding humanitarian crisis within the territorial controls of NSAGs.

This thesis therefore seeks to address such and other deficiencies in our existing knowledge about the governance and overall status of territories that are controlled

---

<sup>24</sup> See Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law*. Cambridge Studies in International and Comparative Law (Cambridge University Press, 2012).

<sup>25</sup> James Crawford, *The Creation of States in International Law* (Oxford University Press, 2007), p.419.

<sup>26</sup> See Andrew Clapham, “Human Rights Obligations of non-state Actors in Conflict Situations,” *International Review of the Red Cross*, 88:863 (2006), pp.491-523. Also see Annyssa Bellal and Ezequiel Heffes, “‘Yes, I Do’: Binding Armed Non-State Actors to IHL and Human Rights Norms Through Their Consent,” *Human Rights & International Legal Discourse*, 12:1 (2018), pp.120-136.

by NSAGs in the MENA region and beyond. It does so by taking an interdisciplinary approach that combines insights from both public international law and IR theory, thereby making an original contribution that is focused on territories that came under the control of NSAGs in Yemen and Libya between and including 2011 - 2015. In addition to increasing our knowledge about the complex interplay between 'sovereignty,' 'territoriality' and 'self-determination' on the one hand, and the state-centric nature of such applicable international legal and theoretical frameworks on the other, this thesis puts the fate of populations within these contested territories centre stage empirically and normatively. As will shortly be demonstrated by Chapter II, 'territory' has indeed always been understood as 'jurisprudence.' Therefore, by establishing what legal and theoretical frameworks are applicable to the territorial controls of NSAGs, the fate of affected populations will be better accounted for.

Importantly, while many of the above landmark contributions in the field of Politics and International Studies and its various sub-disciplinary fields form an integral part of Part I - Literature Review of this thesis (amongst others), especially in relation to the historical processes of state creation in the Middle East, it is crucial to emphasise that the analytical framework of this thesis (see Part II - Chapter IV) is principally grounded within the two specific sub-disciplinary fields of (critical) IR theory and public international law, as respectively reviewed by Chapter III and Chapter II of the thesis. It is indeed incomprehensible that the entire discipline of Politics and International Studies would be reviewed by this rather focused analytical attempt of the present thesis. Significantly, due to its placement of the 'state-society complex' at the centre of analysis in IR theory, as opposed to the state-centrism of the mainstream approach, 'critical' IR theory is most suited with a *meso*-level analysis such as the present one.

At the personal level, this thesis is informed by my own disappointment with the failure of the international community to alleviate the humanitarian situation of my home city in Gaza Strip, Palestine let alone to resolve the Israeli-Palestinian conflict. I hope that this research will inform the readiness of the international community to respond to situations of civil war in a manner that is tailored to the specific needs and aspirations of populations living within the territories of NSAGs, as opposed to that which is informed by a classic security lens trumping all other considerations. In other words, as a research project that is situated within the critical domains of both

IR theory and public international law discourse, this thesis does not aim to prescribe nor to recommend any specific policy tools. Therefore, all recommended ‘bridges’ must be viewed as theoretical in their nature, made in the interest of a growing body of critical research that is calling for a more egalitarian international society. They can ultimately be considered a contribution to contemporary debates within peace and conflict studies that are critical of the notion of ‘human security’ and/or the limits of ‘hybrid peace.’ These call, respectively, for shifting our focus to the resulting state of human suffering as opposed to current preoccupations with the security interests of influential players, and for the incorporation of greater levels of local agency into externally imposed peacebuilding frameworks.<sup>27</sup> The findings of this thesis will further contribute to relevant debates on international legal and policy tools that address the fate of populations living under the control of NSAGs and/or ‘secessionary’ movements in other, similar situations within Eastern Europe, Sub-Saharan Africa, South Sudan, Somalia, Afghanistan, Iraq, and Syria, amongst other places.

### **I.II. Main Contribution: The Territories of NSAGs as *Terra Nullius***

The present analysis is informed by TWAIL and ‘postcolonial’ IR theory. As Marti Koskenniemi et. al. (2017) argue, “[e]ver since the Romans created the ‘law of nations’ as a law open to both Roman and non-Roman citizens, what Jeremy Bentham in the eighteenth century baptized as ‘international law’ has been inextricably bound up with the pursuit of Empire.”<sup>28</sup> Thus, there certainly is no doubt that the ‘critical wave’ in social science and IR theory has reached the closely intertwined discipline of international law. And while it is important that the foundations of this discipline are being critically deconstructed, it is equally necessary to examine the current applications of international law in a similarly critical light. The largely underexamined situation in Yemen and Libya offers us precisely such an opportunity to do so.

---

<sup>27</sup> See Suthakaran Nadarajah and David Rampton, “The Limits of Hybridity and the Crisis of Liberal Peace,” *Review of International Studies*, 41:1 (2015), pp.49-72; and George Christou, “The European Union’s Human Security Discourse: Where Are We Now?” *European Security*, 23:3 (2014), pp.364-381. Also see Mahmoud Abdou “Humanitarian Assistance and Peacebuilding: Congruence as a By-product of Incompatibility,” *Peace and Conflict Monitor / Ideas for Peace*, 2014, available via <https://www.ideasforpeace.org/content/humanitarian-assistance-and-peacebuilding-congruence-as-a-by-product-of-incompatibility/>, (accessed 17/03/2021).

<sup>28</sup> Martii Koskenniemi, Walter Rech and Manuel Jimenez Fonseca (eds.), *International Law and Empire: Historical Explorations* (Oxford University Press, 2017). Editors Preface.

This thesis ultimately underscores that through the critical utilisation of the legal, conceptual framework of '*terra nullius*,' it becomes easier to account for the paucity of international norms that are directly applicable to the *meso*-level of the territorial enclaves of NSAGs. This proposed theoretical approach further accentuates the heavily securitised nature of the international response to this phenomenon in situations of civil war in MENA and beyond, and the continued existence of such divisive strategies of the colonial era in our present international political system. From their subjection to extra-judicial killings by drones and various modalities of direct and/or 'proxy wars,' to their being the object of different proposals to hold NSAGs accountable to internationally set standards of human rights without granting them independence as new states; the territorial enclaves of NSAGs are the '*terra nullius*' par excellence of our contemporary international society.

The term '*terra nullius*' was first conjured up in 1835 by the Proclamation of the (British) Governor Bourke regarding Australia. This particular framing of distant territories was also central to international debates that took place in the lead up to the Berlin Conference (1884-1885) and the 'scramble for Africa,' when various parts of Africa became divided amongst European powers as either colonies or protectorates.<sup>29</sup> It connotes, at the minimum, a lack of recognition of the right of the inhabitants of such territories to govern themselves and/or the right of the most powerful states in the system to claim them as dominions. In other words, a territory such as Australia was proclaimed '*terra nullius*' vis-à-vis other colonial entities or to the extent that no other colonial powers had therein managed to establish an influential presence comparable to that of the British. Most notably, the fate of populations within so-proclaimed territories was effectively reduced to irrelevancy.

By applying the lens of '*terra nullius*' to the present analysis of the situation in Yemen and Libya (2011-2015), I therefore hope to advance the conceptualisation of a pattern of contestations over territory in our present international system that go beyond a simple call for 'secession' based on 'self-determination.' Such territorial contestations are instead driven by Great Power politics and a lingering colonial legacy of 'divide and rule,' leading to either the facilitation or the obstruction of the emergence of a new territorial enclave as suits the interests of powerful external

---

<sup>29</sup> See Luigi Nuzzo, "Territory, Sovereignty and the Construction of the Colonial Space," in Koskenniemi et. al. (2017), pp.263–292.

players. In this regard, the selectivity in how ‘self-determination’ is itself either granted or denied to any given ethnic group seeking to become independent in its own state becomes better rationalised as governed by Great Power politics, such as those of the five Veto Powers of the UNSC that are keen on preserving the post-1945 global status-quo.

In addition, the utilisation of the ‘*terra nullius*’ analytical angle showcases how the pre-existing territorial subdivisions of already established states such as Yemen and Libya have been exploited by external powers to advance their regional and international interests. This is herein stated as the main reason as to why only Iraq, Syria, Yemen, and Libya, out of all other countries that were impacted by the 2011 Arab Uprisings, became territorially fragmented in the aftermath of the Arab revolts. Notably, those specific four countries were historically made up of various subdivisions and they are demographically made up of rich ethnic mosaics. In other words, through this angle, the seemingly autonomous return to pre-existent territorial subdivisions that we have been seeing on the contemporary map of all four countries could instead be an outcome of competing regional and international interests.

Importantly, rather than advocating ‘statehood,’ it is the lingering colonial legacies of ‘divide and rule’ and of addressing distant territorial entities, in this case the territorial enclaves of NSAGs, as ‘*terra nullius*’ that this thesis underlines the need to overcome. This is even more the case if the declared interest of the international legal system is indeed to advance stability, peace, justice, and equality, amongst other stated goals and principles. It could even be advanced through enhancing already established international institutions such as ‘non-intervention,’ as opposed to reinventing the wheel. Rhetoric of justice and equality aside, the situation in post-Uprising Yemen and Libya is unfortunately evidencing the continuation of colonialism through the political avenues of public international law. The heavy involvement of external players in such situations of civil war, and the way that the security interests of those foreign sources of influence are trumping all other considerations must both be addressed. In both case studies within this thesis, the security concerns of the most powerful states at the regional and international levels have crucially been prioritised over the fate of the impacted populations, irrespective of devastating humanitarian outcomes that should instead be avoided at all costs.

### I.III. Research Design and Chapter Outline

The first objective of the present analysis is to outline and provide a critique of currently available tools for the international community to address the fragmentation of states in situations of civil war. The first Chapter of Part I: Literature Review of this thesis (Chapter II) accordingly provides a TWAIL-informed outline of the most applicable international legal frameworks to the overall status as well as the governance of an emerging territorial enclave under the control of NSAGs. Chapter III further examines the subject matter through the lens of IR theory and ‘postcolonialism’ to provide an answer to the second part of the central research question, and to strengthen our understanding of the ideological reasons behind the paucity of applicable international norms to the situation at hand.

Chapter II incorporates insights from both primary and secondary sources. Primary sources include UNSC and UN General Assembly (UNGA) resolutions, relevant rulings from the International Court of Justice (ICJ) and relevant provisions from the UN Charter, International Humanitarian Law (IHL) and International Human Rights Law (IHRL). Secondary sources include contributions from the International Committee of the Red Cross (ICRC) and existing literature on ‘territory,’ state-creation, ‘self-determination’ and humanitarian interventions.

When mentioning public international law, Chapter II makes a distinction between *macro*-level norms such as those enshrined by the UN Charter and *micro*-level, *lex specialis* bodies of law such as IHL. While the UN Charter outlines general terms for inter-state relations like those pertaining to *jus ad bellum* or the conditions under which a war against one state by one or a coalition of other states could be justified, IHL sets out the parameters for the use of force in times of war and is therefore often connotated as the central pillar of *jus in bello* or the laws of armed conflict. Some provisions of the *lex generalis* IHRL continue to apply in war time, which are the provisions pertaining to ‘non-derogable’ rights or rights that must always be protected e.g., the right to life and the right against torture and other forms of ‘cruel, inhumane, or degrading treatment.’ The exploration of *macro*-level norms will inform our understanding of the potential international status of Yemen and Libya’s present territorial subdivisions, while the subsequent examination of relevant provisions from IHL and/or IHRL will help in establishing an account of how, in the



interim, populations living within such contested territories could be administered to the benefit of affected populations.

At the same time, the main limitation of Chapter II is its attempt to explore the overall status and the administration of territorial cantons under the control of NSAGs within already established, sovereign states using state-centric conceptual frameworks such as ‘sovereignty’ and ‘territoriality.’ However, this is still the main puzzle that this research project aims to explore since it attributes the state-centric *modus operandi* of public international law to its preservation of the post-WWII status-quo via the UN. The Chapter concludes with an indication of how the lens of ‘*terra nullius*’ could notably be helpful in overcoming such and other relevant limitations.

With this outlook in mind, Chapter III seeks to offer an illustration of how the paucity of applicable international norms to the governance and overall status of the territorial controls of NSAGs can be studied through international relations theory. In a manner that complements the TWAIL basis of the analysis presented by Chapter II, Chapter III’s main objective is to account for the ideological reasons behind relevant shortcomings in readily available international legal frameworks such as human rights, ‘self-determination,’ and/or IHL. Firstly, this Chapter provides an overview of how IR theory has evolved since the end of WWI, by way of emphasising that various notions of ‘territoriality’ have remained unaccounted for in IR theory, let alone in relation to NSAGs and their territorial enclaves. ‘Constructivism’ and the ‘international society’ framework in the so-called English school of IR are thereafter used to provide a possible explanation of how the Eurocentric international norms of our present international society, with their various limitations, spread to a region such as MENA. Subsequently, the analysis is taken a step further and into the ‘critical’ field of IR theory, ultimately underscoring that together with TWAIL in international legal scholarship, ‘postcolonial’ IR forms the backbone of any research endeavour seeking to critique the general workings of the international system such as the present one. This is certainly the case given the historicism of ‘postcolonial’ IR and the way it queries various modes of Great Power politics from the colonial expeditions of Spain and Portugal in the 15<sup>th</sup> Century to our present day.<sup>30</sup> Lastly, Chapter III revisits the theoretical innovation of this thesis, and its consideration of

---

<sup>30</sup> For a guide, see Sanjay Seth (ed.), *Postcolonial Theory and International Relations: A Critical Introduction* (Routledge, 2013).

the territorial enclaves of NSAGs as the '*terra nullius*' of our contemporary international society.

The second objective of this thesis is to offer an empirical assessment of the general workings of applicable international norms based on the analysis of Part I and using the lens of '*terra nullius*.' Part II of this thesis (Chapter IV – VI) is correspondingly dedicated to the two case studies of Yemen and Libya (2011-2015). Building on the Literature Review of Part I, Chapter IV starts by providing a more explicit statement of the 'critical' underpinnings of the present empirical study, and/or outlining its Analytical Framework. The main characteristics of the 'critical' approach that are adopted here include 'historicism,' and the rejection of the classic distinction between the 'domestic' and the 'international' through notably analysing the question at hand at the (interlinked) *macro*, *micro* and *meso* levels. This Chapter further re-emphasises that '*terra nullius*' is herein proposed as a theoretical bridge, not a remedial policy tool, and that its present use is aimed at exposing the catastrophic consequences of one of the most persistent colonial legacies within the contemporary politics of MENA, not the endorsement of it.

Chapter IV then walks the reader through the methodological approach of this empirical study. In particular, the Chapter proceeds to explain how the developments on the ground in both countries are herein studied through a 'contextual' and diachronic 'process-tracing' approach that aims, in harmony with the generally 'critical' approach of this thesis, to respond to the pertinent call to 'decolonise' the curriculum and by implication the generation of knowledge itself. Part II indeed pioneers in its methodological approach the qualitative analysis of 18,759 daily news reports from Yemen and 24,733 daily news reports from Libya (43,492 reports in total) using the Qualitative Data Analysis Computer Software 'NVIVO.'

As a 'process-tracing' exercise, the empirical undertaking of Part II is informed by my previous research projects on Palestine and my other analyses of relevant selections of media reports over a given period of time.<sup>31</sup> I have opted to apply this approach to Yemen and Libya in order to establish an account of what really

---

<sup>31</sup> See for example Mahmoud Abdou, "Disunity in Palestine: its History and Implications for the Peace Process," "Europe and the Question of Palestine," and "The Middle East Peace Process and U.S. Special Interest Groups," available via <http://warwick.academia.edu/MahmoudAbdou> (last accessed 13/03/2021).

happened in those two countries since 2011, as I have embarked on this research project from the starting point of assuming no prior knowledge of those key events. In turn, my use of 'NVIVO' in this thesis has enabled its systematic analysis of the various reactions of key regional and international players to the situation at hand, as well as my dissection of such a large sum of data into different categories of reports for further analysis.

This is comparable to the predominantly quantitative approach of peace and conflict studies, which is often carried out using another software like STATA. Prior to undertaking this thesis, I completed a total of eight hours of NVIVO-related training at the University of Warwick in Coventry, United Kingdom.

To feed into the descriptive, yet critical interrogation of presently applicable international norms, the analysis of those two case studies in their respective, subsequent chapters (Chapter V & VI) is carried out in a comparative manner. This emphasises both the patterns of convergence amongst the two situations under the broader regional context of the 2011 Arab revolts, as well as the various ways in which they differ. For example, through the examination of relevant UNSC resolutions on Yemen and Libya I seek to demonstrate the ideological bias in the Great Power management of, and responses to the situation in both countries as it developed on the ground. Accordingly, the approval of an international intervention by the UNSC in the case of Libya as early as March 2011 is therein contrasted with the relevant lack of action by the UNSC in the case of Yemen, while the various reports on the unaddressed, catastrophic humanitarian situation in both countries are brought to the fore.

The third and last objective of this thesis is to provide an indication of the significance of its findings and to reflect on some of the potential restrictions in applying the lens of '*terra nullius*' to the territorial controls of NSAGs. Chapter VII accordingly revisits the central research question, summarises the main findings of Parts I and II of the thesis, and offers reflections on the possible limitations of its theoretical and methodological approach.

**PART I: LITERATURE REVIEW**

## Chapter II: Applicable International Legal Framework

This first chapter of the Literature Review outlines international norms that are applicable to the dominions of NSAGs from the perspective of public international law (PIL) and the Third World Approach to International Law (TWAAIL). At the *macro* level, PIL includes the UN Charter and its relevant provisions on ‘human rights,’ ‘self-determination’ and/or ‘territorial integrity;’ while *micro*-level PIL includes *lex specialis* International Humanitarian Law (IHL) and *lex generalis* International Human Rights Law (IHRL).<sup>32</sup> In turn, TWAAIL seeks to expose western/European-centrism in the general workings of international law, and to underline the various forms of power disparity between states in the international arena and how such disparities tend to subordinate the Global South.<sup>33</sup> But before discussing the various aspects of the international legal system that are relevant to the subject matter at hand, this first Chapter of the thesis starts with an analysis of the legal, historical roots of ‘territory’ with the hope that the link between it and ‘administration’ and/or ‘jurisdiction’ becomes understood as inherent to the term, and underlined as the basis of our modern understanding of ‘territoriality’ as governance defined in terms of ‘territory.’ Chapter II.I will also bring to the fore the understanding, until recent years, of ‘sovereignty’ as absolute freedom from external interference, and absolute ‘jurisdiction’ for the ‘territorial state’ within its established external boundaries.

### II.I. Territory, Sovereignty, Territoriality, and the Territories of NSAGs

In *The Birth of Territory* Elden explains that ‘territory’ is rooted in the Roman legal term ‘*territorium*,’ a direct translation of which means “lands surrounding a place, usually a city.”<sup>34</sup> He then underlines the important definition of ‘*territorium*’ by the prominent Medieval Roman Jurist Bartolus de Saxoferrato with the purpose of establishing how the exercise of authority within the ‘*territorium*’ becomes *de facto* established or a matter of fact on the ground: “[*t*]erritorium is so called from

---

<sup>32</sup> See Martii Koskenniemi’s Report for the International Law Commission (ILC) on the “Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law” UN Document A/CN.4/L.682, 13 April 2006.

<sup>33</sup> For an illustrative account, see *International Law and Empire: Historical Explorations* edited by Martii Koskenniemi, Walter Rech, and Manuel Jimenez Fonseca (Oxford University Press, 2017). Also see Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law*. Cambridge Studies in International and Comparative Law (Cambridge University Press, 2012).

<sup>34</sup> Elden (2013), p.11.

terrifying...So long as the army is there, terrifying and dictating to that place, an offence there committed will properly be...punished by the authorities of the city as if it had been committed in their own territory.”<sup>35</sup> Thus, the definition of ‘territory’ in Roman legal discourse was intriguingly and inextricably linked to the recognition of the right of the entity that controls the ‘*territorium*’ to “terrify” the people living within it. And while the Roman geographer Pomponius Mela saw the right of such an authority to “terrify” as a right to expel,<sup>36</sup> Bartolus viewed it as “the power to punish or fix the limits of the laws over the terrified place” using military force.<sup>37</sup> “The etymology of territory is therefore the same as that of a terrorist. That should be no surprise,” explains O’Leary (2001), “given that states have been the greatest terrorists and mass-killers in human history.”<sup>38</sup>

If ‘territoriality’ has in such a manner long been understood as governance defined in terms of ‘territory,’ Elden notes that ‘territory’ was so “born” not just as the “limit of the jurisdiction” but “it’s very definition.”<sup>39</sup> This is important for understanding key developments in the Holy Roman Empire that led to the Empire’s disintegration into independent, ‘sovereign’ monarchies. It further comes in harmony with our modern understanding of the state itself as the entity that successfully claims monopoly over the legitimate use of violence within a given territory.<sup>40</sup>

Contemporary understandings of how *de facto* authority becomes *de iure* are similarly rooted in Roman law. Based on a close reading of the writings of Bartolus, Elden explains that on the side of *de iure* authority, there was the “*imperium romanum*, a political organisation that can, in theory, extend across the world. On the other hand,” there were the *de facto* “independent political units that actually exist within and beyond that *imperium*.”<sup>41</sup> In other words, only through the strict recognition of the *imperium romanum* could a *de facto* entity become *de iure*, or legal. Until the signing of the Peace of Westphalia in 1648, *de iure* authority was indeed equivalent to the submissive acceptance by any *de facto* entity seeking such a

---

<sup>35</sup> Bartolus, on *Codex*, I.I, 46. Quoted in Elden (2013), p.222.

<sup>36</sup> *Digest*, L.I6.239 & Sextus Pomponius, *Enchiridium*, the *Manual*. Qtd in Elden (2013), p.222.

<sup>37</sup> Bartolus, on *Digest*, L.I6.239, in *Opera*, 8:699. Qtd in Elden (2013), p.222.

<sup>38</sup> O’Leary in O’Leary et. al. (2001), pp.4-6.

<sup>39</sup> Elden (2013), p.232.

<sup>40</sup> Max Weber, “Politics as a Vocation” A public lecture (1918). Published as “Politik als Beruf,” *Gesammelte Politische Schriften* (Muenchen, 1921), pp.396-450. Originally delivered as a speech at Munich University, 1918, published in 1919 by Duncker & Humblodt, Munich.

<sup>41</sup> Elden (2013), p.223.

recognition of the higher, divine authority of Rome. Therefore, the thirty-year war that ended the reign of Rome could be considered the first war of independence in modern European history. But even after gaining their independence, the Empire's constitutive monarchies only became 'legal' after Rome agreed through its signing of the Peace of Westphalia to grant them their independence as 'sovereign' entities.

This subsequently informed contemporary debates on the importance of the central government's approval of 'secessionary' undertakings for them to be recognised by the international community. Similarly, the contemporary understanding of *de iure* statehood under the 'constitutive theory' in international legal doctrine indicates that only by international recognition, and such recognition alone, could statehood be achieved. In comparison, an understanding of *de facto* statehood under the 'declaratory theory' of legal discourse considers that recognition only serves to declare that which is in existence already.<sup>42</sup>

The power transformations that led to the independence of European monarchies in 1648 ultimately resulted in the codification of 'sovereignty' as an international norm, because of the monarchies' struggle to withhold the jurisdiction of Rome over their domestic affairs. The most important development, according to Elden, "is that the '*territorium*' [became] not simply a possession of power, nor incidentally the extent of that power, but the very object of political rule in itself."<sup>43</sup> Thus, 'sovereignty' became the birth-child of 'territory,' within which the sovereign came to enjoy an exclusive right to jurisdiction. Those processes of power de-centralisation eventually spilled over Europe's eastern frontier, and in turn led to the collapse of the Ottoman Empire in the lead up to WWI. In both cases, divine power (Christianity in the first, Islam in the second) slowly lost its appeal to the rulers of the land and was replaced by local governance systems in a gradual process of jurisdictional retreat behind the clearly demarcated boundaries of the 'territorial state.' This secularisation process is indeed the very definition of modernity in itself.<sup>44</sup>

---

<sup>42</sup> The latter (*de facto* statehood) resembles the opinion of the *Badinter Commission* in Opinion 1, 29 November 1991, 92 ILR 165. Qtd in Crawford (2007), p.24. For more information on these two theories of statehood under international law, see James Crawford, "The Criteria for Statehood in International Law," *British Yearbook of International Law*, 48 (1977), pp.93-182. Also see Crawford (2007), pp.3-44.

<sup>43</sup> Elden (2013), p.226.

<sup>44</sup> See for instance Anthony Giddens, *The Consequences of Modernity* (Polity Press/Blackwell, 1990).

The important transformations of 17<sup>th</sup> century Europe were also the developments that inspired prominent figures in PIL to write their main contributions. For example, Hugo Grotius highlights in *De jure belli ac pacis* (1625), which became one of the cornerstones of IHL, that the real concern is not the definition of ‘territory’ itself, but the way in which the ‘*imperium*’ is “acquired.”<sup>45</sup> Grotius instrumentally underscored that “the territory, whether wholly, or in part, belongs in common and inseparably to the people; and consequently, is entirely at their disposal.”<sup>46</sup> In other words, the events of 17<sup>th</sup> century Europe also fuelled the debates regarding which entity within those kingdoms is the real sovereign. For Grotius, the people inhabiting any given ‘territory’ enjoy the legitimate claim over the right to determine their destiny, which is a view that paved the way for subsequent revolts against European monarchies, from the French Revolution to the revolts of the 19<sup>th</sup> Century in Europe.

At the same time, it is important to acknowledge that the exact significance of the Peace of Westphalia remains a highly contested issue in the relevant literature. For Elden, it was not as “central” to modern state formation “as the traditional accounts suggest,” nor was it “as unimportant as the revisionists would have us believe.”<sup>47</sup> In other words, the notion of ‘sovereignty’ in the modern sense, which is “supposedly derived from Westphalia,” is in reality “of a much later date.”<sup>48</sup> Given the drive for ‘democracy’ in mid-19<sup>th</sup> century Europe, Teschke particularly holds that “the formation of the modern state-system, based on exclusive territoriality operated by a depersonalised state”<sup>49</sup> must be situated within the historical context of the 1840s revolutions against the remaining monarchies of Europe. For the purposes of the present analysis, it is sufficient to note that a key value of Westphalia lies in how it fixated jurisdiction, “or even sovereignty,” as an act that is exercised over territory: “the treaties codified and reinforced an already existing state affairs, rather than distributing a wider set of rights.”<sup>50</sup> Thus, the ‘sovereign’ became from that moment onwards the “master of territory.”<sup>51</sup>

---

<sup>45</sup> Elden (2013), p.240.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid., p.310.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid, pp.313-314.

<sup>51</sup> Leibniz, qtd in Elden (2013), p.321.



Meanwhile, just as those developments led to the creation of independent states in Europe, externally demarcated boundary regimes were soon imposed on the local inhabitants of the MENA region as it endured European colonialism in the 19<sup>th</sup> – 20<sup>th</sup> centuries. For instance, based on the treaty of Sykes-Picot between France and Britain (1916), and the subsequent San Remo Conference of the post-WWI Allied Supreme Council (1920), the historic region of Kurdistan was divided in-between contemporary Iraq, Syria, Iran, and Turkey. In a completely opposite manner, various competing ethnicities were grouped into a single ‘territorial state’ the way that France carved Lebanon out of Syria in 1921, in theory, as a state for the Christians of the region. The first case resulted in sporadic Kurdish attempts at secession in all four countries, while the latter led to the vicious Lebanese civil war (1975-1990) and on-going instabilities within and in-between the different groups that make up Lebanon’s rich ethnic mosaic.<sup>52</sup> Ultimately, this situation prevented the same evolutionary processes of social organisation from developing on their own in the Middle East, which is so named based on the ‘colonial gaze’ in and by itself.

The UN System is the outcome of centuries of territorial disputes and civil wars.<sup>53</sup> And while the contemporary border regimes of MENA were mostly drawn by colonial entities during the era of European colonialism in the 19<sup>th</sup> – the 20<sup>th</sup> centuries, *uti possidetis juris* under the UN System effectively ensured that such colonial boundary regimes were respected at the time of independence regardless of the potentially contradictory aspirations of local populations. In other words, under PIL the internationally recognised frontiers of already established states such as Iraq and Syria justify the continued partition of Kurdistan, and the historic sub-divisions of Yemen and Libya must similarly remain grouped under the same modern statehood system that came into existence in both states after they gained their independence. However, the Northern and Southern parts of Yemen were

---

<sup>52</sup> On Lebanon, see Oren Yiftachel “‘Right-Sizing’ or ‘Right-Shaping’? Politics, Ethnicity, and Territory in Plural States,” Ch.12 in O’Leary et. al. (2001), pp.359-387; and Simone Tholens, “Border Management in an era of ‘Statebuilding Lite’: Security Assistance and Lebanon’s Hybrid Sovereignty,” *International Affairs*, 93:4 (2017), pp.865-882. On Kurdistan, see in particular Cizre (2001), Natali (2001), Okyay (2017); and Jude, (2017). Also see Louise Fawcett, “States and Sovereignty in the Middle East: Myths and Realities,” *International Affairs*, 93:4 (2017), pp.937-48; William Zartman, “States, Boundaries and Sovereignty in the Middle East: Unsteady but Changing,” *International Affairs* 93:4 (2017), pp.937-948; and Raffaella A. Del Sarto, “Contentious Borders in the Middle East and North Africa: Context and Context and Concepts,” *International Affairs*, 93:4 (2017), pp.767-787.

<sup>53</sup> See Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge University Press, 2010).

intriguingly two separate states at the time of South Yemen's independence from Britain in 1967, divided by a boundary demarcation left by Britain, and they did not join their current political union until 1990. On what legal basis other than *uti possidetis juris* could the resistance of the international community to accommodating the territorial fragmentation of Yemen since 2011 best be explained, and how must such territorial enclaves be administered until their international status is determined?

'Territoriality,' or governance defined in terms of 'territory' is typically explored within the confinement of unwavering, state-centric frameworks such as 'sovereignty,' the treaty-signing capacity of the entity in question and the level of recognition such an entity receives from the international community. However, the applicability of those frameworks to NSAGs and their respective territories is highly uncertain and problematic, especially given the limited recognition that such territorial entities receive from the international community and/or the various restrictions that are placed by the UN System on the entry of new states into the 'family of nations.'<sup>54</sup> At present, the territories that fall under the control of NSAGs because of civil war could indeed be described as spaces of legal discontinuity, or as blackholes on the contemporary map of the world, where neither the legal system of the relevant state nor international treaties with governance-related provisions extend in their application. Most importantly, those legal discontinuities have not been possible to resolve at the *meso*, community level by regional and international interventions in countries such as Yemen and Libya, which have instead resulted in far-reaching humanitarian crises inclusive of war crimes, famine, internal displacement, and an influx of refugees into Europe.

In pertinence to such situations of uncertain applicability of PIL, Koskenniemi highlights that "we are thrown...into having to argue both what the law's content is and why we consider it binding on the state. To avoid utopianism, we must establish the law's content so that it corresponds to concrete state practice, will and interest. But to avoid apologism," continues Koskenniemi, "we must argue that it binds the state regardless of its behaviour, will or interest."<sup>55</sup> The first approach is a descending

---

<sup>54</sup> See Oyvind Osterund, "The Narrow Gate: Entry to the Club of Sovereign States," *Review of International Studies*, 23:2 (1997), pp.167-184.

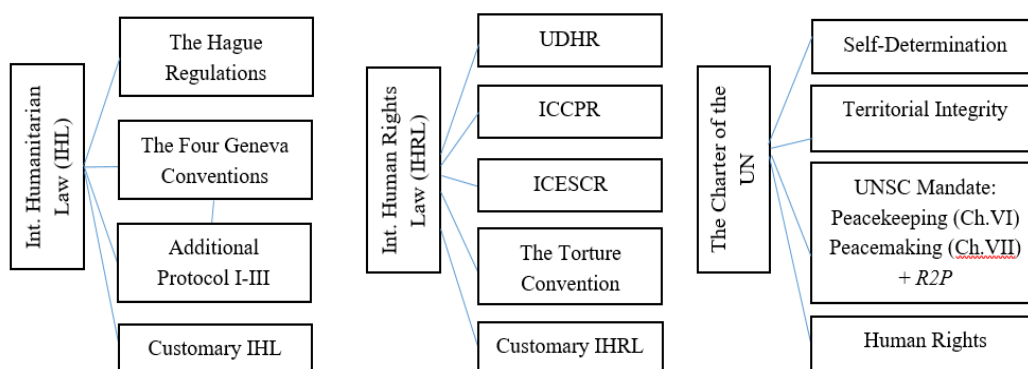
<sup>55</sup> Martti Koskenniemi, *From Apology to Utopia: The structure of the International Legal Argument* (Cambridge University Press, 2005), p.67.

approach, one that looks at states as equal subjects under a normative system that Koskenniemi refers to as utopian in its goals. The second is an ascending approach, which looks at states as possessive of rights e.g., ‘sovereignty,’ that do not cease to exist when delegating some of their powers to higher normative legal frameworks (apologism).<sup>56</sup>

As such, PIL is arguably “based on contradictory premises,” which makes it “over and under legitimizing: it is over legitimizing as it can be ultimately invoked to justify any behaviour (apologism), [and] it is under legitimizing because [it is] incapable of providing a convincing argument on the legitimacy of any practices (utopianism).”<sup>57</sup> Therefore, the task of the researcher is not to pick and choose which of those two approaches to follow, but to take the ascending as well as the descending approaches together since “neither correctness nor normativity can be consistently preferred.”<sup>58</sup>

What is then the present *content* of international norms that are relevant to the overall status as well as the governance of the territorial enclaves of NSAGs? Are such norms binding on all states, including the five Permanent Members of the UNSC, regardless of their will, power, and interests; or are they selectively applied and situation-specific? To answer those and other relevant questions, it is important to restate, as a point of departure, that this thesis deals with the provisions of ‘public,’ not ‘private’ international law. Under private international law state boundaries are arguably eroding as a natural consequence of the various processes of globalisation, but under public international law (PIL) state boundaries are conservatively preserved.

**Figure I:** Relevant Bodies of PIL: IHL, IHRL and the UN Charter<sup>59</sup>



<sup>56</sup> Koskenniemi (2005), 67

<sup>57</sup> Ibid,

<sup>58</sup> Ibid, pp.66-67.

<sup>59</sup> Source: Author.

## II.II. Public International Law and the Int. Status of the Territories of NSAGs

### II.II.a. Territorial Integrity, Self-Determination, Remedial Secession, and Humanitarian Interventions

When examining *macro*-level PIL in relation to the question of ‘territory,’ it is worth noting that the Charter of the UN obliges states to respect each other’s ‘territorial integrity,’ and it legitimises the use of force by one state against another within the restrictions of *jus ad bellum*. Such use of force is namely permitted only in situations of either ‘self-defence’ or as directed by the UNSC under Chapter VII of the UN Charter. Accordingly, the UN and its affiliated web of organisations have outlawed old state practice such as acquiring or annexing territory by the means of occupation, conquest, or an unchallenged display of effective control.<sup>60</sup> This is why Israel’s continued occupation of the Golan Heights, East Jerusalem, and the West Bank since 1967 is illegal under international law. As highlighted by the Friendly Relations Declaration of the UN General Assembly (1970): “no territorial acquisition resulting from the threat or use of force shall be recognized as legal,” and as subsequently underscored by Resolution 3314 of the UNGA: “the territory of a state shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another state in contravention of the Charter.”<sup>61</sup>

On 15 December 2015, the State Parties to the Rome Statute have further activated the International Criminal Court’s jurisdiction over the ‘crime of aggression’ as outlined by Article 8bis of the Rome Statute, which means the government officials of any state waging an unlawful war against another state could now face international criminal prosecution at the ICC.

At the same time, in situations of ‘non-international armed conflict’ the territorial controls of NSAGs are addressed by *macro* level frameworks of PIL such as the various provisions of the UN Charter in a highly contradictory manner, one that

---

<sup>60</sup> See John McHugo, “How to Prove Title to Territory: A Brief, Practical Introduction to the Law and Evidence,” in *Boundary and Territory Briefing*, 2:4 (1998), Clive Schofield (ed.), International Boundaries Research Unit (IBRU), University of Durham; also see O’Leary, “The Elements of Right-Sizing and Right-Peopling the State,” Ch.2 in O’Leary et. al. (2001), pp.16-73; and Haklai et. al. (2015).

<sup>61</sup> See United Nations General Assembly, “Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations,” Resolution A/RES/25/2625, October 1970; United Nations General Assembly, “Definition of Aggression,” Resolution A/RES/29/3314, December 1974. Both resolutions/documents are available at <http://www.un-documents.net>.

remarkably obscures the fate of impacted populations at the *meso*, community level. For instance, while under the UN Charter the ‘territorial integrity’ of the state must be respected at all times, the principle of ‘self-determination’ under the same Charter could suggest, for some, that the external boundaries of various states must be redrawn in order to accommodate the aspirations of ethnic minorities and subjugated groups in society, which would in turn violate the ‘territorial integrity’ of those same states.<sup>62</sup> The meaning of ‘territorial integrity’ under this view has notably been blurred by the 2010 Advisory Opinion of the International Court of Justice (ICJ) on Kosovo’s declaration of independence, when the ICJ held that the “[s]cope of the principle of territorial integrity is confined to the sphere of relations between states.”<sup>63</sup> In other words, in 2010 the ICJ avoided giving an answer for whether or not ‘self-determination’ can be used as the basis for ‘secession,’ and it instead advised that no presently-available legal international norms could be relied on to otherwise consider the Kosovan declaration of independence illegal.

However, a close reading of the UN Charter would instead lead one to the conclusion that anti-colonial, national liberation movements may invoke the right to ‘self-determination’ against their foreign occupiers, but not groups seeking to secede from already established states.<sup>64</sup> Even then, whether ‘self-determination’ can be effectively invoked against the central government of an already established state or against a foreign occupation such as Israel’s remains a highly political issue, one that is heavily influenced by the potentially conflicted interests of regional and global powers alike, especially those of the Permanent Members of the UNSC. For example, since 1972 the U.S. has vetoed at least 43 UNSC resolutions for “Israel’s sake.”<sup>65</sup>

---

<sup>62</sup> Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, Yale Law School (1991), p.178; also see UN Charter Ch.1 Art 2(1,4&7).

<sup>63</sup> ICJ, *Advisory Opinion* No.141 (2010), p.6 & 38, available online via <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>, (accessed 13/03/2021).

<sup>64</sup> See Ian Brownlie, “The Creation and Transfer of Territorial Sovereignty,” Ch. VII in *Principles of Public International Law* (Oxford University Press, 2003) pp.123–162; James Crawford, *The Creation of States in International Law* (Oxford University Press, 2007), pp.37-93 & 174-193; Peter Malanczuk, “Legal Consequences of Changes of Sovereignty over Territory (State Succession)” Ch. XI in *Akehurst’s Modern Introduction to International Law* (Routledge, 1997), pp.161-172; Jan Klabbers, *The Right to be Taken Seriously: Self-Determination in International Law* (Johns Hopkins University Press, 2006), pp.186-206; Janique Dubois, “Beyond Territory: Revisiting the Normative Justification of Self-Government in Theory and Practice,” *The International Indigenous Policy Journal*, 2011, pp.1-10; and Elden, (2009), pp.63-110 & 139-170.

<sup>65</sup> See for instance “This is How many Times the US has Used its Veto for Israel’s Sake,” *The New Arab*, 19/12/2017, available at <https://www.alaraby.co.uk/english/blog/2017/12/19/how-many-times-has-us-backed-israel-at-un>, (accessed 13/03/2021).

Meanwhile, the creation of new states based on ‘self-determination’ has since 1914 been facilitated according to the circumstances of what we can still separate into the following three cases, based on a review of Crawford’s book *The Creation of States under International Law* (2007) as well as my own analysis.

The first case is the case of territories that were administered by the Mandate System of the League of Nations, and subsequently the Trusteeship System of the United Nations. Those territories slowly gained their independence during the era of decolonisation and the Cold War, except Palestine, and they include ‘Class A’ Mandates that were relinquished by Turkey through Article 16 of the Treaty of Lausanne (1923), ‘Class B’ Mandates or African territories detached from Germany by Articles 118-119 of the Treaty of Versailles (1919), and ‘Class C’ Mandates or other German-administered territories detached by Articles 118-119 of the Treaty of Versailles (1919).<sup>66</sup> Last is the sub-category of territories detached as a result of WWII in accordance with Article 77(1) (B) of the UN Charter.

The second case pertains to ‘non-self-governing territories,’ or territories that either continued to be under foreign occupation or were acquired after 1945, which are separately dealt with under Chapter XI of the UN Charter. The relevant list of those territories that is given by Crawford (2007) includes more than one-hundred territories, many of which were also listed by the 1946 UNGA Resolution 66(1).<sup>67</sup> Some of those territories have already gained their independence e.g., British Cyprus, others were incorporated into the administering state e.g., Alaska, and others were merged into/transferred to a third state e.g., Sabah into Malaysia and the Cocos and Christmas Islands into Australia. Porto Rico and the Cook Islands resemble yet another example of how the status of a ‘non-self-governing territory’ was terminated, which is that of a formal association (Commonwealth) with the U.S and New

---

<sup>66</sup> On Palestine, the UNGA endorsed by its Resolution No 72/160 of 19 December 2017 the Palestinians’ right to ‘self-determination’ by a vote of 176 to 7, based on the 1967 borders of Gaza Strip, East Jerusalem, and the West Bank. UNGA Res.72/160 is available via [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/72/160](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/160), (accessed 13/03/2021). During its Tenth Emergency Special Session of 21 December 2017, the UNGA also passed Res. ES-10/19 on the Status of Jerusalem by a vote of 129 to 9, condemning the U.S. recognition of Jerusalem as the capital of Israel and requesting from UN Member States not to relocate their embassies from Tel Aviv to Jerusalem. This other UNGA Res. is available via [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/ES-10/19](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/ES-10/19), (accessed 13/03/2021). Also see Ian Lustick, *Unsettled States, Disputed Lands* (Cornell University Press, 1995); and Haklai et.al. (2015).

<sup>67</sup> See Appendix 3 in Crawford (2007), pp.743-756; also see Crawford (2007), Ch.14, “Non-Self-Governing Territories: The Law and Practice of Decolonization,” pp.602-647.

Zealand, respectively.<sup>68</sup> By 2005, seventeen ‘non-self-governing territories’ remained under foreign control, including British Islands in the Caribbean, Gibraltar, many Pacific Island states and Western Sahara.<sup>69</sup> The large majority of those remaining areas have still been granted membership in one or more regional and international organisations, despite their lack of formal independence.<sup>70</sup>

In both of case one and case two above, “the extent of a given territory [was] determined by its boundaries at the time of acquisition or (as the case maybe) independence,” and there was no “reversion to some earlier and superseded territorial formation.”<sup>71</sup> In other words, colonial boundary regimes were for the most part enforced once foreign rule had been relinquished. In this regard, Article 11 of the Vienna Convention on the Succession of States in Respect of Treaties (1978) states that “a succession of states does not as such affect: (a) a boundary established by a treaty; or (b) obligations and rights established by a treaty and relating to the regime of a boundary.”<sup>72</sup> As further stated The Badinter Commission, “whatever the circumstances, the right to ‘self-determination’ must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the states concerned agree otherwise.”<sup>73</sup> And according to the ICJ, “this is not a rule pertaining solely to one specific system of international law. It is a principle of general scope, logically connected with the phenomenon of the obtaining of independence, wherever it occurs.”<sup>74</sup>

The third case of state creation based on ‘self-determination’ is that of ‘remedial secession,’ which is arguably the most relevant case to the present analysis. Based on Crawford’s and my own assessment, examples under this category have thus far included Bangladesh (1971), Kosovo (2008), and South Sudan (2011). This is the

---

<sup>68</sup> See Crawford (2007), Ch.14, “Non-Self-Governing Territories: The Law and Practice of Decolonization,” pp.602-647.

<sup>69</sup> Ibid, p.634. On Western Sahara, see “Indigestible Lands? Comparing the Fates of Western Sahara and East Timor,” in O’Leary et. al. (2001), pp.290-317; Jacob Mundy & Stephen Zunes, “Moroccan Settlers in Western Sahara: Colonists of Fifth Column?” in Haklai et. al. (2015), pp.40-74.

<sup>70</sup> See Table 6 in Crawford (2007), p.635.

<sup>71</sup> Crawford (2007), pp.644-645.

<sup>72</sup> Quoted in Stuart Elden, “Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders,” *SAIS Review of International Affairs*, 26:1 (2006), pp.11-24, p.12.

<sup>73</sup> *Conference on Yugoslavia*, Arbitration Commission, Opinion No 2, 11 January 1992: 92 ILR 167, pp.168-9. Quoted in Crawford (2007), p.407.

<sup>74</sup> *International Court of Justice*, Case Concerning the Frontier Dispute between Burkina Faso/Republic of Mali, 11/12/1986. Available via <http://www.icj-cij.org/en/case/69/summaries>, (accessed 13/03/2021). Also see Suzanne Lalonde, *Determining Boundaries in a Conflicting World: The Role of Uti Possidetis* (McGill’s-Queen’s University Press, 2002).

evolving case whereby the population of a territory that had been subjected to systematic human rights violations amounting to war crimes, crimes against humanity and/or genocide becomes entitled to secede into its own state.<sup>75</sup> Steps towards those applications of the principle of ‘self-determination’ outside the colonial context started to be taken by the international community in the 1970s with the articulation of the ‘safeguard clause’ through Principle 5, paragraph 7 of the “Friendly Relations Declaration” of the UNGA (1970), which was subsequently underscored by the “Vienna Declaration” of the UN World Conference on Human Rights (1993). Those two important international proclamations respectively state the following on ‘self-determination:’

“nothing...shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and ‘self-determination’ of peoples...and thus possessed of a government representing the whole people belonging to territory *without distinction as to race, creed, or color [sec]*.”<sup>76</sup>

“It shall not be constructed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and ‘self-determination’ of peoples and thus possessed of a government representing the whole people belonging to the territory *without distinction of any kind*.”<sup>77</sup>

The key to understanding those developments in relation to the present analysis is the part of the above stated ‘safeguard clause’ that indicates if a state is able to exercise effective governance “without distinction” or discrimination “of any kind,” the right of the inhabitants of such a state to ‘self-determination’ is exercised “through their participation in the government of the state on the basis of equality.”<sup>78</sup> Contemporary state practice indicates that otherwise, or “in extreme cases of oppression,” as was the case in respect to Bangladesh (1971), Kosovo (2008), and

---

<sup>75</sup> On Bangladesh, also see Vali Nasr, “The Negotiable State: Borders and Power-Struggles in Pakistan,” Ch.6 in O’Leary et. al. (2001), pp.169-200.

<sup>76</sup> UN General Assembly, “Friendly Relations Declaration,” GA Resolution 2625 (XXIV), Annex, 24 October 1970, principle 5, paragraph 7; quoted in Crawford (2007), p.118. Emphasis added.

<sup>77</sup> United Nations World Conference on Human Rights, Vienna Declaration and Programme of Action, 25 June 1993, 32 ILM 1661; quoted in Crawford (2007), p.118. Emphasis added.

<sup>78</sup> Crawford (2007), pp.118-119.



South Sudan (2011), “international law allows ‘remedial secession’ to discrete peoples within a state and the ‘safeguard clause’ in the “Friendly Relations Declaration” and the “Vienna Declaration” recognizes this, even if indirectly.”<sup>79</sup>

As such, it is possible to argue that the ‘safeguard clause’ brought to the fore previous attempts to apply ‘self-determination’ to oppressed minority groups within the boundaries of already established states, which were first made by the “Rapporteurs Report” in the *Aaland Islands* case (1921) before the League of Nations. Here, it was stated that ‘self-determination’ as a right to secede applies “when the state lacks either the will or the power to enact and apply just and effective guarantees” in pertinence to the human rights of minority groups.<sup>80</sup> However, very little development followed in this regard until the 1970s, or until after the process of gaining independence in the former colonies themselves was for the large part completed.

A reference to the *Quebec Secession* case before the Canadian Supreme Court (1998) could further illustrate the scope of ‘remedial secession’ vis-à-vis the ‘safeguard clause.’ Here, the Government of Canada stated that the ‘safeguard clause’ “was a safeguard against secession for those states that complied with it.” The Court concurred that those safeguards on the ‘territorial integrity’ of states are normally fulfilled through “internal ‘self-determination’ - a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state.”<sup>81</sup> In the Court’s view, “the right to external ‘self-determination’” or the right to break away from already established states “only arose in ‘the most extreme of cases and, even then, under carefully defined circumstances.’”<sup>82</sup> “A state whose government represents the whole of the people or peoples resident within its territory on a basis of equality and without discrimination, and respects the principles of ‘self-determination’ in its own internal arrangements,” continued the Court, “is entitled to the protection under international law of its ‘territorial integrity.’”<sup>83</sup> Therefore,

---

<sup>79</sup> Crawford (2007), p.119.

<sup>80</sup> “Report of the Committee of Rapporteurs” (Beyens, Calonder, Elkens), 16 April 1921: LN Council Doct. B7/2I/68/106 [VII], 22-3. Quoted in Crawford (2007), p.111.

<sup>81</sup> Supreme Court of Canada, *Quebec Secession* (1998), 115 ILR 536, 582 (para 126).

<sup>82</sup> Crawford (2007), p.119, quoting the Supreme Court of Canada, *Quebec Secession* (1998), 115 ILR 536, 584 (para 126).

<sup>83</sup> Supreme Court of Canada, *Quebec Secession* (1998), 115 ILR 585 (para 130). Qtd in Crawford (2007), p.120.

Klabbers (2006) underscores that the right to ‘self-determination’ must be looked at as part of a bundle of “procedural rights: a right to be heard and to be taken seriously.”<sup>84</sup> In other words, outside the colonial context of cases one and two, a people’s right to ‘self-determination’ is normally fulfilled through strengthening domestic legal systems to be more inclusive and more representative. Only the three previously stated exceptions have thus far been permitted to this rule.

That said, the question of whether the suppression of any given secessionary attempt is the equivalent of denying another possible ‘remedial secession’ case requires an examination of the unique circumstances of each individual case. Such a study could crucially result in the recognition of a pattern whereby Great Power politics plays the most decisive role in either granting or withholding ‘remedial secession’ irrespective of the humanitarian realities on the ground. For instance, regardless of Russia’s suppression of Chechnya’s attempt at secession in the 1990s, the human rights situation in Chechnya still did not lead to the creation of an independent Chechnyan state. It is also highly unlikely that any violent suppression of the Scottish call for independence by Britain would result in the creation of an independent Scottish state. Like Russia, Britain is a Permanent Member of the UNSC, and it therefore possesses the right to veto any possible international interventions on behalf of an oppressed segment of its population. Britain is also a member of NATO, which is the entity that carried out the so-called “illegal but legitimate” humanitarian intervention in Kosovo when such a move was being blocked by Russia at the UNSC.<sup>85</sup>

The developments under the *third case* of ‘remedial secession’ have intriguingly come about in close parallel to the codification process of the ‘Responsibility to Protect’ (R2P) and relevant international legal doctrine on humanitarian interventions. While international law recognises that the ‘territorial integrity’ of states must be inviolable at all times, the “spatial extent” of a state’s sovereignty within its external boundaries has for Elden become “contingent.”<sup>86</sup> In accordance with R2P the international community may indeed intervene under the pretext of protecting the human rights of the citizens of a given state, if at the *meso*, community

---

<sup>84</sup> Jan Klabbers, *The Right to Be Taken Seriously: Self-Determination in International Law* (Johns Hopkins University Press, 2006), p.202.

<sup>85</sup> The Independent International Commission on Kosovo, *The Kosovo Report* (Oxford University Press, 2000), p.4.

<sup>86</sup> See Elden (2009).

level of that state the official government has failed to do so.<sup>87</sup> The UNSC's authorisation for the use of force in Darfur, Sudan in 2006 and in Libya in 2011 are the only two instances thus far when R2P was officially invoked against a UN Member State.<sup>88</sup>

Importantly, however, R2P as unanimously approved by the Heads of States at the 2005 World Summit does not contain any measures for the division of states, although when this principle was invoked in the case of Libya the result was the end of Qaddafi's regime and a power vacuum that gave various NSAGs the freedom to takeover major parts of Libya's territory. The rapid development of international norms on humanitarian interventions and R2P has been widely described in the literature as a *Grotian moment*,<sup>89</sup> which is a term coined by Richard Falk in 1985 and is defined by Michael Scharf as ““a transformative development in which new rules and doctrines of customary international law emerge with unusual rapidity and acceptance.””<sup>90</sup> However, while R2P was codified at the 2005 World Summit, similarly to how ‘sovereignty’ was allegedly codified at Westphalia in 1648, parallel developments under ‘remedial secession’ have yet to reach such a level of commitment by the international community.

The call for cooperation amongst states for the purposes of protecting human rights is still not a new development, which has certainly aided the unanimous approval of R2P by the World's Heads of State in 2005. For instance, in defining the purpose of the UN, Article 1 of the UN Charter includes in its third paragraph a verse on “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” In addition, Article 55(c) of the Charter affirms that the UN will ensure the promotion of “universal respect for, and observance of, human rights and fundamental freedoms,” and Article 56 states that “all Members pledge themselves to take joint and separate action in cooperation with the Organisation for the achievement” of those ends. Thus, while

---

<sup>87</sup> To learn more about the development of this norm, please visit the blog of the *International Coalition for the Responsibility to Protect* via <https://icrtopblog.org/about/>, (accessed 14/03/2021). Also see UNGA Res.60/1 para.138-139, UN Doc A/RES/60/L.1 (15/09/2005).

<sup>88</sup> For a discussion, see Jess Gifkins, “R2P in the UN Security Council: Darfur, Libya and Beyond,” *Cooperation and Conflict* 51:2 (2016), pp.148-165. Also see UNSC Res.1674, para 4, UN Doc S/RES/1674 (24/04/2006).

<sup>89</sup> See Milena Sterio, “A Grotian Moment: Changes in the Legal Theory of Statehood,” *Denver Journal of International Law and Policy* 39:209 (2011), pp.213-214.

<sup>90</sup> Qtd in Milena Sterio (2011), p.211.

contradictory to other provisions of the Charter such as those pertaining to ‘non-intervention,’ humanitarian interventions are arguably still in line with the intended purposes of the UN System itself e.g., to preserve the post-WWII global territorial status quo.

Humanitarian interventions have indeed been carried out by the international community through the UNSC at various junctures preceding the adoption of R2P. In their chapter in *The Politics of International Law*, Wayne Sandholtz and Alec Stone Sweet examine the debates of the UNSC that preceded humanitarian interventions in the following nine cases between 1990 and 2004: Liberia, Iraq (the case of the safe havens for Kurds), Bosnia, Somalia, Haiti, Rwanda, Sierra Leone, Kosovo, and East Timor.<sup>91</sup> The authors crucially underline that an international precedence regarding humanitarian interventions had already been established before the 2005 World Summit, and that “once the Security Council has permitted intervention in one case, it becomes much more difficult to argue that the rules prohibit intervention in a similar instance.”<sup>92</sup> This is so the case, argues Sandholtz and Stone Sweet, despite the insistence of various members of the UNSC “to deny the notion that their decisions should be constrained” by what an earlier session of the Council may have determined, and their consistent attempt to “maximise the normative protections of [their] state sovereignty.”<sup>93</sup> Examples of how this has taken place include the insertion of exclusionary clauses in states’ voting statements on the subsequent binding effect of their votes on their future governments.<sup>94</sup>

Therefore, the real significance of the R2P development lies in how it granted the UNSC the power to authorise the use of force in situations of severe human rights violations. In other words, R2P has emboldened the imperial reach of the Permanent Members of the UNSC, and it has made their interventions in the domestic affairs of other states *de iure*, or legitimate as a matter of law, not merely as a matter of fact. To use the terminology of prominent social scientist Bourdieu, the adoption of R2P has emboldened the ‘symbolic power’ and authority of the UNSC as it added legitimacy

---

<sup>91</sup> Wayne Sandholtz and Alec Stone Sweet, “Law, Politics, and International Governance,” Ch.10 in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press, 2004), pp.238–271.

<sup>92</sup> Ibid, p.259.

<sup>93</sup> Ibid, p.260.

<sup>94</sup> Ibid.

to its already established practices, and acceptance of them, by the wider international community.<sup>95</sup>

#### II.II.b. Statehood as a Result of the Breakup of Political Unions, and the Case of Unrecognised *de facto* States

Meanwhile, since 1914, a significant proportion of state creation has come about because of the breakup of political unions, be they unitary state systems and/or Empires. The creation of states under this *fourth case* has not exactly reflected an exercise of ‘self-determination’ in the manner explained by the first two of the previously highlighted three cases (the colonial context), nor has it exactly come about because of the evolving *third case* of ‘remedial secession.’ Under this *fourth case*, or second category outside the colonial context, we can add Crawford’s (2007) list of seven examples since 1945, excluding “divided states” that were formed in the aftermath of WWII (North & South Korea and East Germany). Those seven broad examples include: Senegal (1960), Singapore (1965), the three Baltic States: Latvia, Lithuania and Estonia (1991); the other eleven successor states of the USSR: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kirgizstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan (1991); the five successor states of Yugoslavia: Slovenia, Macedonia, Croatia, Bosnia-Herzegovina, and the Federal Republic of Yugoslavia (Serbia and Montenegro) (1991-2); Czech Republic and Slovakia (1993); and Eritrea (1993).<sup>96</sup> One could now also add Montenegro (2006) to this list.

State practice under the UN System indicates that in respect of this *fourth case* of state creation, if the government in question “maintained its opposition to the secession, such attempts have gained virtually no international support or recognition, and this has been true even when other humanitarian aspects of the situation have triggered widespread concern and action.”<sup>97</sup> The consent of the previous government of the state was certainly evident with respect to Senegal,

---

<sup>95</sup> For a discussion on how ‘symbolic power’ could be used to study the UNSC, see Ian Hurd, “Legitimacy, Power, and the Symbolic Life of the UN Security Council,” *Global Governance*, 8:1 (2002), pp.35-51.

<sup>96</sup> Crawford (2007), p.391. Please also see Crawford (2007), pp.392-403 for more information on each of those specific situations; and Alexander J. Motyl, “Reifying Boundaries, Fetishizing the Nation: Soviet Legacies and Elite Legitimacy in the Post-Soviet States,” Ch.7 in O’Leary et. al. (2001), pp.202-221.

<sup>97</sup> Crawford (2007), p.403.

Singapore, Eritrea, and Montenegro. Considerable importance when thinking of the independence of the Baltic States was also attached to “the indication of consent given by the State Council of the Soviet Union.”<sup>98</sup> Following the collapse of the Soviet Union, an agreement amongst all parties concerned further formed the basis of the creation of states in Eastern and Central Europe, including the case of Czechoslovakia. Those agreements were then followed by the international recognition of the newly created states.

An exception to this latter rule is the case of Yugoslavia, when “the emergence of the constituent republics was treated as a consequence of the dissolution of Yugoslavia,” the failure of the political union, “and early international recognition was seen...as a way of containing the violence and limiting the issues to be resolved.”<sup>99</sup> In other words, no prior consent formed the basis of independence for Yugoslavia’s constituent states. “If it becomes clear that the process of dissolution of the state as a whole is irreversible,” states Crawford, “the consent of the government of the predecessor state may cease to be required for the separation of its constituent parts. In such a case, that government will itself be in the process of dissolution and may have ceased to represent the former state.”<sup>100</sup> At the same time, the ‘Yugoslavia exception’ has arguably been made to safeguard European interests, given the far-reaching impact of Yugoslavia’s dissolution on peace and stability in Europe. In other words, exceptions to established international norms are only permitted when and if they serve Great Power interests, similarly to how prominent international norms such as ‘non-intervention’ and ‘sovereignty’ were officially amended with the passage of R2P to advance the rule of the UNSC and its five Veto Powers or Permanent Member States.

With the present situation in Yemen and Libya in mind, the preceding analysis could indicate that the two countries are disintegrating in a manner resembling either the breakup of Yugoslavia or that of the former political unions of present-day Senegal, Singapore and/or Montenegro (the *fourth case*). The specific situation of Yemen could still be classified under the *third case* of ‘remedial secession’ given the severe humanitarian crisis that is unfolding because of it. However, the determination of

---

<sup>98</sup> Crawford (2007), p.416.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid, p.418.

whether any declarations of independence have been made within a given part of the pre-existing subdivisions of those two states in MENA necessitates a closer examination of on the ground developments since 2011. Such a ‘process-tracing’ exercise indeed forms the basis of linking this Chapter of the Literature Review to Chapters V & VI of the thesis on Yemen and Libya, respectively. In the meantime, one could only postulate that an exception to *uti possidetis juris* in the Yemeni case, which would have otherwise permitted a regression to the British legacy of the 1967 borderline between North and South Yemen, is currently being made as the preservation of the 1990-political union of those two parts of Yemen is instead being preferred due to the weighty interests of external players that are also at stake. Irrespective of the humanitarian consequences.

In parallel to the *fourth case* of state creation because of the breakup of political unions, which has mostly materialised after the end of the Cold War, a second *Grotian moment* pertaining to the four criteria of statehood under the Montevideo Convention (1933): ‘territory,’ ‘government,’ ‘population’ and ‘the capacity to enter into international relations’ has been identified by Milena Sterio (2011). As a sub-category of the fourth criteria or the ‘capacity to enter into international relations,’ Sterio identifies the need for recognition by both regional powers and the Great Powers of the world.<sup>101</sup> The reasons for this are outlined by Sterio to include, amongst others, the “emergence and continued existence” of *de facto* states such as Taiwan, Northern Cyprus, South Ossetia, Abkhazia and North Kosovo.<sup>102</sup> In the context of the post-Cold War order, this is arguably the result of what Mary Kaldor labels “New Wars” by way of emphasising the ethnic characteristics of such conflicts and distinguishing their ‘non-international’ nature from pre-WWII interstate conflicts.<sup>103</sup> At the *meso* level, the populations of those territorial enclaves are presently placed under various administrative regimes that are addressed by neither the domestic legal system of their former states, nor by *macro & micro* bodies of PIL.

With Sterio’s emphasis being placed on the need for recognition, Crawford (2007) tellingly excludes such highly complex situations from his otherwise extensive

---

<sup>101</sup> Milena Sterio (2011), p.210.

<sup>102</sup> Ibid, p.220 & p.226. Also see O’Loughlin et. al. (2014), and on Cyprus, see especially Neophytos Loizides, “Settlers, Mobilization, and Displacement in Cyprus: Antinomies of Ethnic Conflict and Immigration Politics,” Ch.8 in Haklai et. al. (2015), pp.168-191.

<sup>103</sup> Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era* (Polity Press, 1999).

account on *The Creation of States in International Law*,<sup>104</sup> stopping at the provision of the following list of unsuccessful cases of secession since 1914. These include: Tibet (China), Katanga (Congo), Biafra (Nigeria), Kashmir (India), East Punjab (India), The Karen and Shan States (Burma), the Turkish Federated State of Cyprus (Cyprus), Tamil Elam (Sri Lanka), Somaliland (Somalia), Bougainville (Papa New Guinea), Kurdistan (Iraq & Turkey), Republika Srpska (Bosnia Herzegovina), Chechnya (Russian Federation), Abkhazia (Georgia), South Ossetia (Georgia), Anjouan (the Islamic Republic of the Comoros), Gagauzia (Moldova), Nagorno-Karabakh (Azerbaijan), and the Democratic Republic of Yemen (a.k.a. South Yemen).<sup>105</sup>

Besides the more recent changes in the situation of Kosovo and South Sudan, which I have taken the liberty to remove from Crawford's above list of unsuccessful secessionary attempts, the situation in the former Democratic Republic of Yemen (South Yemen) is also changing in the aftermath of the 2011 Yemeni Uprisings. Evidence by the developments on the ground may even suggest that it is now the Houthis that are attempting to secede in Yemen, given their *coup d'état* against the Saudi-supported government of President Hadi in 2014. This final list by Crawford (2007), certainly excludes those other situations where "support for secession has existed in a territory but has not risen to the level of a unilateral declaration of independence."<sup>106</sup> Other examples here include the Serbian-autonomous region in North Kosovo and the Kurdish region in Syria, and it could as well be the case in respect to the five different sub-administrative units of present-day Yemen and Libya, pending further examination.

However, the situation in North Kosovo remains in flux, especially with the controversial 2018 land swap deal between Serbia and Kosovo closely in mind. In addition, when compared to the lack of recognition that the Turkish control of North Cyprus has received from the international community since 1974, and/or that Abkhazia and South Ossetia received following their invasion by Russia in 2008; the level of recognition that was granted to Kosovo by the Western-allied international community points to the prominence of Great Power politics in the determination of

---

<sup>104</sup> Crawford (2007), p.419.

<sup>105</sup> Ibid, p.403. Please see Crawford (2007), pp.404-415 for a more detailed discussion on some of those cases.

<sup>106</sup> Ibid, p.403.



the future status of such territorial enclaves and their respective populations. Those political considerations are arguably even more detrimental than any possible *meso* level considerations that could be given to the fate of the populations living therein.

### **II.III. Public International Law and the Governance of the Territories of NSAGs**

#### II.III.a. IHL and the Territorial Possessions of NSAGs

The preceding analysis of *macro*-level international norms is important for setting out the most relevant international legal precedence to the overall status of the territorial enclaves of NSAGs in Yemen and Libya, as deficient as such an account could be due to Great Power politics. As 19<sup>th</sup> Century German doctrine importantly established, “the concept of people” has always “identified itself with the state,”<sup>107</sup> and if the legal status of a people’s territory is in flux, the humanitarian aspects of their situation will continue to be severe. While the overall status of a people’s territory is still undecided, it is remarkably unclear how their territorial entities should be administered at the *meso*, community level until a lasting peace agreement is reached by all warring parties. In other words, if the international community does not recognise the legal systems of NSAGs, how else might their territorial enclaves be governed? This second consideration, to which the focus of the present Literature Review now turns, is key for prioritising the humanitarian aspect of the situation over any other possible considerations.

Since the situation in both Yemen and Libya is a situation of armed conflict, some insights could be gained from the *micro*-level body of PIL that is relevant to situations of armed conflict: International Humanitarian Law (IHL) or *jus in bello*. IHL sets out the parameters for the use of force in times of war. It notably assigns the status of ‘protected persons’ to civilians, the sick, the wounded and medical personnel, and it stipulates that those persons must not be targeted directly by any warring parties at all times. If any civilians are caught in harm’s way, then targeting their inhabited areas is lawful under IHL only if the military advantage that is gained by doing so outweighs the cost in civilian life, and if sufficient measures have been taken to minimise civilian casualties. While International Human Rights Law (IHRL) and IHL represent different embodiments of rights that every human being is entitled

---

<sup>107</sup> Nuzzo, in Koskeniemi et. al. (2017), p.263.

to, IHL is the *lex specialis* body of law that is only applicable in times of war and IHRL applies in peacetime. Many provisions of IHRL still apply in war time, which are the provisions that are pertinent to “non-derogable” rights, or rights that must always be protected, including the right to life and freedom from torture.

“Non-state armed groups” as a term is based on the language of IHL treaties, and it is herein used to describe non-state entities that are taking part in hostilities in situations of armed conflict. Under IHL, the classification of armed conflict as either ‘international’ or ‘non-international’ is an essential first step for the identification of applicable law, and thereby the specification of the rights and obligations of the different parties to an armed conflict. ‘Non-international armed conflict’ is governed by Common Article 3 and Additional Protocol II (APII) to the Four Geneva Conventions. For an armed conflict to be classified as ‘non-international’ and be governed by IHL (as opposed to domestic law), the NSAGs in question must possess certain characteristics and degree of organisation. In the reading of the International Committee of the Red Cross (ICRC) of applicable law, the armed confrontation must also reach a certain threshold of intensity.<sup>108</sup>

According to Article 1(1) of APII, for a conflict to be governed by this Protocol the fighting must take place “in the territory of a High Contracting Party, between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, *exercise such control over a part of its territory* as to enable them to carryout sustained and concerted military operations and to implement this Protocol.”<sup>109</sup> Article 1(2) of APII further underlines that “this Protocol, shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.” Those other situations are governed by the domestic legal frameworks of the relevant states, and they therefore fall outside the scope of international law in and by itself. Correspondingly, non-territorial armed groups fighting within the boundaries of State Parties to the Geneva Conventions (193 UN Member States in addition to the Holy Sea, the State of Palestine, and the Cook Islands) fall outside the

---

<sup>108</sup> 32 International Conference “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts,” ICRC (32IC/15/11), Geneva, Switzerland 8-10/12/2015, p.8.

<sup>109</sup> Emphasis added.

scope of this thesis. Table 1 on the following page still provides an indication as to what those other types of NSAGs could be.

In addition to the ‘territorial dimension,’ what the ICRC labels as the ‘intensity threshold’ for IHL to come into force could be viewed as a protective measure, a second form of the ‘safeguard clause’ over the ‘sovereignty’ and/or the ‘territorial integrity’ of the relevant state. If Chapter VII of the UN Charter authorises the UNSC to convene and take appropriate measures to address a situation of significant impact on ‘international peace and security,’ including the possible authorisation of the use of force, the two criteria together make such an intervention an avenue of last resort and they separate a situation presented by a terrorist attack from that of a civil war. However, it is ultimately up to the UNSC to decide when and if such a ‘line in the sand’ has been crossed, which is a reality that often underlines the prominence of the security interests of the Permanent Members of the UNSC instead.

**Table 1:** A Possible Illustration of the Different Types of NSAGs<sup>110</sup>

	Change vs. status quo	Territorial vs. non-territorial	Physical vs. psychological use of violence	Political vs. economic motivation
Rebels, Guerrillas	Change	Territorial	Physical	Political
Militias, Para-militaries	Status quo	Territorial Non-territorial	Physical Psychological	Political
Clan chiefs, Big men	Status quo	Territorial	Physical	Political
Warlords	Status quo	Territorial	Physical Psychological	Economic
Terrorists	Change	Non-territorial	Psychological	Political
Criminals, Mafia, Gangs	Status quo	Non-territorial	Psychological	Economic
Mercenaries, PMCs/PSCs	Indifferent	Territorial	Physical	Economic
Marauders, ‘sobels’	Indifferent	Non-territorial	Psychological	Economic

At present 168 states have signed and ratified APII relevant to ‘non-international armed conflict,’ with the US, Turkey, Syria, Israel, Iraq, Iran, Pakistan, India, and Somalia being the leading exceptions.<sup>111</sup> With regards to those other states that have

<sup>110</sup> Ulrich Schneckener, “Armed Non-State Actors and the Monopoly of Force,” p.14 in Alyson Bailes, Ulrich Schneckener and Herbert Wulf, “Revisiting the State Monopoly on the Legitimate Use of Force,” *Geneva Centre for the Democratic Control of Armed Forces (DCAF)*, Policy Paper No.24 (2007) pp.10-18.

<sup>111</sup> For a complete list of state parties to APII, please visit: <https://ihl-databases.icrc.org/ihl/INTRO/475?OpenDocument>, (accessed 13/03/2021).

yet to sign and/or to ratify APII, Common Article 3 to the Four Geneva Conventions is the only applicable legal instrument. At the same time, in its study of Customary IHL, or IHL rules that apply to all states regardless of whether or not they have signed and ratified the Four Geneva Conventions and their Additional Protocols, the ICRC has determined that 149 out of 161 rules identified by this study apply to all situations of ‘non-international armed conflict.’<sup>112</sup> Beyond this, there is the consideration that Common Article 3 to the Geneva Conventions is more universally ratified than APII, and the discussion surrounding the otherwise Customary IHL status of most of the provisions of APII.

Crucially, however, IHL does not contain any substantial frameworks that are directly applicable to the *meso*, administrative level of the territories of NSAGs in situations of ‘non-international armed conflict,’ except for the following, limited provisions of APII. Article 4(3)(a) on the obligation of NSAGs to ensure children’s access to education, Article 5(2) on the right of detainees to health and medical care, and Article 17(1) on the obligation to ensure that internally displaced people (IDPs) have ‘satisfactory conditions of shelter, hygiene, health, safety and nutrition.’ In those situations of civil war, the relevant provisions of IHL (Common Article 3 and APII) are largely concerned with the regulation of armed combat between the warring parties and they do not specify how, exactly, should NSAGs administer, as fighting takes place on the outskirts of towns, the provision of vital services such as public order, security for the affected population, and civil governance duties. This particular reading of IHL has most recently been reinforced by the corresponding section of the December 2019 report of the ICRC.<sup>113</sup>

Such a dilemma could be better illustrated by comparing the territorial controls of NSAGs in a situation of a ‘non-international armed conflict’ to state-occupied territories in situations of ‘international armed conflict.’ The administration of the latter is indeed defined by the Laws of Occupation that are in turn enshrined by The

---

<sup>112</sup>“Customary International Humanitarian Law,” *ICRC*, 2005 available via [http://www.redcross.int/EN/mag/magazine2005\\_2/24-25.htm](http://www.redcross.int/EN/mag/magazine2005_2/24-25.htm); for the complete list of 161 rules identified by the ICRC, please visit <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>, (accessed 13/03/2021).

<sup>113</sup> “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70<sup>th</sup> Anniversary of the Geneva Conventions,” *ICRC*, 4427 ebook, Geneva (December 2019), pp.52-53, available at <https://www.icrc.org/en/publication/4427-international-humanitarian-law-and-challenges-contemporary-armed-conflicts#>, (accessed 13/03/2021).

Hague Regulations and The Fourth Geneva Convention. Those rules of belligerent occupation include the obligation of the occupation authorities to “restore public order and safety;” to ensure “sufficient hygiene and public health standards” are provided, and to secure the provision of “food and medical care to the population under occupation.”<sup>114</sup>

Meanwhile, IHL’s provisions for the delivery of humanitarian assistance to civilian populations caught in the middle of an on-going situation of ‘non-international armed conflict’ are squarely within the *meso* scope of this thesis. This is even more so the case given the TWAIL-based critique of humanitarian aid agencies in the existing literature as instruments of an imperial global governance system, and the present endorsement of such a critique.<sup>115</sup> In this regard, the ICRC states that “apart from measures that the belligerents may take to help the population under their control, humanitarian action by impartial humanitarian organisations, including the ICRC, remains essential in order to reduce vulnerabilities and alleviate the needs of persons affected by an armed conflict.”<sup>116</sup> Humanitarian engagement with NSAGs that are parties to a ‘non-international armed conflict’ was indeed “a task foreseen and expected from the ICRC,” as stipulated for by Common Article 3 of the Geneva Conventions.<sup>117</sup> Importantly, however, and as Florence Nightingale forewarned before the creation of the ICRC in 1863, “humanitarianism relieves the warring parties of many of the burdens (administrative and financial) of waging war, diminishing the demands of governing while fighting, cutting the cost of sustaining casualties, and supplying the food, medicine, and logistical support that keep armies going.”<sup>118</sup>

According to the ICRC, IHL provisions governing humanitarian action are made up of the following four pillars. 1) All warring parties are under a primary obligation to

---

<sup>114</sup> For more information on the Laws of Occupation under IHL, please see, “Occupation and International Humanitarian Law: Questions and Answers,” *ICRC*, 04/08/2004, available via <https://www.icrc.org/eng/resources/documents/misc/634kfc.htm>, (last accessed 13/03/2021).

<sup>115</sup> See B. S. Chimni, “Globalisation, Humanitarianism and the Erosion of Refugee Protection,” *Journal of Refugee Studies*, 13:3 (2000), pp.243-263 & B. S. Chimni, “International Institutions Today: An Imperial Global State in the Making,” *European Journal of International Law*, 15:1 (2004), pp.1-37.

<sup>116</sup> ICRC, 32 International Conference (2015), p.26.

<sup>117</sup> *Ibid*, p.21.

<sup>118</sup> Qtd in Philip Gourevitch, “Can You Provide Humanitarian Aid Without Facilitating Conflict?” *The New Yorker*, 04/10/2010, available at: <https://www.newyorker.com/magazine/2010/10/11/alms-dealers>, (accessed 14/03/2021).

meet the needs of the populations that fall under their control. 2) Particularly when the needs of populations affected by an armed conflict are not fulfilled, humanitarian organisations have the right to offer their impartial services. 3) This impartial humanitarian action is subject to the consent of the relevant parties to the conflict. And lastly, 4) “once impartial humanitarian relief schemes have been agreed to, the parties to the armed conflict, as well as all states that are not a party thereto, are expected to allow and facilitate the rapid and unimpeded passage of the relief schemes, subject to their right of control.”<sup>119</sup>

At the same time, the success of humanitarian missions depends largely on “the possibility of rapid and unimpeded access to persons in need,” which “remains a significant challenge for many humanitarian organisations.”<sup>120</sup> In particular, Common Article 3 does not specify whose consent a humanitarian aid organisation must seek in order to gain access to populations in need.<sup>121</sup> It would be quite intuitive to think that gaining access to areas controlled by NSAGs would require the consent of those groups, but Article 18(2) of APII only necessitates the consent of the relevant High Contracting Party, i.e. the state party on whose territory the ‘non-international armed conflict’ is taking place. This is because NSAGs do not have an ‘international personality,’ or the capacity to form international relations, in an international system that is made up of sovereign, independent states. In other words, until the interests of involved hegemonic powers permit the control of such groups over their respective territories to be upgraded from *de facto* or a fact on the ground to a *de iure* status, they are not granted such a level of recognition by the legally binding language of the Geneva Conventions.<sup>122</sup>

Additional complications for humanitarian action arise from the self-contradictory manner of how the UNSC calls for such urgent humanitarian action, while simultaneously designating some NSAGs that are parties to a ‘non-international armed conflict’ as terrorist organisations.<sup>123</sup> The inclusion of some NSAGs in the

---

<sup>119</sup> ICRC, 32 International Conference (2015), p.27.

<sup>120</sup> Ibid, p.26.

<sup>121</sup> Ibid, p.28.

<sup>122</sup> Ibid, also see the ICRC’s 2016 Handbook on IHL and NIAC: <https://casebook.icrc.org/law/non-international-armed-conflict>, (accessed 14/03/2021).

<sup>123</sup> For more information on IHL and terrorism, see specifically “International Humanitarian Law and Terrorism: Questions and Answers,” ICRC, 01/01/2011, <https://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm> (accessed 14/03/2021).

lists of terrorist organisations that are maintained by the UN, regional organisations such as the EU and individual states indeed carries the potential of criminalising “a range of humanitarian actors and their personnel, and may create obstacles to the funding of humanitarian activities.”<sup>124</sup> This is more so the case when keeping in mind that such a situation is usually intertwined with a prohibition of “unqualified acts of ‘material support,’ ‘services’ and ‘assistance to’ or ‘association with’ terrorist organisations.”<sup>125</sup> The prohibition of such activities using broad language is in fact contrary to the spirit of the 1949 Geneva Conventions themselves, as it prevents organisations such as the ICRC from carrying out their mandated duties to facilitate “visits and material assistance to detainees suspected of, or condemned for, being members of a terrorist organization;” to provide first aid training and IHL dissemination services to members of organisations that are classified as terrorist, or even to launch assistance programs for internally displaced persons (IDPs) “where individuals associated with terrorism may be among the beneficiaries.”<sup>126</sup> At the *meso* level of such situations, affected populations therefore become entirely at the mercy of NSAGs and their various systems of governance; Sharia-based, tribal or otherwise.

In terms of the duration of its applicability, the Geneva Conventions and API stipulate that IHL continues to apply until “the general close of military operations,” except where it is relevant to “persons whose final release, repatriation or re-establishment takes place thereafter.”<sup>127</sup> At the same time, in many situations of armed conflict a general cessation of hostilities is not easy to determine, which has prompted the International Criminal Tribunal for Yugoslavia (ICTY) to decide in the infamous *Tadic* case that IHL continues to apply “until a general conclusion of peace is reached, or in the case of internal armed conflict, until a peaceful settlement is achieved.”<sup>128</sup> Accordingly, the ICRC holds that “hostilities must end with a degree

---

Also see “The Relevance of IHL in the Context of Terrorism,” *ICRC*, 01/01/2011, available via <https://www.icrc.org/eng/resources/documents/faq/terrorism-ihl-210705.htm>, (accessed 14/03/2021).

<sup>124</sup> ICRC, 32 International Conference (2015), p.20. Also see “Pilot Empirical Survey Study on the Impact of Counterterrorism Measures on Humanitarian Action,” *Harvard Law School - Program on International Law and Armed Conflict* (HLS PILAC), March 2017.

<sup>125</sup> ICRC, 32 International Conference (2015), p.20.

<sup>126</sup> *Ibid*, pp.20-21.

<sup>127</sup> *Ibid*. Also see Article 6(2) of the Third Geneva Convention, Article 6(4) of the Fourth Geneva Convention, and Article 3(b) of Additional Protocol I.

<sup>128</sup> *Tadic*, ICTY A. Ch.2.10.1995 para.70.

of stability and permanence for an [international armed conflict] to be deemed terminated.”<sup>129</sup> As for ‘non-international armed conflict,’ the ICRC is of the opinion that a “‘peaceful settlement’ should be interpreted as a situation where a factual and lasting pacification of the NIAC has been achieved.”<sup>130</sup>

The determination of when a ‘non-international armed conflict’ has ended is “less straightforward” than that of an international armed conflict due to the “intensity threshold” that is required in order to classify an internal armed conflict as ‘non-international’ in the first place.<sup>131</sup> In this regard, one view is that “it would be sufficient for the hostilities to fall below the threshold of ‘protracted armed violence’ with a certain degree of permanence and stability.”<sup>132</sup> Another view is that the applicability of IHL comes to an end, “when at least one of the opposing parties to the conflict has disappeared or [it] no longer meets the level of organization required by IHL.”<sup>133</sup> For example, it loses its control over territory. Yet, a third view is that a conflict of a ‘non-international’ nature would cease to exist “when the hostilities have ceased and there is no real risk of their resumption even though the level of organisation of the parties is still met.”<sup>134</sup> The underlying assumption in all of these scenarios is that the hostilities must completely end, “without real risk of resumption,” for the application of IHL and its humanitarian framework to come to an end.<sup>135</sup> This could crucially leave out *de facto* states that are born out of a ‘non-international armed conflict’ e.g., Somaliland from the scope of IHL’s applicability as limited such an applicability to humanitarian assistance as it could possibly be.

Conclusively, while the international status of the territorial enclaves of NSAGs is in flux, the applicability of the most relevant PIL framework to situations of civil war, the Laws of Armed Conflict or IHL, to the governance of the day to day lives of populations caught in the middle of such enclaves is limited to IHL’s provisions on humanitarian aid. This is problematic because, on the one hand, the provision of aid requires the consent of the NSAG that oversees the territory in question, while IHL

---

<sup>129</sup> ICRC, 32 International Conference (2015), p.9.

<sup>130</sup> Ibid, p.10.

<sup>131</sup> See Dustin A. Lewis, Gabriella Blum & Naz K. Modirzadeh, “Indefinite War: Unsettled International Law on the End of Armed Conflict, *Harvard Law School - Programme on International Law and Armed Conflict (HLS PILAC)*, February 2017.

<sup>132</sup> ICRC, 32 International Conference (2015), p.10.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.



does not grant those actors such a level of recognition. Furthermore, the designation of some of those armed groups as terrorist organisations could result in the criminalisation of humanitarian aid actors that still manage to acquire the consent of such groups, in the absence of their legal recognition by the international community and the various treaties of IHL.

On the other hand, humanitarian aid should nonetheless be a temporary measure, not an end by itself. The impartiality of humanitarian aid agencies has arguably been slowly eroding as they came to the aid of and/or became included in long-term peacebuilding projects given the latter's limited evidence of success.<sup>136</sup> In other words, humanitarian aid often results in a situation of 'conflict management' as opposed to 'conflict resolution,' thereby enforcing the conservative purpose of global governance via the UN System to preserve the post-WWII status quo. In addition, the securitisation of humanitarian work as part of the broader security-development nexus has contributed to the social engineering of such 'unruly places' in the image of the West, in order to supposedly contain the threat they could potentially pose to hegemonic international players e.g., the attacks of 11 September 2001 in the US.<sup>137</sup>

#### II.III.b. IHRL's Applicability to the Territorial Enclaves of NSAGs

One of the main questions surrounding the applicability of other branches of PIL such as International Human Rights Law (IHRL) to the territories of NSAGs still concerns the level of *de facto* control that the NSAG in question has managed to establish over its respective territory. Equally important is the level of recognition that such a level of control has received from the international community, especially from the government of the state in question.<sup>138</sup> Traditionally, argues Andrew Clapham, "[i]nsurgents were considered to have international rights and obligations with regards to those states that recognised them as having such a status."<sup>139</sup> However, granting any kind of status to NSAGs taking part in a situation of an ongoing civil war often comes with the persistent objection of the official

---

<sup>136</sup> See Mahmoud Abdou "Humanitarian Assistance and Peacebuilding: Congruence as a By-product of Incompatibility," *Peace and Conflict Monitor / Ideas for Peace*, 2014, available via <https://www.ideasforpeace.org/content/humanitarian-assistance-and-peacebuilding-congruence-as-a-by-product-of-incompatibility/>, (accessed 17/03/2021).

<sup>137</sup> *Ibid.*

<sup>138</sup> Andrew Clapham, "Human Rights Obligations of non-state Actors in Conflict Situations," *International Review of the Red Cross*, 88:863 (2006), pp.491-492.

<sup>139</sup> *Ibid.*, p.492.

government of the relevant state, even when this is solely carried out for the purpose of facilitating the delivery of humanitarian aid. Doing so further conflicts with the heavily state-centric nature of PIL, and the way the international system under the UN became principally made up of ‘sovereign’ independent states.

The backbone of IHRL is the International Bill of Rights (1948) and its three components of the Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). IHRL includes seven additional treaties aimed at the protection of vulnerable groups in society, for example the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention for the Protection of All Persons from Enforced Disappearances. All such IHRL treaties require the states that have signed and ratified them to implement legislations within their domestic legal systems to bring their provisions into force, e.g. in relation to the right to free and fair trial, amongst other provisions of ICCPR.<sup>140</sup> That said, the general provisions of the International Bill of Rights and its three main treaty components make up a part of Customary IHRL, and are thus arguably binding on all states regardless of whether or not they have signed and/or ratified those treaties.

With the situation in Yemen and Libya squarely in mind, IHRL’s applicability within the territorial enclaves of NSAGs in both countries is at best speculative. NSAGs do not have the capacity to sign international treaties and it is up to their own discretion whether the provisions of treaties signed by their former states are applied in their respective territories, especially at a point in time when their control over such territories is effectively maintained as a new fact on the ground, away from the administrative system of the recognised state. Indeed, such NSAGs tend to come into existence through a revolution against domestic legal systems, and by extension any enactments of relevance to international treaties that such domestic legal systems may or may not contain. In other words, in those situations it is up to both the state against which the ‘non-international armed conflict’ is fought, as well as the

---

<sup>140</sup> For more information, see Mahmoud Abdou, “On the 70<sup>th</sup> Anniversary of the Universal Declaration of Human Rights, what is UDHR and How did it Come About?” *International Human Rights Centre*, 03/08/2018, available via [https://figshare.com/articles/thesis/On\\_the\\_70th\\_Anniversary\\_of\\_the\\_Universal\\_Declaration\\_of\\_Human\\_Rights\\_What\\_is\\_UDHR\\_and\\_How\\_did\\_it\\_Come\\_About\\_/17076047](https://figshare.com/articles/thesis/On_the_70th_Anniversary_of_the_Universal_Declaration_of_Human_Rights_What_is_UDHR_and_How_did_it_Come_About_/17076047), (accessed 17/02/2022).

international community at large “to appraise – by granting or withholding, if only implicitly, recognition of insurgency,”<sup>141</sup> and by extension to grant a higher level of protection to the populations that fall under the control of NSAGs. In juxtaposition, in situations of ‘international armed conflict,’ an occupied territory or a territory that is under the effective control of a foreign state, e.g., the Palestinian Occupied Territories, is notably governed by the provisions of IHRL treaties that the occupation force has signed and ratified. This is in addition to the Laws of Occupation under IHL.

Against this background, a recently launched project (as of June 2018) by the *Geneva Academy of International Humanitarian Law and Human Rights* on “Human Rights Responsibilities and Armed Non-State Actors” can be acknowledged. As stated on the Academy’s website, the objective of this project is to build “a common understanding and vision as to how states and the relevant parts of the UN System can provide a concrete and practical framework to address [Armed Non-State Actor’s] human rights responsibilities, taking into account states’ own obligations for ANSAs human rights violations.”<sup>142</sup> In addition, this project aims to “explore the interest of states in setting up and developing guiding principles or any other instruments outlining ANSAs’ human rights responsibilities.” A second relevant study on “Armed Non-State Actors and International Human Rights Law” by *Harvard Law School’s Program on International Law and Armed Conflict* is equally worth highlighting, especially given its narrow focus on the practice of the UNSC and UNGA.<sup>143</sup> As the authors of this study, Burniske et. al. conclude:

“it is incontrovertible that the U.N. Security Council and the U.N. General Assembly have recognized, at the minimum, that the conduct

---

<sup>141</sup> Cassese (2005), p.125, qtd in Clapham (2006), p.492.

<sup>142</sup> “Human Rights Responsibilities and Armed Non-State Actors,” *The Academy of International Humanitarian Law and Human Rights*, June 2018, available at <https://www.geneva-academy.ch/research/our-clusters/non-state-actors/detail/63-human-rights-responsibilities-and-armed-non-state-actors>, (accessed 14/03/2021). Also see Annyssa Bellal & Ezequiel Heffes, “‘Yes, I Do’: Binding Armed Non-State Actors to IHL and Human Rights Norms Through Their Consent,” *Human Rights & International Legal Discourse*, 12:1 (2018), pp.120-136; and the Report of the Academy’s seminar on “Human Rights Responsibilities of Armed Non-State Actors,” held on 8 November 2017, available at [https://www.geneva-academy.ch/joomlatools-files/docman-files/Seminar\\_Human%20Rights%20Responsibilities%20of%20Armed%20Non-State%20Actors.pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/Seminar_Human%20Rights%20Responsibilities%20of%20Armed%20Non-State%20Actors.pdf), (accessed 14/03/2021).

<sup>143</sup> Jessica S. Burniske, Naz K. Modirzadeh & Dustin A. Lewis, “Armed Non-State Actors and International Human Rights Law: An Analysis of the Practice of the U.N. Security Council and U.N. General Assembly” *Harvard Law School’s Program on International Law and Armed Conflict*, June 2017, available via [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2994907](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2994907) (last accessed 14/03/2021).

of at least some ANSAs—in contexts as diverse as the DRC to Syria—can amount to violations or abuses of human rights. It is not currently possible to state, however, that either of these principal U.N. organs has taken sufficient steps to formally endow ANSAs with human-rights obligations in general under international law...because that system [IHRL] has long been premised on *states* bearing international responsibility for respecting, protecting, and fulfilling human rights.”<sup>144</sup>

However, it is still worth noting that in 2012 the Inquiry Commission of the UN Human Rights Council on Syria confirmed that “human rights obligations constituting peremptory international law (*ius cogens*) bind States, individuals and non-[s]tate collective entities. Acts violating *ius cogens*,” stated the Commission, “for instance, torture or enforced disappearances – can never be justified.”<sup>145</sup> This could indeed be one possible area of *micro*-level PIL that applies to *de facto* states that are born out of civil war. In other words, it has now been established that NSAGs are bound at the minimum by *ius cogens*, which overlap with ‘non-derogable’ rights under IHRL or rights that must be always protected, and their members could correspondingly face prosecutions at international tribunals when and if they are ever established. For example, the International Criminal Tribunals on Yugoslavia (ICTY) and Rwanda (ICTR) were established by the UNSC in 1993 and 1994, respectively. Nonetheless, the politics of international law, and the conflicting interests of some of the Permanent Members of the UNSC remain the main obstacle to international justice. A simple ‘veto’ by one of those Permanent Members of the UNSC could indeed obstruct the establishment of such tribunals.

With regards to other human rights law such as the provisions of ICCPR, establishing whether they bind a NSAG such as the Houthis is more problematic than the enforcement of *ius cogens* themselves. As the ICRC puts it, “[e]ssential questions remain unanswered, such as the source, scope, and limitation of non-State armed groups’ potential human rights obligations, and the relationship between these potential obligations and those of the territorial [s]tate.”<sup>146</sup> The conservative nature of contemporary international institutions such as ‘territoriality’ effectively denies alternative governance structures to the Westphalian statehood system, in a manner

---

<sup>144</sup> Burniske et. al. (2017), p.27.

<sup>145</sup> UN Human Rights Council (2012), 20. Qtd in Bellal & Heffes (2018), p.62.

<sup>146</sup> The ICRC, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts,” p.54.

that has been best described by John Agnew as a ‘territorial trap.’<sup>147</sup> This situation also renders the various proposals to hold NSAGs accountable to international standards of human rights in policy-oriented and academic research capacities alike<sup>148</sup> rather redundant, if not enforcing of the conservative nature of PIL’s denial of the entry of new states to the ‘family of nations.’<sup>149</sup> In addition, such a reality ironically reduces those proposals to a neo-elitist scramble to extend the ‘standards of civilisation’ to a ‘*terra nullius*,’ which rather enforces the conclusions of Koskenniemi et. al. (2017) that international law networks and Empire have always been intertwined.

In that same volume of Koskenniemi et. al. (2017), Jose-Manuel Barreto illustrates that the writings of Hugo Grotius (1583 – 1645), which are often connotated as the cornerstone of the discipline of IHL, were mainly written to justify Dutch colonial expeditions in the East Indies. In addition, Manuel Jimenez Fonseca highlights that the writings of Francisco de Vitoria (1483 - 1546), which are another foundational stone of the discipline, enabled Spanish political and economic colonial projects in Latin America. And as there is no doubt that the ‘critical wave’ of the discipline of social science and international relations has reached the closely intertwined discipline of public international law, the present utilisation of the lens of ‘*terra nullius*’ is aimed as a contribution to ongoing academic efforts in TWAIL and ‘postcolonial’ IR circles to evaluate the contemporary implications of international law, not just its foundations, in a critical light.

#### **II.IV. Conclusion: PIL’s Applicability and the Utility of *Terra Nullius***

The analysis presented in this Chapter has been focused on the first part of the research question: *how does international law apply to the territorial controls of NSAGs in post-Uprising Yemen and Libya?* In its attempt to answer this question, this Chapter has first established that ‘territory’ has always been understood as ‘jurisprudence’ and it has then examined the applicability of what I have divided into *macro* and *micro* levels of international norms of relevance to the situation at hand.

---

<sup>147</sup> John Agnew, “The Territorial Trap: The Geographical Assumptions of International Relations Theory,” *Review of International Political Economy*, 1:1 (1994), pp.53-80.

<sup>148</sup> Also see Daragh Murray, *Human Rights Obligations of Non-State Armed Groups*, *Studies in International Law* (Hart Publishing, 2016).

<sup>149</sup> On the latter, see Oyvind Osterund, “The Narrow Gate: Entry to the Club of Sovereign States,” *Review of International Studies*, 23:2 (1997), pp.167-184.

Under those broad categories of international norms, this Chapter has stressed the great degree of hesitancy in the way that they apply to, respectively, the international status and the governance of the territorial enclaves of NSAGs. And since the main objective of this thesis is to underscore the disastrous humanitarian consequences of such situations at the *meso* level, the main dilemma that we have to grapple with is that those territorial enclaves lack, at the *macro* level, international recognition, which hinders the applicability of IHL and IHRL frameworks at their *micro* level because those treaties are largely dependent in their applicability on the level of recognition that the territories in question receive from the international community at large. This is like the situation of *de facto* states, although the latter has arguably moved beyond the status of war, which could leave, at the minimum, the applicability of IHL altogether out of any such possible considerations. The concept of ‘people’ is indeed closely intertwined with the status of their territory, and if such a status is in flux, the humanitarian outcomes are bound to be severe. In turn, the status of any given sub-state territorial enclave is largely dependent on the interests of the Great Power managers of the UN System such as the Permanent Members of the UNSC, and their allies in a region such as MENA.

Importantly, this Chapter has established that in all cases of state-creation under the UN System, the interests of relevant influential international players have been decisive. Taking such a TWAIL-informed approach would allow us to understand why the various processes of decolonisation under case one and case two that are outlined above have remained incomplete, with the status of Palestine and many ‘non-self-governing territories’ still being undecided to this day. Similarly, under the third case of ‘remedial secession’ only three exceptions have thus far been permitted to a grant of ‘self-determination’ to subjugated groups in society in a manner that annuls the ‘safeguard’ placed by PIL above the ‘sovereignty’ of already established states due to Great Power politics. For instance, Kosovo has still not received the recognition of the Russia-allied international camp. And if the illegal invasion by India of East Pakistan was a crucial factor behind the subsequent establishment of Bangladesh in the early 1970s, a similar invasion by Turkey of North Cyprus around that same juncture has resulted in the emergence of the widely un-recognised (to this day) Turkish region of North Cyprus.

The case of ‘remedial secession’ has also intriguingly emerged in the lead up to the codification of R2P in 2005. While humanitarian interventions have been carried out by the international community before the passage of R2P, the codification of this *macro*-level international norm has made any possible UNSC-authorized intervention in the domestic sphere of already established states *de jure* or legitimate as a matter of law, and it has thereby expanded the imperial reach of the Permanent Members of the UNSC. Even more, the so called “illegal but legitimate” intervention by NATO in Kosovo still permits the possibility of a deviation from the UNSC if it suits the interests of some Permanent Members of the UNSC more than others to intervene in another state. However, R2P still does not call for the division of states. If rare exceptions to the ‘safeguard clause’ have been permitted in the case of ‘remedial secession’ depending on Great Power politics, the interests of the Permanent Members of the UNSC ultimately converge around the preservation of the post-WWII global territorial status quo.

Already established international norms tend to be amended only when and if doing so suits the interests of influential players in the international system, irrespective of the potential conflict that doing so brings to other norms of the same system. The passage of R2P to the advantage of the Permanent Members of the UNSC crucially contradicts the principles of ‘non-intervention,’ ‘sovereignty,’ and/or ‘territorial integrity.’ Similarly, while the consent of the central government of the relevant state under the fourth case of state creation that this Chapter has outlined, the case of ‘the breakup of political unions,’ has always been a prerequisite; early recognition was extended to the constituent republics of Yugoslavia to safeguard the stability of Europe. And while the application of the other PIL norm of *uti possidetis juris* could result in Yemen’s return to the British legacy of the 1967 border line between North and South Yemen, the political union that the two parts of Yemen entered in 1990 is instead being preserved due to the interests of influential players that are also at stake. Exceptions to international norms are largely dependent on Great Power politics, and the mere possibility of such exceptions being made strips our international system of its ‘legal certainty,’ while equally underlying the ideological bias of its guiding principles.

Due to this prominence of Great Power politics in all cases of state creation under the UN System, a rising number of *de facto* states have emerged on the contemporary

map of the world since the end of the Cold War, out of “New” or ethnic-based conflicts, and many of these have remained unrecognised to this day. The latter situation includes Somaliland and Nagorno-Karabakh, and it is further represented by the ongoing crisis in Yemen and Libya. While the status of such substate territorial enclaves has remained unsettled, they have become possible to characterise as blackholes of legal discontinuity on the contemporary map of the world, where the domestic legal framework of the former state has been annulled and/or “unrecognised” governance systems have come into existence instead. Such a reality has notably rendered affected populations at the mercy of the NSAGs in question and their own system of governance; Sharia-based, tribal, or otherwise.

The conclusion of Koskenniemi et. al. (2017) that “what Jeremy Bentham in the eighteenth century baptized as ‘international law’ has been inextricably bound up with the pursuit of Empire,”<sup>150</sup> is even more evident in the way that *micro*-level PIL frameworks apply to the territorial enclaves of NSAGs. For instance, the fact that IHL is limited in its applicability to such situations of civil war to the provision of humanitarian aid is a testimony to the conservative purpose of the UN System to preserve the post-WWII global territorial status quo. Humanitarianism is indeed a global governance tool of ‘conflict management’ as opposed to ‘conflict resolution’ and its inclusion since the 1990s in long term peacebuilding projects has contributed to the social engineering of societies in the image of the West to e.g., prevent another ‘9/11’ attack. Similarly, the various proposals in policy-oriented and academic circles alike to extend the applicability of IHRL to the dominions of NSAGs without granting them independence as new states is rather reminiscent of the ‘civilising mission’ and how it was used to justify the subjection of what the former colonial powers classified amongst themselves as ‘*terra nullius*’ to foreign rule. This is not to say that an official grant of statehood to the territorial enclaves of NSAGs is the only way out. It is rather the lingering colonial legacies of ‘divide and rule’ and of (implicitly) designating various parts of the globe as ‘*terra nullius*’ vis-à-vis their adversaries that this thesis underlines the need to instead overcome.

As the empirical part of this thesis will particularly demonstrate (Part II), applying the lens of ‘*terra nullius*’ to the territorial enclaves of NSAGs could prove to be

---

<sup>150</sup> Koskenniemi et al (2017), Editors Preface.



helpful in overcoming some of the deficiencies in our understanding of the international legal system as those outlined above. It could further aid the conceptualisation of a pattern of contestations over territory in our present international system that go beyond any ethnic calls for ‘self-determination.’ Through this angle, the rise of any given substate entity, especially in states that were historically made up of separate territorial enclaves, becomes notably understood as either facilitated or suppressed as suits the interests of relevant influential regional and international players. Since its first appearance in the Proclamation of Bourke regarding Australia (1835), ‘*terra nullius*’ has indeed always been an instrument of Great Power politics that granted no recognition of the right of the inhabitants of such territories to simply exist. It is therefore not surprising that the humanitarian consequences of the ‘*terra nullius*’ of our contemporary international society, the territorial enclaves of NSAGs, can reach such alarmingly catastrophic levels.

### Chapter III: IR Theory and the Territorial Controls of NSAGs

The purpose of this Chapter is to address the second part of the research question, namely how the nature of international law's applicability to the situation at hand can be studied through IR theory. IR theory is herein utilised with the objective of filling any persistent gaps in our understanding of PIL's applicability to the *meso* level of populations living under the administration of NSAGs, which may arise because of either the ideological bias of readily applicable norms or their complete absence. At the same time, it is important to keep in mind that since international law has been considered from the 19<sup>th</sup> century onwards to be the "code of international relations;"<sup>151</sup> if such a "code" is missing, relevant debates in IR theory could in turn be plagued with, at the minimum, uncertainties, and confusions. In addition, it must be re-emphasised that the inter-disciplinary approach of this thesis rests within the two specific sub-disciplinary fields of public international law (Chapter II) and international relations theory (Chapter III). This Chapter therefore seeks to support the preceding TWAIL-informed analysis with a compatible theoretical framework from the discipline of IR theory, and to ultimately strengthen the critical basis of the proposed utilisation of the lens of '*terra nullius*' in the study of the territorial controls of NSAGs.

#### III.I. The Evolution of IR Theory and Unaddressed Issues of Territoriality

The field of IR theory emerged in the aftermath of WWI, and in a close parallel to the evolution of the UN System itself. This cognate disciplinary field of social science has been characterised by a series of 'great debates' that took place in-between its various theoretical camps, as they attempted to conceptualise the way that the last one-hundred years of inter-state affairs have come about.<sup>152</sup>

The first of those 'debates' (1930s-1950) was in its essence a 'realist' critique by E.H. Carr and Hans Morgenthau of the utopian, Emmanuel Kant-inspired 'idealism'

---

<sup>151</sup> Horowitz (2005), qtd in Nuri Yurdusev, "The Middle East Encounter with the Expansion of European International Society," p.76 in Ch.4 of *International Society and the Middle East: English School Theory at the Regional Level*, Barry Buzan and Ana Gonzalez-Pelaez (eds.) (Palgrave Macmillan, 2009), pp.70 – 91. Also see Roberto Carrillo & Lidia Nunez, "Interdisciplinarity: The Intersection of Different Disciplines for Understanding Common Problems," Ch.35 in Jean-Frederic Morin, Christian Olsson and Ece Ozlem Atikcan (eds.), *Research Methods in the Social Science: An A-Z of Key Concepts* (Oxford University Press, 2021), pp.145-149.

<sup>152</sup> See for instance Andrew Heywood, "Why Theory Matter," Ch.21 in *Global Politics*, 2<sup>nd</sup> edition (Palgrave Macmillan, 2014), pp.514-532.

that led to the creation of the League of Nations and subsequently the UN. Most prominently, ‘realist’ scholars such as Morgenthau argued that there was no place for morality in politics, which was for him a field that is instead concerned with the study of ‘power.’ Meanwhile, Carr argued that the sole function of organisations such as the League of Nations was to advance the interests of the most powerful states in the international system, which were believed to be engaged in an endless pursuit of power even when advocating notions of global peace and cooperation.<sup>153</sup> Inspired by the likes of Thucydides, Niccolo Machiavelli and Thomas Hobbes who tended to view human nature in a very pessimistic way, those ‘classic realists’ believed that humans are by nature evil and for them this constituted the main cause of war in the international system. States and their officials were thus considered to be rationally egoistic entities that are primarily concerned with the maximisation of their power in the international system.

Carr’s and Morgenthau’s camp of ‘classic realism’ arguably emerged victorious out of this ‘first debate’ of IR, as the idealists saw their cosmopolitan ambitions tarnished by the collapse of the League of Nations and the outbreak of WWII. Meanwhile, with the ‘structural turn’ of social science in the 1950s-1960s towards more ‘positivist’ modes of inquiry the ‘realists’ and the ‘liberals’ engaged in the second ‘great debate’ of ‘behaviourism’ vs. ‘traditionalism.’ Major contributions such as those of Kenneth Waltz on *Man, the State and War* (1959) now occupied centre-stage of their deliberations. During this second ‘great debate,’ ‘realism’ continued its evolution as a theory attempting to provide an answer to the question as to why wars between states occur, while ‘liberalism’ continued its development as a theory attempting to examine the greater potential for cooperation than war between states, albeit with a toned-down degree of utopianism.

The third ‘great debate’ arguably took place during the following two decades: 1970s-1980s, when the views of both schools of thought converged around the acceptance of the ‘anarchical nature’ of the international system, largely inspired by Waltz’s (1979) [Structural] *Theory of International Politics*. To the ‘neo-realists,’ the absence of an ‘orderer,’ or a ‘leviathan’ at the international level became seen as the

---

<sup>153</sup> See Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, edited by Kenneth W. Thompson (A.A. Knopf, 1948); and E.H. Carr, *The Twenty Years’ Crisis, 1919-1939: an Introduction to the Study of International Relations* (Macmillan & Co. LTD, 1946).

main cause of war, while the ‘neo-liberals’ continued to believe that there was more space for cooperation than conflict within the broader atmosphere of ‘international anarchy.’ In addition, the emergence of ‘neo-realism’ during the Cold War led to the conceptualisation of the ‘security dilemma’ and the argument of ‘defensive’ realists such as Waltz that international peace can only be realised in an atmosphere of never-ending pursuit of power through a bi-polar international system. In this third ‘great debate,’ which is often referred to as an ‘inter-paradigm debate,’ the neos of both camps became crucially conflated against ‘classic Marxism,’ which was originally conceived of as a political theory that formed the ideological basis of the Bolshevik Revolution.

However, ‘classic Marxism’ was called into question with the first wave of USSR reforms in the 1960s, while the gradual replacement of the Bretton Woods system with the present neoliberal international financial system in the 1970s inspired Gramscian, ‘post-Marxist’ scholars to turn this political school of thought into an IR theory. This took place particularly through Immanuel Wallerstein’s World Systems theory and Johan Galtung’s centre-periphery analysis of the international political economy, within the broader context of the ‘post-modern turn’ in social science and the emergence of the discourse on globalisation.

Subsequently, the ‘critical turn’ in IR theory informed the fourth ‘great debate’ in the 1980s, which could be said to still be ongoing to this day. Here, the mainstream IR theories of ‘liberalism’ and ‘realism’ became conflated against a wide array of ‘critical’ modes of inquiry e.g., ‘feminism’ and ‘post-structuralism’ which found inspiration in the integration of ‘Marxism’ into IR theory. The neos of the ‘liberals’ and the ‘realists’ now became referred to as the ‘positivists,’ with ‘neo-liberals’ like Robert Keohane and Joseph Nye and ‘offensive’ ‘neo-realists’ like John Mearsheimer taking the lead of relevant debates.<sup>154</sup> For the ‘neo-liberals,’ or ‘rational institutionalists,’ it was ‘absolute’ gains from cooperation that mattered: states would continue to cooperate as long as their overall position is improved from cooperation, and even if this happens as a result of their mere membership in international organisations. Conversely, the ‘neo-realists’ believed that it is ‘relevant’ gains that matter, and that states would only cooperate if a state’s overall power position

---

<sup>154</sup> See John J. Mearsheimer, “A Realist Reply,” *International Security*, 20:1 (1995), pp.82-93.

surpasses that of its main adversaries. Meanwhile, the opposing theoretical camp and its various branches of ‘critical’ IR theory became referred to as the camp of ‘post-positivists’ and ‘post-structuralists’ who reject the remedial approach of the ‘positivist’ mode of inquiry in search for transformational change and the emancipation of ‘subaltern,’ marginalised groups in society.

Despite this rich history of the discipline, and rather surprisingly, issues of ‘territoriality’ or governance defined in terms of ‘territory’ have remained largely unaccounted for by IR theory, irrespective of the significant ramifications that such issues could bring to international relations. Indeed, after nearly three decades of John Ruggie’s (1993) problematisation of the lack of attention given to ‘territoriality’ by students of international studies,<sup>155</sup> this concept has remained largely underexamined by IR theory, let alone in relation to NSAGs and their various governance capacities. One possible reason for this is the preoccupation of the discipline with the various ways that globalisation has or has not changed the way that states themselves can be governed. In other words, even when ‘territoriality’ has been examined in the relevant IR literature, this has been largely carried out from an international political economy perspective that is more aligned with the sphere of ‘private’ as opposed to ‘public’ international law.

For example, Ruggie’s more recent contributions have formed the basis of the evolving UN doctrine on ‘business and human rights.’ In his article “Reconstituting the Global Public Domain – Issues, Actors and Practices,”<sup>156</sup> Ruggie (2004) notably explores how non-state actors such as transnational corporations (TNCs) and civil society organisations (CSOs) have created a “new transnational world of transaction flows” that did not exist before.<sup>157</sup> Here, Ruggie stresses that there has not been an “actual shift away from public to private actors” operating across and within the boundaries of states as the traditional narrative in globalisation discourse and that pertaining to the various processes of ‘neoliberal’ privatisation would have us believe. Instead, he proposes that the “traditional international political world [that] saw itself as comprising territorially distinct and disjoint[ed] units, which engaged in

---

<sup>155</sup> John Ruggie, “Territoriality and Beyond: Problematizing Modernity in International Relations,” *International Organizations*, 47:1 (1993), pp.139-174.

<sup>156</sup> John Ruggie, “Reconstituting the Global Public Domain – Issues, Actors, and Practices,” *European Journal of International Relations*, 10:4 (2004), pp.499-531.

<sup>157</sup> *Ibid*, p.503.

strictly ‘external’ transactions” has become “reconstituted” by those other non-state actors.<sup>158</sup> In Ruggie’s words, “the spatial configuration of the global governance agenda has become far more open, fluid, and tightly coupled across states...Non-state actors helped produce the underlying shifts in some cases,” argues Ruggie, while “in virtually all they have moved swiftly into and expanded their own institutional sites within the transformed issue space.”<sup>159</sup>

Ruggie’s main area of work, ‘business and human rights,’ has mostly emerged out of the need to hold transnational corporations accountable to international human rights standards, with CSOs acting as the ‘watchdog’ of TNCs. While some insights could be gained from this area of work, since NSAGs are also ‘non-state actors,’ one must nonetheless be careful not to draw too many parallels between it and the present analysis, or else we would risk falling into the paradox of the various proposals to, in turn, extend the application of international human right treaties to the dominions of NSAGs (see pp.55-59 of this thesis). Armed non-state actors or NSAGs in possession of a given territory cannot simply be studied the way we study other non-state actors such as transnational corporations vis-à-vis their sweatshops. Besides the distinction that this thesis maintains between public and private international law, there are also various ontological incompatibilities at play.

On the one hand, the TNCs’ invasion of markets in the Global South has since the 1970s been advanced through neoliberal reforms advocated by international institutions such as the World Bank and the IMF in a ‘top-down’ manner. On the other hand, the territorial possessions of NSAGs are posing a challenge to this new “global public domain” from the ‘bottom-up,’ or from the grassroots level to the international level. The challenge posed by the latter case is indeed more of a challenge to the capitalist international state system itself because there are no financial gains nor economic profits that can be made from accommodating the rise of a territorial enclave under the control of a NSAG. By extension, the rise of such territorial enclaves could be argued to be either facilitated or accredited varying levels of international recognition if and only when material interests are at stake e.g., the ‘oil factor’ in relation to Cyrenaica, Libya, and Kurdistan, Iraq. In addition, the way civil wars are often exploited by international weapon manufacturers, private

---

<sup>158</sup> Ruggie (2004), p.503 & 505.

<sup>159</sup> Ibid, p.509.

security contractors and other profit-seeking non-state actors poses one of the main obstacles to any calls to refocus our attention instead on the resultant state of human suffering, such as the present one. Tellingly, the March 2021 reconciliation agreement in Libya has called for the withdrawal of mercenaries out of Libyan cities to pave the way for healing the country's ongoing territorial fragmentation.

Ruggie's work is informed by the 'constructivist' approach in IR theory, which is one possible way of understanding the inter-subjective and co-constitutive power of international norms at the level of the individual, the state, and the international. "There is a certain moral and intellectual obtuseness," insists Ruggie, "to a position that considers people's welfare to be an uninteresting concern for international relations theorizing, particularly at a time when the individual enjoys more extensive recognition in international politics and law than ever before."<sup>160</sup> But if norms are co-constitutive, it is paradoxical that the 'individual' can now co-constitute international norms in areas of workers' rights, but not in relation to human suffering caused by issues pertaining to 'territoriality' in situations of civil war. At the same time, rather than adding yet another proposal on how the latter situation could be normatively rectified e.g., through human rights, the present Chapter of the Literature Review seeks to untangle and further critique the ideological bias in the general workings of applicable PIL frameworks, which is arguably the main reason behind the existence of such a paradox in the first place.

Where else in the discipline of IR theory can we then turn our attention to, as we seek to study the nature of international law's applicability to the situation at hand in a 'critical,' not a 'remedial' (positivist) nor merely a 'descriptive' manner? Is the usefulness of 'constructivism' limited, in this regard, to the area of 'business and human rights' vis-à-vis other 'non-state actors' such as the TNCs?

### **III.II. The Constructivist Turn and the International Society Framework**

The four 'great debates' of IR theory were inspired by major developments at the international level, as IR scholars sought to make sense of the general dynamics of such developments and the resulting patterns of interactions amongst states. 'Constructivism' itself emerged in the post-Cold War decade of the 1990s through the work of prominent scholars such as Alexander Wendt who is best known for his

---

<sup>160</sup> Ruggie (2004), p.519.

assertion: “anarchy is what states make of it.”<sup>161</sup> Without agreeing with the ‘neo-realists’ in their assumption that the anarchical nature of the international system will always lead to war (in the absence of a balance of power system), and also to differentiate his line of thinking from what the ‘neo-liberals’ saw as a greater propensity for cooperation than conflict in our anarchical international system (through for instance the UN web of institutions); Wendt argues that depending on their ideology and/or identity, states could either cooperate and form alliances or go to war with one another.<sup>162</sup> The ‘constructivist’ approach in IR theory thus rests on the power of inter-subjective and co-constitutive structures such as norms, identity, discourse and ideology. As Friedrich Kratochwil famously underscored, the military or material power of the Soviet Union was the same on the night before it collapsed as it was on the day when it crumbled down. For a ‘constructivist,’ it is therefore ‘ideology’ not ‘power’ that explains the demise of the USSR.<sup>163</sup>

While Wendt’s application of this social theory of interactions to power politics offered a bridge in-between the two highly polarised political camps of ‘realism’ and ‘liberalism’ in IR theory, the critique of Wendt’s propositions caused a division within the ‘constructivist’ school of thought itself. If everything is socially and inter-subjectively constructed, when asked if the state itself is similarly constituted, Wendt replied that states were the main “authors” of international relations. In other words, Wendt took the existence of states as a given, becoming himself a victim of what Agnew (1994) characterised as the ‘territorial trap’ of mainstream IR theory. At the same time, like any other school of thought in IR theory, ‘constructivism’ continued to evolve in response to its internal and external critiques, and it nowadays includes three branches that respectively address the power of inter-subjectively constitutive forces such as identity on the individual (unit-level analysis), the state (state-level analysis), and the international system (system-level analysis).<sup>164</sup> Not only do those various levels of analysis study the impact of *meso* level social forces on a state’s

---

<sup>161</sup> Alexander Wendt, “Anarchy is what States Make of it: The Social Construction of Power Politics,” *International Organizations*, 46:2 (1992), pp.391-425.

<sup>162</sup> Also see Alexander Wendt, “Constructing International Relations,” *International Security*, 20:1 (1995), pp.71-81.

<sup>163</sup> See Rey Koslowski and Friedrich V. Kratochwil, “Understanding Change in International Politics: The Soviet Empire’s Demise and the International System,” *International Organizations*, 48:2 (1994), pp.215-247.

<sup>164</sup> For the subsequent development of this school of thought, see for instance Christian Reus-Smit, “Constructivism,” Ch.9 in *Theories of International Relations*, Scott Burchill, and Andrew Linklater (eds.) (Palgrave Macmillan, 2013), pp.217–240.



overall identity, but they equally also demonstrate how such forces are able to shape the structure of the international system while equally being shaped by it. Through its engagement with prominent debates in IR theory such as *structure vs. agency*, ‘constructivism’ thus became the via-media approach between ‘mainstream’ and ‘critical’ IR theory, thereby offering a generally harmonious approach to understanding international relations.

For example, in contrast to how PIL is often seen as a ‘descriptive’ or a ‘prescriptive’ tool of the global governance system, and accordingly a contribution of mainstream IR theory, ‘realism’ and ‘liberalism;’ ‘constructivism’ views PIL instead as an ‘explanatory’ theory. It gives importance to both the state as well as non-state entities within it, and it enables the researcher to explore PIL as a social structure that is constitutive of world politics while equally being constituted by them. Table 2 below offers an illustration of how this school of thought contrasts with the mainstream theories of IR in their view of international law.

**Table 2:** International Law via Realist, Liberal and Constructivist Lenses<sup>165</sup>

<b>Realist</b>	<b>Liberal</b>	<b>Constructivist</b>
Descriptive theory	Prescriptive theory	Explanatory theory
Value-free approach	Promotion of core values	Norms as explanatory variables
State-centric	Plurality of actors	State primacy and civil society
Structural (material)	Emphasis on agency	Structural (social)
Law as rules	Law serving range of functions	Law as constituting world politics

In this regard, a ‘constructivist’ view of international relations could further provide an ‘explanation’ for the seeming rarity of, or significant shortcomings in presently applicable PIL frameworks to the *meso*, administrative level of the territorial enclaves of NSAGs. Since norms are co-constitutive, such a dilemma becomes notably explained via the ‘constructivist’ lens as one possible outcome of the expectation placed by the population of a state undergoing civil turmoil on the international community, which considers the discourse of human rights to be important, that the latter has failed to address due to its various security preoccupations. In other words, the situation of populations living under the control

---

<sup>165</sup> David Armstrong, Theo Farrell, and Helene Lambert, “Three lenses: realism, liberalism, constructivism,” Ch.3 of *International Law and International Relations* (Cambridge University Press, 2007), pp.69-116, 106.

of NSAGs underlines that this relative absence of norms is the result of various levels of incompatibilities between the rhetoric of humanitarianism on the one hand, and the dominant view of the territorial enclaves of NSAGs as places of ‘contagion’ that must be isolated, on the other hand, irrespective of catastrophic humanitarian consequences that have rendered a place like Gaza Strip altogether “uninhabitable.”<sup>166</sup> In addition, and as the analysis of the present Chapter of the Literature Review further builds up from a mere ‘explanation’ of the subject matter at hand and into a critique of PIL’s various shortcomings on issues pertaining to ‘territoriality’ and NSAGs, the ‘vanguardist’ explanation in the English school circles of IR, of how a Eurocentric ‘international society’ spread from Europe to the rest of the world is intriguing.

The ‘international society’ framework in its current form is the result of what has been signposted as the ‘constructivist turn’ of IR. Like the impact of the other major junctures of the discipline, this latter development has left no aspect of IR theory untouched. It particularly inspired and informed new developments under the conceptual framework of the ‘international society’ by English school theorists such as Barry Buzan, who have turned it in the way they have applied it to area studies into a ‘constructivist,’ ‘socially-aware’ and a ‘historically-informed’ framework.<sup>167</sup> The ‘constructivist turn’ has additionally made this framework a viable “middle way” between ‘realism’ and ‘idealism.’<sup>168</sup> This ‘international society’ has been defined by Hedley Bull as one that comes about when “a group of states, conscious of certain common interests and common values, form 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 workings of common institutions.”<sup>169</sup>

---

<sup>166</sup> See for instance Michael Jansen, “Gaza Strip ‘unlivable’ years earlier than predicted, says UN,” *The Irish Times*, 13/07/2017, <https://www.irishtimes.com/news/world/middle-east/gaza-strip-unlivable-years-earlier-than-predicted-says-un-1.3153792>, (accessed 15/03/2021).

<sup>167</sup> See Tim Dunne, *Inventing International Society: A History of the English School* (McMillan Press LTD, 1998), p.62; Andrew Linklater, “The English School,” in Burchill, E. et al, *Theories of International Relations* (Palgrave Macmillan, 2013); Ethan Edelman, “Global Prohibition Regimes: The Evolution of Norms in International Society,” *International Organisations*, 44:4 (1994), pp.479-526; Christian Reus-Smit, “International Crises of Legitimacy,” *International Politics*, 44:2 (2007), pp.157-174; and Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalisation* (Cambridge University Press, 2004).

<sup>168</sup> Chris Brown, “World Society and the English School: An ‘International Society’ Perspective on World Society,” *European Journal of International Relations*, 7:4 (2001), pp.423-441, 424.

<sup>169</sup> Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (Palgrave Mcmillan, 1977), p.13.

In turn, the English school in IR theory is a product of the British Committee on the Theory of International Politics, which met regularly in the 1950s and 1970s with the intention of, amongst others, breaking the dominance of “American IR theories” such as ‘realism’ over the discipline.<sup>170</sup> This so-called English school has notably been criticised by ‘realist’ IR scholars such as Dale Copeland (2003), for “ignoring” the highly conflictual impact of anarchy on the international system and how the norms of ‘international society’ impact state behaviour.<sup>171</sup> And while this school of thought has become known as the *Grotius school* of IR theory, recent applications of its main conceptual contribution of ‘international society’ have included “The English School and the Laws of War: A Taxonomy for Examining State Practice” by Matthew Zommer (2017).

Through this theoretical perspective, our ‘international society’ becomes possible to conceive of as norm-based and state-centric. And with the increasing emphasis on the human rights of individuals within states, recent debates in English school circles have built on Bull’s distinction between the ‘pluralists’ and the ‘solidarists’ (a.k.a. the Grotians). To use Koskenniemi’s earlier contention, this is a distinction between ‘apologism’ and ‘utopianism’ (see pp.30-31 above). For Bull, the “central Grotian assumption is that of solidarity or potential solidarity with respect to the enforcement of the rule of law,” while the ‘pluralists’ hold that “states do not exhibit solidarity of this kind but are capable of agreeing only for certain minimum purposes, which fall short of the enforcement of the law.”<sup>172</sup> On the one hand, for ‘pluralists’ such as Bull himself, international institutions like ‘sovereignty’ and ‘non-intervention’ restrict the actions of the ‘international society’ to fairly minimal rules of coexistence. On the other hand, ‘solidarists’ like Martin Wight hold that the ‘international society’ can develop wide-ranging norms, rules and institutions that cover both coexistence issues and cooperation in pursuit of shared interests, including some scope for

---

<sup>170</sup> Barry Buzan, “The English School: An Underexploited Resource in IR,” *Review of International Studies*, 27:3 (2001), pp.471-488. Also see Andrew Linklater, “The English School,” in S. Burchill, *Theories of International Relations* (Palgrave Macmillan, 2013), pp.88-112.

<sup>171</sup> Dale C. Copeland, “A Realist Critique of the English School,” *Review of International Studies*, 29 (2003), pp.427-441.

<sup>172</sup> See Chris Brown, “International Theory and International Society: The Viability of the Middle Way?” *Review of International Studies*, 21:2 (1995), pp.183-196, 186; Hedley Bull, “The Grotian Conception of International Society” in Butterfield and Wight (eds.), *Diplomatic Investigations: Essays in the Theory of International Relations* (Harvard University Press, 1966), p.52.

collective enforcement.<sup>173</sup> Examples of ‘solidarist’ conceptions in the international system arguably include R2P and/or ‘remedial secession.’ As shown by the following table, the list of institutions established by Buzan (2004) ultimately includes ‘the equality of people’ under the ‘primary institutions’ of our contemporary ‘international society,’ with its ‘derivative institutions’ being ‘human rights,’ ‘humanitarian interventions,’ and, I add, IHL.

**Table 3:** The Primary and Secondary Institutions of International Society<sup>174</sup>

Primary Institutions		Secondary Institutions
Master	Derivative	(examples of)
Sovereignty	Non-intervention International law	UN General Assembly Most regimes, ICJ, ICC
Territoriality	Boundaries	Some PKOs
Diplomacy	Bilateralism	Embassies United Nations
	Multilateralism	Conferences Most IGOs, regimes
Great power management	Alliances	NATO
	War	UN Security Council
	Balance of power	
Equality of People	Human rights	UNHCR
	Humanitarian intervention	
Nationalism	Self-determination	Some PKOs
	Popular sovereignty	
	Democracy	

Six out of eight ‘primary institutions’ listed by Buzan (2004) could indeed prove to be helpful in situating relevant PIL debates within the broader dynamics of our present international system (see Table 3): ‘sovereignty,’ ‘territoriality,’ ‘diplomacy,’ ‘great power management,’ ‘equality of people’ and ‘nationalism.’ The institution of the ‘market’ could also be considered relevant if one accounts for the dimension of oil resources and its various ramifications in the Yemeni and Libyan contexts. However, while the ‘international society’ framework demonstratively acknowledges the prominence of those institutions in the general workings of the UN System, the extent that this framework permits a critique, or even an explanation, of the way that such institutions apply to the situation at hand is still questionable. The

<sup>173</sup> See Buzan (2004), p.8; Brown (1995), p.190; and Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, 2000).

<sup>174</sup> Barry Buzan (2004), p.187.

account established by such a framework in IR theory is indeed overly ‘descriptive’ in its tone, except for the ‘explanation’ that it provides of how this Eurocentric ‘international society’ spread from Europe to the rest of the world in a ‘vanguardist,’ coercive manner. Nonetheless, as the purpose of the present Chapter is to offer an indication of how PIL’s applicability to the situation at hand can be studied from the perspective of IR theory, the ‘international society’ framework can still aid our understanding of those international norms that do apply, irrespective of their limitations.

From Buzan’s preceding table, ‘nationalism’ and its derivative institutions of ‘popular sovereignty’ and ‘democracy’ evolved because of the French Revolution and subsequent revolts in mid-19<sup>th</sup> Century Europe, which overthrew ruling monarchies and replaced them with democratic systems of governance. ‘Self-determination,’ however, which according to Buzan (2004) is the remaining ‘derivative institution’ of ‘nationalism,’ only started to be used in official international legal documents by the League of Nations and was most crucially granted to colonial entities occupied by the major powers of the European continent in the 19<sup>th</sup> – early 20<sup>th</sup> century. ‘Self-determination’ indeed distinguishes between what Heywood labels ‘liberal nationalism’ and ‘anticolonial nationalism’ on the one hand, and ‘expansionist’ and/or ‘conservative nationalism’ on the other.<sup>175</sup> Whereas ‘liberal nationalism’ was born as a result of 18<sup>th</sup>-19<sup>th</sup> century European revolts, ‘expansionary nationalism’ oxymoronically represents the ideology of newly born, ‘democratic’ European powers whose newly-found sense of independence turned them into supremacist entities bent on “civilising the savages.” For English school theorists, this was the ‘vanguardist’ manner through which the ‘international society’ spread from Europe to the rest of the world, much like the way that more recently the U.S. invaded Iraq, allegedly to extend democracy to the Iraqi people.

Meanwhile, the prime moment of ‘anticolonial nationalism,’ as per Heywood’s classifications, was reached during the era of decolonisation in the 1950s-1970s, when UN membership increased from 60 states in 1950 to 159 states in 1984. This is the period when, to use the words of Lustick (1995), the ‘ideological hegemony’ of the colonial powers within their colonies either reached a threshold of absence or

---

<sup>175</sup> See for instance Andrew Heywood, “Nations and Nationalism,” Ch.5 in *Politics*, fourth ed. (Palgrave Macmillan, 2013), pp.108-126.

started to irreversibly breakdown through various ‘wars of position’ by the colonial entities followed by ‘wars of manoeuvre’ vis-à-vis a changing institutional arrangement within the colonial powers themselves.<sup>176</sup> The gathering of 29 African and Asian nations at Bandung in April 1955 represented in those regards a major reference point in anticolonial studies, which praise the juncture of that conference as the moment when “third world sovereignty” was born, empires broke down and a new world order emerged.<sup>177</sup> And whereas ‘anticolonial nationalism’ is the result of ‘expansionist nationalism,’ the rise of ‘conservative nationalism’ in our contemporary global affairs and in countries such as the UK and India, and Iraq and Syria before them (the Baathists), has given birth to what we could additionally term ‘ethnic,’ or ‘postcolonial’ nationalism.

This last category of nationalism, ‘postcolonial nationalism,’ represents in relation to the present analysis secessionary movements that are revolting against international institutions such as ‘boundaries,’ which is according to Buzan (2004) a derivative institution of ‘territoriality.’<sup>178</sup> This is a notion that Brilmayer has labelled “adverse possession claims,” whereby an ethnic or a religious minority challenges the dominant group’s control over territory, and aims to correct the historical grievances of its members by confining them within territorial demarcations that are believed to be better suited for their ethnic and/or religious survival.<sup>179</sup> For entities like the Kurds in Iraq and Syria, the enforcement of the UN System of the present border regimes of a region such as MENA via *uti possidetis juris* evidences the continuation of colonialism via international legal means, hence the term ‘postcolonialism’ (without a middle hyphen).<sup>180</sup>

Importantly, however, and as Roger Epp (1998) points out, “even where English school texts are critical of Western policy and sympathetic to the post-colonial

---

<sup>176</sup> Also see O’Leary et. al. (2001), and Haklai et. al. (2015).

<sup>177</sup> See *Bandung, Global History, and International Law: Critical Pasts and Pending Futures*, edited by Luis Eslava, Michael Fakhri, and Vasuki Nesiha (Cambridge University Press, 2017). Also see *Bandung revisited: the legacy of the 1955 Asian–African Conference for International Order*, edited by Seng Tan and Amitav Acharya (NUS Press, 2008).

<sup>178</sup> See O’Leary et. al. (2001), in particular Gurharpal Singh “Resizing and Reshaping the State: India from Partition to the Present,” Ch.5, pp.139-167; and Vali Nasr on Pakistan/Bangladesh, Ch.6, pp.169-200.

<sup>179</sup> Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, Yale Law School (1991), pp.178; also see UN Charter Ch.1 Art 2(1, 4 & 7).

<sup>180</sup> On this, see for instance Christine Sylvester, “Post-colonialism” Ch.11 in *The Globalization of World Politics: An Introduction to International Relations*, edited by John Baylis, Steve Smith, and Patricia Owens (Oxford University Press, 2017), pp.174-189.

‘revolt’...they typically also evince a more conservative concern for order in international society.”<sup>181</sup> In other words, conceptual frameworks such as the ‘international society’ tend to be endorsing of the status quo as opposed to being accommodative of any possible redrawing of the political map of the world. Thus, by further taking the present study of applicable international norms and institutions in the direction of ‘critical’ IR theory we could become better equipped in analysing the selectivity in how those ‘postcolonial’ revolts are either facilitated or suppressed by our present ‘international society.’ ‘Critical’ IR theory indeed places the ideological basis (and bias) of our present international system centre stage of the analysis. Even when ‘constructivism’ took ‘ideology’ into account it is arguably the case that scholars such as Kratochwil applied it in a derogatory way e.g., only the USSR and not the West had an ‘ideology.’ The ‘critical’ camp of IR interrogates instead the ideological basis of our contemporary, ‘neo-liberal’ global governance system. Meanwhile, it is still worth illustrating some of the other possible limitations of the ‘international society’ framework when applied at a regional level such as that of MENA.

### **III.III. The International Society Framework at the Regional Level of MENA**

In outlying the framework of analysis for his co-edited book *International Society and the Middle East: English School Theory at the Regional Level*, Buzan (2009) convincingly uses the “fried-egg” metaphor. He illustrates that different regional ‘inter-state’ societies rest on and share the ‘white’ of the global ‘international society,’ as well as the great levels of compatibility between the “social developments at the regional level and those at the global level.”<sup>182</sup> Under such an international system, the “thinner global interstate society is shared by all, and the regional developments build on top of that...The key to this second-order pluralism,” argues Buzan, “is the desire to express and maintain zones of cultural and political difference without seeking to expand them to global dominance.”<sup>183</sup> In such a manner, the book investigates how the thinner layer of the global ‘international society’ spread to

---

<sup>181</sup> Roger Epp, “The English School on the Frontiers of International Society: a Hermeneutic Recollection,” *Review of International Studies*, 24 (1998), pp.47-63, 58.

<sup>182</sup> Barry Busan, “The Middle East Through English School Theory,” p.33 in Ch.2 of *The International Society and the Middle East: English School Theory at the Regional Level*, Buzan and Gonzalez-Pelaez (eds.) (Palgrave Macmillan, 2009), pp.24-44.

<sup>183</sup> *Ibid*, p.33.

MENA, as well as its degree of internalisation by, and compatibility and difference with region-specific 'primary institutions' such as 'Arab nationalism' and 'Islamism.'

Rather than being entirely 'solidarist,' or explicitly 'pluralist,' Buzan describes the current nature of our global international society as "modestly cooperative" in the sense that its "coexistence elements are quite deep-rooted and stable."<sup>184</sup> Borrowing key terminology such as "vanguard" from Leninist thinking, Buzan underlines that the "vanguard theory of how interstate society expanded is implicit in the way the English school has presented the story of the European/Western interstate society becoming global," not through the actions of a single state, but through that of "all of the Western colonial powers."<sup>185</sup> In other words, such a "triumph of European power [has] meant that Western norms..., values and institutions dominated the whole system."<sup>186</sup> The function of this Westphalian model and its associated 'institutions' is for Buzan also similar to "the idea that hegemonic states like the UK and the US act to spread values, though the vanguard model is...less centred in a single hegemonic state, and more the outcome of a hegemonic interstate society."<sup>187</sup> This is why he has further explained that the "cooperative roots" of the global 'international society' are shallower, "and could more easily (which is not to say easily) be swept away by changes in the distribution of power that reduce Western influence."<sup>188</sup>

With the increasing number of instances when Russia and China have either obstructed or vetoed UNSC Resolutions on situations of civil turmoil ranging from Syria to Yemen to more recently Sudan; one may still amend the last part of Buzan's statement in relation to the present analysis as follows. The 'cooperative roots' of our 'international society' may easily be swept away by changes in the distribution of power that reduce the collective interest of the Permanent Members of the UNSC to preserve the post-WWII status quo. Those recent actions by Russia and China also evidence a reduction in the dominance of the West over the running of our global political affairs, which came about in the aftermath of the Cold War. While under

---

<sup>184</sup> Buzan (2009), pp.40-41.

<sup>185</sup> Ibid, pp.35-36.

<sup>186</sup> Ibid, p.35.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid, pp.40-41.



such conditions they may still be cooperating to prevent any substantial changes to the post-WWII global territorial status quo, the Permanent Members of the UNSC now arguably balance each other out in a manner that is preventing neither the West nor the East from reaching global ‘hegemony’ in the running of contemporary global affairs. Those dynamics have strikingly been overlooked by the English school, presumably because of its eagerness to demonstrate how the West, to the exclusion of the Rest, established our modern international system.

The framework of analysis that is outlined by Buzan et. al. (2009) for the regional level of the Middle East is still commendable for factoring in various notions of “template” institutional copying in the region, and how they “run in close parallel to Waltz’s (1979) idea that anarchy generates ‘like units’ through process of ‘socialisation and competition.’”<sup>189</sup> In this regard, NATO’s interventions in Kosovo and Libya were copied and applied at the regional level of the Middle East through the GCC’s/Arab Coalition’s intervention in Yemen. This is one effect highlighted by Buzan “of a sub-global vanguard leading a global development.”<sup>190</sup>

Similarly, several Westphalian institutions have not only become ‘internalised’ and replicated by the states of the region, but they have also become imbedded in the consciousness of the region’s population and often invoked against the West itself (norms co-constitute).<sup>191</sup> Those institutions include ‘territoriality’ and its derivative institution of ‘boundaries,’ ‘sovereignty’ and its derivative institution of ‘international law,’ ‘nationalism’ and its derivative institution of ‘self-determination,’ and the ‘equality of people’ and its derivative institutions of ‘human rights,’ ‘humanitarian interventions’ and IHL. For example, the Organisation of African States officially endorsed *uti possidetis juris* in 1964, and ‘nationalism’ and ‘self-determination’ were invoked during the Algerian war of independence against France. In addition, as Buzan et. al., amongst others point out, ‘Islamism’ spread to the region after the 1979 Islamic Revolution in Iran within the confinement of the ‘sovereign,’ ‘territorial state’ not through a call to restate the Caliphate, which is evidenced by the rise of the Muslim Brotherhood to power positions in various parts of post-Uprisings MENA through democratic elections.

---

<sup>189</sup> Buzan (2009), p.35.

<sup>190</sup> Ibid, p.36.

<sup>191</sup> Ibid.

The process of “internalisation” of international norms and institutions at the regional level of MENA has been addressed by the prominent Middle Eastern scholar Fred Halliday in his opening chapter of Buzan’s co-edited book on *International Society and the Middle East*.<sup>192</sup> Many aspects of Halliday’s suggestions on how best to adapt the ‘international society’ framework to the Middle East, such as his recommendations to take a greater accountability of historical continuities and discontinuities as well as to factor in the coercive nature of ‘international society’s’ expansion to the region, further form an integral element of the overall direction of this book. Notably, two subsequent chapters by Amira Bennison and Nuri Yurdusev are dedicated to Ottoman History in the Region, while Ana Gonzalez-Pelaez illustrates in a separate chapter which of those ‘primary institutions’ that are identified by Buzan (2004) are indeed active at the regional level of the Middle East. Simon W. Murden explores in yet another chapter the dysfunctional ‘secondary institutions’ of the Middle Eastern system such as the Arab League.<sup>193</sup> And following two additional chapters on ‘Arab nationalism’ and ‘Islamism,’ respectively, Raymond Hinnebusch concludes the book with an oil-centred study entitled a “Neo-Gramscian Twist on the International Society Approach.”

However, various theoretical shortcomings remain at play here, which once again underlines the generally ‘descriptive’ tone of the ‘international society’ framework. In her own chapter in Buzan et. al. (2009), Ana Gonzalez-Pelaez outlines the ‘primary institutions’ at the level of the regional interstate society of the Middle East (see Table 4 below). To account for some of the distinctive features of the region’s inter-human society vis-à-vis the global ‘international society,’ Gonzales-Pelaez adds ‘Arab nationalism’<sup>194</sup> as a derivative institution of ‘nationalism’ and the ‘Israeli-Palestinian conflict’ under that of ‘territoriality.’ While Gonzales-Pelaez goes into some doubts as to whether the Israeli-Palestinian conflict should be listed as a

---

<sup>192</sup> Fred Halliday, “The Middle East and Conception of ‘International Society,” pp.11-12 & 22 in Ch.1 of *International Society and the Middle East*, Buzan and Gonzalez-Pelaez (eds.). pp.1-23.

<sup>193</sup> Simon W. Murden, “The Secondary Institutions of the Middle Eastern Regional Interstate Society,” Ch.6 in *The International Society and the Middle East* (2009), pp.117-139.

<sup>194</sup> For more specific information on Arab nationalism, see in Particular Adeed Dawisha, *Arab Nationalism in the Twentieth Century* (Princeton University Press, 2016); Shibley Telhami and Michael Barnett, *Identity and Foreign Policy in the Middle East* (Cornell University Press, 2002); Raymond Hinnebusch and Anoushiravan Ehteshami (eds.), *The Foreign Policy of Middle Eastern States* (Lynne Reinner, 2002); and Stephen Humphreys, “Strange Career of Pan Arabism,” Ch.3 in *Between Memory and Desire the Middle East in a Troubled Age* (University of California Press, 2005), pp.60-82.

separate ‘institution,’ it is the notion of ‘irredentism’ that could alternatively be listed as a derivative institution of ‘territoriality’ and/or ‘nationalism’ in the Middle East, by way of better accounting for the present territorial controls of NSAGs in various parts of the region. Elsewhere, Raymond Hinnebusch (2015) has acknowledged that ‘irredentism’ formed the basis of the ongoing plights of both the Palestinian as well as the Kurdish people in the ‘postcolonial landscape’ of the Middle East. However, such a dimension of analysis (*irredentia*) still has not been applied to the on-going processes of state fragmentation by NSAGs in countries such as Yemen and Libya. In the case of Buzan and Gonzales-Pelaez, their book was written before the 2011 Arab Uprisings broke out, but in the case of Hinnebusch (2015) the notion was all together overlooked even in his chapter on the Arab Uprisings,<sup>195</sup> let alone in relation to external players that empower some secessionist movements while suppressing others in a way that is reminiscent of the classic colonial legacy of ‘divide and rule.’

**Table 4:** Relevant Primary Institutions of the Middle Eastern Inter-State Society<sup>196</sup>

Master	Derivative institutions
Sovereignty	Non-intervention International law
Territoriality	Boundaries Conflict/Israel-Palestine
Diplomacy	Bilateralism Multilateralism
Great power management	Alliances Balance of power
War	
Nationalism	Self-determination Popular sovereignty/democracy Arab nationalism
Equality of people	Human rights Humanitarian interventions Ruling elites

While English school theorists hold that their ‘international society’ framework is “epistemologically constructivist,” and/or historically and socially “aware,” those main tenants of the framework are arguably only partially utilised in Buzan et. al.’s (2009) approach to the region. For instance, while the various authors of this study do consider the more than 500 years of Ottoman legacy in the region prior to

<sup>195</sup> Hinnebusch (2015). See Ch. 9, “The Arab Uprisings: Consequences for State and System,” p.272-292.

<sup>196</sup> Ana Gonzalez Pelaez, “The Primary Institutions of the Middle Eastern Regional Society,” p.115. Ch.5 in *The International Society and the Middle East* (2009), pp.92-116.

European colonialism, the *millet* governance system of the Ottomans was notably under-examined, let alone in relation to contemporary notions of ‘postcolonial nationalism.’ In the case of North Yemen and Libya, this was an Ottoman system of guaranteeing local control over local issues, and granting each tribe jurisdiction over its own legal, social and cultural affairs until it was overridden by Italy after its invasion of Libya in 1911.<sup>197</sup> Under such an Ottoman *yilayet* organisation for the Middle East, “territorial borders coincided with the age-old customs of local people: they were never clear-cut, and [were] always permeable.”<sup>198</sup> In other words, the co-constitutive study of norms from a ‘constructivist’ perspective could have been further utilised to showcase how the imposition of ‘primary institutions’ such as ‘statehood,’ ‘sovereignty’ and ‘territoriality’ on the various tribes of MENA e.g., those of Yemen and Libya, could have led to their estrangement and subsequently contributed to the two countries’ present territorial fragmentations in the aftermath of the 2011 Arab Revolts. However, the English school’s epistemological pre-occupation with ‘order’ in the international system has arguably obstructed Buzan et. al.’s arrival at such a level of analysis.

Buzan has importantly stressed that the original theoretical contribution of the different authors of this landmark study in English school circles of IR and/or Middle East studies is the first of its kind, which he says could give rise to “some analytical problems in that there are few or no precedents to guide the investigation.”<sup>199</sup> He particularly notes that “[a]ll of the authors in this volume have [had] to some extent to carve out pathways for the first time,” and that “because the English school concentrated almost entirely on primary institutions in the interstate domain, there is a serious shortage of guidance on what primary institutions look like in non-state domains and how these might relate to those in the interstate domain.”<sup>200</sup> Indeed, the English school remains predominantly state-centric in its approach.

Thus, it can be restated here that if Buzan et. al. (2009) and Crawford (2007) before them,<sup>201</sup> have demonstratively approached questions pertaining to the way that

---

<sup>197</sup> On the millet System, see Philip A. Schrodt and Deborah J. Gerner, “Middle Eastern Politics,” Ch.4 in *Understanding the Contemporary Middle East*, Jillian Schwedler (ed.) 4<sup>th</sup> ed. (Lynne Rienner, 2013), pp.89-138, 99.

<sup>198</sup> Yurdusev (2009), in *International Society and the Middle East*, p.82.

<sup>199</sup> Buzan (2009), p.43.

<sup>200</sup> Ibid.

<sup>201</sup> Crawford (2007), p.419.

prominent institutions of ‘international society’ such as ‘territoriality’ and ‘self-determination’ extend to NSAGs with a great degree of reluctance, those same questions are the main analytical puzzle that this thesis interrogates. In addition, Buzan’s explicit statement of the shortcomings of the ‘international society’ framework at the non-state domain of MENA is an endorsement of what has been stated at the beginning of this Chapter, that where the code of international relations is missing in the form of norms, relevant debates in international relations theory could themselves be plagued with various theoretical shortcomings. This is arguably also due to the relevant theoretical limitations of IR theory itself, such as the lack of attention that it continues to pay to issues of ‘territoriality’ other than through a political economy perspective that is merely compatible with Ruggie’s area of ‘business and human rights.’ The alternative lens of ‘*terra nullius*’ that this thesis employs could therefore prove to be helpful in overcoming both the normative as well as the theoretical shortcomings that are simultaneously at play in our study of the governance and overall status of the territorial controls of NSAGs (See Ch.IV on the Analytical Framework).

Ultimately, there is a need to go beyond the heavily ‘descriptive’ and/or ‘explanatory’ tone of the ‘international society’ framework that ‘constructivism’ itself permits through its consideration of the co-constitutive power of norms. The selectivity in how our present international society grants independence to subethnic groups and/or how it allows the individual to co-constitute certain norms e.g., in areas of ‘business and human rights’ more than others e.g., those pertaining to questions of ‘territoriality’ and NSAGs indeed calls into question the ideological foundations of our present international system itself. This latter consideration requires that the analysis is taken a step further and into the direction of ‘critical IR’ theory. It would have by doing so been taken from a mere ‘description’ of which norms apply and which norms do not apply, to the subsequent ‘explanation’ of how such norms expanded to a region such as MENA, and to lastly a ‘critique’ of the way that those same norms apply to a given subject matter e.g., ‘territoriality’ and NSAGs. It is only by embarking on the path of ‘critical’ IR theory would one be able to importantly complement the TWAIL-informed analysis that is presented by the previous Chapter, in a manner that most of all considers the broader forces of Great Power politics that are undeniably at play in situations of civil war.

### III.IV. Critical Theory & the Conservative End of Problem-Solving IR Theory

Through his important article “Social Forces, States and World Orders: Beyond International Relations Theory,” Robert Cox (1981) has cemented our contemporary understanding of IR theory as made up of the two opposite camps of ‘critical’ vs. ‘problem solving’ theory.<sup>202</sup> Building on the ‘critical turn’ of the field of sociology, Cox criticised the classic distinction between the state vs. society in ‘traditional’ IR theory, which considered the ‘state’ the main unit of analysis of this other discipline, and he proposed the ‘state-society complex’ should instead occupy central stage of IR deliberations. By doing so, Cox and his contemporaries e.g., Richard Ashley established the cornerstone of what became known as ‘critical’ IR theory. This work was further developed by Andrew Linklater (2010), who described the ‘critical turn’ of IR as one that exposed “the methodological limitations of [the] classical approaches.”<sup>203</sup> For Linklater, it was also time to move beyond class-based emancipation that ‘classic Marxism’ promoted, and to take IR theory in a direction where ‘class’ is not the only basis for political emancipation and relevant theoretical discourse.<sup>204</sup>

Many such ‘critical’ contributions to the study of IR have correspondingly sprung out of this ‘critical turn’ of the discipline, including those informed by ‘post-Marxism,’ ‘feminism,’ ‘post-structuralism’ and ‘postcolonialism.’ If the ‘positivists’ accept reality as it is, those ‘post-positivist’ contributions deconstruct the present *nature* of international relations. They have now even become considered within IR circles as more mainstream than ‘the mainstream’ or ‘traditional’ IR theories of ‘liberalism’ and ‘realism’ that Cox (1981) labelled ‘problem-solving’ theory.<sup>205</sup>

For Cox (1981), the strength of ‘problem-solving’ theory is its ability “to fix limits or parameters to a problem area, and to reduce the statement of a particular problem to a limited number of variables which are amenable to relatively close and precise

---

<sup>202</sup> Robert W. Cox, “Social Forces, States and World Orders: Beyond International Relations Theory,” *Millennium: Journal of International Studies*, 10:2 (1981), pp.126-155.

<sup>203</sup> Andrew Linklater, *Beyond Realism and Marxism: Critical Theory and International Relations* (Palgrave Macmillan, 1990), p.27.

<sup>204</sup> *Ibid*; also see Cox (1981).

<sup>205</sup> On ‘positivism’ and ‘post-positivism,’ see Patrick Thaddeus Jackson and Lucas Dolan, “Positivism, Post-Positivism, and Social Science,” Ch.50 in Jean-Frederic Morin, Christian Olsson and Ece Ozlem Atikcan (eds.), *Research Methods in the Social Science: An A-Z of Key Concepts* (Oxford University Press, 2021), pp.214-218.

examination.”<sup>206</sup> By contrast, ‘critical’ theory is so named “in the sense that it stands apart from the prevailing order of the world, and asks how that order came about.”<sup>207</sup> Linklater (2010) further clarifies that “critical theory takes issue with ‘positivism’ by arguing that knowledge does not arise from the subject’s neutral engagement with an objective reality, but rather reflects pre-existing social purposes and interest.”<sup>208</sup> It additionally “stands opposed to empirical claims about the social world, which assume that existing structures are immutable...and investigates the prospects for new forms of community in which individuals and groups can achieve higher levels of freedom.”<sup>209</sup> ‘Critical’ theory thus became the camp of IR theory that concerns itself with ‘emancipation’ and its various processes, while ‘problem-solving’ theory became the ‘ideology’ of diplomats and statecraft.

“Theory is always for someone and for some purpose,” underscores Cox.<sup>210</sup> He therefore highlights that each stream of IR theory represents a distinct ideology in and by itself. As Cox points out by way of a critique of ‘problem-solving’ theory, there is “no such thing as theory...divorced from a standpoint in time and space. When any theory so represents itself,” argues Cox, “it is the more important to examine it as ideology and lay bare its concealed perspective.”<sup>211</sup> Unlike ‘problem-solving’ theory, Cox (1981) notably underlines that ‘critical’ theory “does not take institutions and [existing] social and power relations for granted but calls them into question by concerning itself with their origins and how and whether they might be in the process of changing.”<sup>212</sup> In addition, whereas both streams of theory take as a matter of practice as their “starting point some aspect or [a] particular sphere of human activity..., the critical approach leads towards the construction of a larger picture of the whole of which the initially contemplated part [e.g., ‘territoriality’ and NSAGs] is just one component, and seeks to understand the process of change in which both parts and whole are involved.”<sup>213</sup>

---

<sup>206</sup> Cox (1981), p.129.

<sup>207</sup> Ibid.

<sup>208</sup> Andrew Linklater, “The Achievements of Critical Theory,” p.279 in Ch.13 of *International Theory: Positivism & Beyond*, edited by Steve Smith, Ken Booth and Marysia Zalewski (Cambridge University Press, 2010), pp.279-298.

<sup>209</sup> Linklater (2010), pp.279-280.

<sup>210</sup> Cox (1981), p.128.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid, p.129.

<sup>213</sup> Ibid.

While laying out those contemporary cornerstones of the discipline, Cox (1981) further underlines that ‘critical theory’ is “theory of history in the sense of being concerned not just with the past, but with a continuing process of historical change.”<sup>214</sup> In contrast, he stresses that “problem-solving theory is non-historical or ahistorical, since it, in effect, posits a continuing present... The strength of the one is the weakness of the other.”<sup>215</sup> Indeed, “the belief that human beings can make more of their history under conditions of their own choosing” became for Linklater one of the central pillars of critical IR theory.<sup>216</sup> Building for instance on the project of Habermas for the reconstruction of “historical materialism,” ‘post-Marxism’ improves conventional Marxist analysis “by considering axes of exclusion other than class and by analysing the variety of forces, including production, which shape the contours of human history.”<sup>217</sup> Cox (2010) concludes that “the purpose served by problem-solving theory is conservative, since it aims to solve the problems arising in various parts of a complex whole in order to smooth the functioning of the whole.”<sup>218</sup> It correspondingly makes uncompromising value-judgments about the general function of the existing world order, in a manner that does not allow for change.

Of remarkable relevance to the research question of this thesis is the conservative end of the ‘problem-solving’ approach that has been described by John Agnew (1994) as its ‘territorial trap.’ For Agnew, ‘problem-solving’ theory is evidently “trapped” because it treats the existence of the ‘territorial state’ as a given, and in non-historical terms.<sup>219</sup> Agnew (1994) highlights that this is the result of three geographical assumptions by the ‘problem-solving’ field of inquiry: 1) “The reification of state territorial spaces as fixed units of secure sovereign space” in order to, mainly, defend the integrity of the state’s territorial space and to *deny alternatives*; 2) the separation of the domestic from the foreign, failing along the way to explain the dependency of the ‘territorial state’ on its interactions with the global political and economic order; and 3), the view of the territorial state as existing prior to and as a “container of society,” separating and protecting it from the anarchy and the

---

<sup>214</sup> Cox (1981), p.129.

<sup>215</sup> Ibid.

<sup>216</sup> Linklater (2010), p.280.

<sup>217</sup> Ibid.

<sup>218</sup> Cox (1981), pp.129-130.

<sup>219</sup> John Agnew, “The Territorial Trap: The Geographical Assumptions of International Relations Theory,” *Review of International Political Economy*, 1:1 (1994), pp.53-80.



danger that reigns outside of it.<sup>220</sup> While Agnew eventually revisited his ‘territorial trap’ thesis in light of the changes that I have highlighted earlier vis-à-vis the international political economy,<sup>221</sup> this thesis remains strikingly applicable to notions of ‘territoriality’ under public, as opposed to private international law. If under private international law state boundaries are allegedly eroding as part of the various processes of globalisation, under public international law they are being conservatively preserved.

A review of how such ‘problem-solving’ views came about in relation to the ‘territorial state’ may further prove to be beneficial for the purposes of the present analysis. For instance, the period of revolution and political turmoil that preceded and immediately followed the signing of the Peace of Westphalia was what inspired Thomas Hobbes, one of the main figures in the ‘realist’ school of thought, to write the *Leviathan* in 1651. Hobbes had the English Civil War “squarely in mind,” which was fought between 1642-1651, as well as the French Fronde, which was “a series of revolts that followed the Peace of Westphalia from 1648-1653...between the landed aristocracy and the French royalty.”<sup>222</sup> For Hobbes, “the civil, temporal power must be able to supersede other powers,”<sup>223</sup> and governance is practiced through cultivating the consent of the governed by the means of the social contract between the people and their government. “This is the generation of the great Leviathan,” underscored Hobbes, in a stark reference to the evolving principle of ‘non-intervention’ into the affairs of the ‘sovereign,’ independent ‘territorial state’ by any external entities.<sup>224</sup> The stated adherence to those views by our present international system e.g., via the UN Charter indeed exposes its self-contradictions. Notably, the most powerful states, the victors of WWII, may still intervene in the internal affairs of other states to safeguard their interests and their relative power positions in the international system.

The decade of Westphalia was also when John Locke, one of the founding figures of ‘liberalism,’ wrote *Two Treaties of Government* in 1690, or soon after the 1688

---

<sup>220</sup> Agnew (1994), pp.76-77. Emphasis added.

<sup>221</sup> John Agnew, “Revisiting the Territorial Trap,” *Nordia Geographical Publications*, 44:4 (2015), pp.43-48.

<sup>222</sup> Elden (2013), p.299.

<sup>223</sup> *Ibid*, pp.299-300.

<sup>224</sup> Qtd in Elden (2013), p.301. Also see O’Leary, Ch.2 in O’Leary et. al. (2001), pp.16-73 on the historical evolution of the modern state.

Glorious Revolution in England. For Locke, governance is characterised as the art of protecting private property, inclusive of a person's own labour, through a consensual process of power delegation from citizen to ruler: "The great and chief end therefore, of Mens Uniting into Commonwealths, and putting themselves under Government," argued Locke, "is the preservation of their property."<sup>225</sup> The evolution of the 'territorial state' was accordingly described by Locke in the manner whereby the enlargement of families, possessions, industries and stocks made people search for settlement, build cities "and then, by consent, they came in time, to set out the bounds of their distinct Territories, and [to] agree on limits between them and their Neighbours, and by Laws within themselves, [they] settled the Properties of those of the same Society."<sup>226</sup> This is remarkably demarcated in the relevant literature as a process that ended in the past. However, if European societies were able to follow those seemingly natural processes of social organisation, those same processes were denied to the various parts of MENA that saw Westphalian institutions such as 'sovereignty' instead being imposed on them during the era of European colonialism in the 19<sup>th</sup>- early 20<sup>th</sup> Century.

The generally conservative impact of those developments on contemporary 'problem-solving' theory is important, especially since the interest here is to study the presence as well as the absence of applicable international norms to the territorial controls of NSAGs. And, if for the purposes of the present argument international law is to be understood as a 'positivist,' 'problem-solving' institution in itself, then the following critique of the paucity of such norms becomes possible to reach: international law's conservative preservation of Westphalian institutions such as 'sovereignty' and 'territoriality' denies alternatives and makes the 'problem-solving' approach "territorially-trapped." And since the actual existence of applicable norms to the territorial controls of NSAGs is limited to 'remedial secession,' humanitarian interventions, and/or humanitarian assistance that are advocated on a selective basis by the 'problem-solving' camp, such remedies become understood, to use the language of Cox (1981), as solutions to "the problems arising in various parts of a complex whole in order to smooth the functioning of the whole."<sup>227</sup>

---

<sup>225</sup> Elden (2013), p.307.

<sup>226</sup> Qtd in Elden (2013), p.307.

<sup>227</sup> Cox (1981), pp.129-130.

Correspondingly, by allowing for a scrutinization of the ideological basis of ‘problem-solving’ norms and remedial approaches, the sphere of ‘critical’ IR theory enables the arrival at a better understanding of the fluid nature of contemporary interactions between the domestic and the international. It further advances our understanding of how the state is itself created in a post-Westphalian world aiming to challenge the territorial boundaries of the modern state and to emancipate the ‘subaltern.’ The present mode of inquiry is indeed in line with Cox (1981), who underlines that a critical approach may contain ‘problem-solving’ tools within it, so long as such frameworks of analysis are treated as “identifiable ideologies, thereby pointing to their conservative consequences, not to their usefulness as guides to action.”<sup>228</sup> This is also in agreement with the guidance of Koskenniemi (2005), that in areas of uncertain applicability of international law, we must first establish the content of the law and then consider whether or not it is binding on all states regardless of their will, interest and power. Koskenniemi is indeed a member of the critical approach to the study of international law, which is also known as New Stream scholarship.<sup>229</sup>

This thesis further takes note of Cox’s assessment of the fluid and continuous nature of interactions between the three levels of historical institutions, the different forms of the state and social forces within it, and the (hegemonic) world order of the day, or the *micro*, *meso* and *macro* levels.<sup>230</sup> Under this view, the function of institutions such as those outlined by Buzan (2004) become understood as enforcing of the present hegemonic order, while also setting out acceptable ‘codes of conduct’ for states and the social forces within them in a manner that enables the most powerful states of the system to neutralise any calls for transformational change.

#### **III.V. Postcolonialism and *Terra Nullius*: Towards an Alternative Approach to the Study of PIL’s Applicability to the Territorial Enclaves of NSAGs**

‘Critical’ IR theory most notably includes, in relation to the present analysis, ‘post-structuralism,’ ‘post-Marxism,’ and ‘postcolonialism.’ Contemporary ‘post-structural’ scholarship seeks to expose the various notions of ‘othering’ in society

---

<sup>228</sup> Cox (1981), p.130.

<sup>229</sup> Armstrong et. al. (2007), p.101.

<sup>230</sup> Cox (1981), pp.135-138.

through e.g., discourse analysis and the deconstruction of binary oppositions created by language and our general use of it, as well as through the study of how power is formally and informally exercised in society. It builds on a rich and diverse range of contributions by Friedrich Nietzsche, Martin Heidegger, Jacques Derrida, and Michel Foucault, amongst others. In this regard, it can be noted that ‘post-structural’ contributions on the question of ‘state’ and ‘territory’ are numerous, and they include the contributions of Michel Foucault and Henri Lefebvre, amongst others. This body of work has also found its relevance to the field of the international political economy.<sup>231</sup> However, as Elden states in *The Birth of Territory* in a critique of the ‘post-structural’ genealogy of ‘territory’ that Foucault developed from Nietzsche’s and Heidegger’s work, “most of what Foucault says about territory specifically is at best misleading.”<sup>232</sup> Elden adds by way of emphasising the importance of his own historical account on ‘territory’ that regardless of its potential usefulness, “such a way of writing, [or genealogy] is wholly inappropriate for a concept whose substantive history does not exist.”<sup>233</sup>

It can be further acknowledged that if the early work of Marx and Engels analysed the different modes of production within the capitalist state system and the exploitation of the working force by the bourgeoisies; Gramscian and neo-Gramscian schools of thought in ‘post-Marxism’ have referred to the supremacy of the elite over the ‘masses’ as ‘cultural hegemony.’ Questions pertaining to why the masses in a capitalist state system have never revolted in a manner comparable to the Bolshevik Revolution thereby became better understood. The work of figures such as Galtung and Wallerstein in the 1970s took the notion of ‘hegemony’ internationally, which is particularly seen through their conceptualisation of various modes of analysis of core/periphery global economic dependencies in a ‘post-imperialist’ manner. However, since we are more concerned with the cultural and political impact of international law, as opposed to the various processes of economic globalisation, ‘postcolonialism’ can ultimately be stated as the most relevant ‘critical’ IR theory to the present analysis.

---

<sup>231</sup> For a discussion, see Nisha Shah, “The Territorial Trap of the Territorial Trap: Global Transformation and the Problem of the State’s Two Territories,” *International Political Economy*, 6 (2012), pp.57-76.

<sup>232</sup> Elden (2013), p.8.

<sup>233</sup> Ibid.

In its own regard, ‘postcolonialism’ is also epistemologically and ontologically compatible with the present mode of inquiry as it examines the present continuations of colonialism following the various stages of ‘flag decolonisation’ of the 1950s-1980s. As Bill Ashcroft points out, the term ‘postcolonialism’ refers to the study and analysis of the various institutions of European colonialism and contemporary colonial legacies in both pre, and post-independence nations and communities.<sup>234</sup> The ‘post’ in ‘postcolonialism’ does not signal “that we are in the era after colonialism, with the implication that it now belongs to the past but, on the contrary, that the world has been decisively shaped by colonialism, and that one cannot even begin to understand the contemporary situation if this fact is not acknowledged, taken into account, and explored in all its ramifications.”<sup>235</sup> Accordingly, various ‘revisionist’ accounts have been established within the ‘postcolonial’ circles of IR, in a manner that is e.g. critical of the exclusion of the writings of prominent scholars such as W. E. B. Du Bois in the early stages of the discipline’s development, and/or of issues of racism and white supremacy in ‘mainstream’ IR theory.<sup>236</sup>

‘Postcolonialism’ is therefore to IR theory what TWAIL is to international law, although ‘postcolonialism’ remains critical “of all ‘essentialism,’ that is, of all approaches which take national and ethnic identities for granted, by assuming them to be ‘fixed,’ ‘natural’ or ‘primordial’ – and this includes the essentialist claims of anti-colonial nationalisms and Third Worldism.”<sup>237</sup> And whereas ‘post-imperialism’ or ‘post-Marxism’ is mostly critical of the present nature of the global economic system and the dependency of the ‘periphery’ of developing and underdeveloped countries on the ‘core’ of global hegemonic powers, ‘postcolonialism’ explores such on-going dependencies through mostly cultural and political means. For example, it is heavily critical of the UN System and its institution of ‘great power management’ through the UNSC and international law. In addition, ‘postcolonialism’ criticises the

---

<sup>234</sup> See Ch.6 & 7 in Norrie Macqueen, *Colonialism*, (Pearson Longman, 2007). Also see Bill Ashcroft, et al., *Key Concepts in Post-Colonial Studies* (Routledge, 1998): “colonialism,” pp.45-51; “decolonization,” pp.63-67; “neo-colonialism,” pp.162-163 & “post-colonialism,” pp.186-192.

<sup>235</sup> Sanjay Seth (ed.), *Postcolonial Theory and International Relations: a Critical Introduction*, (Routledge, 2013), p.1.

<sup>236</sup> See in particular Meera Sabaratnam, “Is IR Theory White? Racialised Subject-Positioning in Three Canonical Texts,” *Millennium Journal of International Studies*, 49:1(2020), pp.3-31; and Alex Anievas, Nivi Manchanda and Robbie Shilliam (eds.), *Race and Racism in International Relations: Confronting the Global Colour Line* (Routledge, 2014).

<sup>237</sup> Seth (2013), p.2.

discipline of IR theory itself as western/Eurocentric,<sup>238</sup> and it aims to incorporate into the study of international affairs in general, and to the subfield of area studies in particular, subaltern voices from the Global South.

As Sanjay Seth (2013) points out, ‘postcolonialism’ is the approach which is “principally concerned with critique, with showing why the dominant accounts and understandings of the international are deficient, and why a postcolonial ‘take’ on it is necessary.”<sup>239</sup> Seth (2013) therefore rejects the notion of how “alternative ways of interpreting the international, and critiques of the discipline, often end up becoming a subset or school within it,” suggesting and proposing instead that ‘postcolonialism’ should be seen “not as one more strand or possibility in IR, but as a very different way of conceiving and studying the international.”<sup>240</sup> Seth especially takes issue with the story of how a Eurocentric ‘international society’ expanded to the rest of the world in English school circles of IR, stressing that “any satisfactory account of the emergence of the modern international system cannot chart how an international society that developed in the West radiated outwards, but rather needs to explore the ways in which international society was shaped by the interaction between Europe and those it colonized. In this regard,” Seth underlines, “any satisfactory account would be a postcolonial one.”<sup>241</sup> In the words of Stuart Hall (1996), “[n]o site, either ‘here’ or ‘there’, in its fantasied autonomy and in-difference, could develop without taking into account its significant and/or abjected others...The Other [cannot] be a term fixed in place and time external to the system of identification and [become], instead, a symbolically marked ‘constitutive’ outside.”<sup>242</sup>

Indeed, legal, and theoretical frameworks are only effective in explaining contemporary international relations when they are deeply rooted or anchored in an existing reality. But when a lot of what is happening in contemporary international politics cannot be explained through a reliance on such available frameworks, their underlying ideological basis become heavily pronounced, and called into question.

---

<sup>238</sup> See for instance Tarek Barkawi and Mark Laffey, “The postcolonial moment in security studies,” *Review of International Studies*, 32:2 (2006), pp.329-352. Also see Navid Pourmokhtari, “A Postcolonial Critique of State Sovereignty in IR: the Contradictory Legacy of a ‘West-centric’ Discipline,” *Third World Quarterly*, 34:10 (2013), pp.1767-93.

<sup>239</sup> Seth (2013), p.3.

<sup>240</sup> Ibid, p.12.

<sup>241</sup> Ibid, p.20.

<sup>242</sup> Stuart Hall, “When was ‘The Post-Colonial:’ Thinking at the Limit,” in I. Chambers and L. Curti (eds.), *The Post-Colonial Question* (Routledge, 1996), p.252, qtd in Seth (2013), p.21.

The application of the alternative lens of '*terra nullius*' in Part II of this thesis on case studies, which is itself inspired by TWAIL and 'postcolonial' scholarship, could thusly prove to be helpful in cementing our understanding of contemporary developments such as those of the territorial fragmentation of Yemen and Libya (2011-2015). It could also bridge current gaps in our understanding of those situations of civil war that are arising from existing, heavily problematic normative and conceptual frameworks such as 'territoriality,' 'sovereignty' and/or 'self-determination.'

As will shortly be demonstrated through Part II of this thesis on Yemen and Libya (2011-2015), certain contestations over territory in our present 'international society' by and through NSAGs remarkably go beyond a simple call for secession based on 'self-determination.' Instead, such contestations are arguably facilitated by external forces bent on upholding the classic colonial legacy of 'divide and rule,' effectively treating sub-administrative territorial entities as '*terra nullius*' within established states and rendering the status of populations living therein negligible. On those grounds, even the creation of states based on 'self-determination' becomes itself better understood as either facilitated or prevented when and if in line with the interests of competing regional and international powers alike.

The adoption of the lens of '*terra nullius*' vis-à-vis the territories of NSAGs additionally enables the postulation that the absence of an IHL/IHRL framework for the administration of such territories is indeed purposeful. It crucially facilitates the treatment of those territories by the present international system as either zones of 'contagion' that must be contained and purged of the 'terrorists' e.g., the Yemeni South or the Libyan East, or as expendable pawns that can be bid against domestic and international rivals alike. Importantly, any proposals to extend the applicability of international 'standards of civilisation' such as those of human rights to the territorial controls of NSAGs without granting them independence are rather redundant, and they largely ignore the power dynamics at play. In addition, as the practice of the UN System itself is indicative of the fact that NSAGs have never been recognised as having 'international personality' that enables them to sign and ratify such international frameworks, those proposals further enforce the conclusions of Koskenniemi et. al. (2017) that international law networks and publications have always been at the service of Empire. This is not to say that statehood is the only

answer; it is rather the lingering colonial legacies of ‘divide and rule’ and of explicitly or implicitly designating certain parts of the world as ‘*terra nullius*’ that must be overcome, as one possible way of arriving at a more just international system.

### III.VI. Conclusion: IR Theory and the Study of PIL’s Applicability

This Chapter has offered an assessment of how the hesitant nature of PIL’s applicability to the overall status and governance of the territorial enclaves of NSAGs can be studied through international relations theory. I have resorted to this cognate disciplinary field of the social science with the hopes of filling any persistent gaps in our understanding of the situation at hand, which may have arisen either because of the existence of various shortcomings in applicable PIL frameworks or their complete absence. As The Committee on Facilitating Interdisciplinary Research (2004) explains, an interdisciplinary study would typically aim to “advance fundamental understandings or to solve problems whose solutions are beyond the scope of a single discipline or area of research practice.”<sup>243</sup> However, besides the normative limitations that are outlined by the previous Chapter, this second part of the Literature Review has accentuated several theoretical limitations that are also at play in our study of such notions of ‘territoriality’ in situations of civil war. Ultimately, the theoretical analysis of the present Chapter has complemented the TWAIL-informed analysis of the previous Chapter and strengthened the theoretical basis of applying the lens of ‘*terra nullius*’ to the situation at hand. It is hoped that this theoretical innovation would help us overcome both the normative as well as the theoretical limitations of available frameworks in PIL and IR theory, and to most notably account for the largely ignored humanitarian outcome.

This Chapter has firstly stated that ever since its emergence in the aftermath of WWI, the field of IR theory has been characterised by a series of ‘great debates’ between its different schools of thought as they attempted to conceptualise the various modes of interaction between states. However, it has also been underlined that despite its rich history, issues of ‘territoriality’ have remained largely underexamined in the field of IR theory, other than through the lens of international political economy. And

---

<sup>243</sup> Qtd in Roberto Carrillo & Lidia Nunez, “Interdisciplinarity: The Intersection of Different Disciplines for Understanding Common Problems,” Ch.35 in Jean-Frederic Morin, Christian Olsson and Ece Ozlem Atikcan (eds.), *Research Methods in the Social Science: An A-Z of Key Concepts* (Oxford University Press, 2021), pp.145-149, 145.



while this first subsection has examined the relevance of Ruggie's work under the UN doctrine of 'business and human rights,' it has also cautioned against drawing too many parallels between this area of work and the present situation, or else we would risk falling into the trap of the various proposals to extend the applicability of international human rights treaties to NSAGs. Rather than adding yet another proposal on how the restrictions of the prominent international institution of 'territoriality' can be reconciled when a territorial enclave emerges under the control of a NSAG, it was notably stated that it is the selectivity of how some of those territorial enclaves are fought while others are accommodated that must instead be addressed. The paradox of how the 'individual' has become able to co-constitute international norms in areas of business and 'workers' rights' and/or when financial profits are at stake, but not in relation to human suffering within and at the forefront of the territorial enclaves of NSAGs indeed exposes the ideological bias and limitations of the international system itself.

The 'constructivist' approach in IR theory, which informs Ruggie's contributions on 'non-state actors' and "the global public domain," was still made relevant to the situation at hand given how 'constructivism' views international law as an 'explanatory' as opposed to a 'descriptive' or a 'prescriptive' tool of analysis. This Chapter has importantly stated that 'constructivism' can help us view the paucity of international norms at the *macro*, *micro* and *meso* levels of the territorial controls of NSAGs as possible outcomes of an expectation placed by the populations of such territories on the international community, where norms are understood as co-constitutive, that the latter has failed to address due to its various security preoccupations. The rhetoric of humanitarianism is indeed difficult to reconcile with the general classification of such territories as places of contagion that must be contained e.g., to prevent another '9/11' attack.

The second subsection of this Chapter has further offered an outline of the main tenets of the 'constructivist,' 'international society' framework in the English school circles of IR theory. While this framework of analysis indeed provides a seemingly natural link between PIL and the field of IR theory, especially in relation to the list of international institutions that are established by Buzan (2004), I have emphasised that there remains a need to go beyond the heavily 'descriptive' and/or 'explanatory'

tone of this theoretical framework.<sup>244</sup> Epp (1998) has notably problematised how even where such English school literature proved to be sympathetic of the ‘postcolonial’ revolt and critical of the West, it has still endorsed the status quo and the present order of the international system in a manner that does not permit any possible redrawing of the political map of the world. Therefore, one would inevitably need to take the analysis in the direction of ‘critical’ IR theory to further consider the ideological basis of our present international system.

The subsequent presentation of how English school theorists such as Buzan et. al. (2009) have applied the ‘international society’ framework to the Middle East further accentuates the theoretical limitations of this approach. Indeed, Buzan himself has admitted the significant shortcomings of ‘international society’ at the ‘non-state domain’ of MENA, as well as the lack of guidance in IR theory for how such a sub-state level of analysis can be carried out. In this third subsection of the present Chapter, I have pointed out that while English school theorists claim their ‘international society’ framework is ‘constructivist’ and socially/historically “aware” in its nature, such stated features of this framework have only been partially utilised in the way that it was applied to MENA. For example, ‘irredentism’ could have been listed as one of the ‘institutions’ of the region to factor in the plights of both the Palestinian and the Kurdish peoples, as well as any possible notions of ‘ethnic’ or ‘postcolonial’ nationalism that have been taking shape in the region in the aftermath of the 2011 Arab Uprisings. In addition, Buzan et. al. (2009) do not fully explore the Ottoman’s *yilayet* or *mellit* governance system in the Middle East, which could have otherwise aided our understanding of any ongoing processes of revolt by the region’s various ethnic or tribal conglomerates against colonially-imposed Westphalian institutions such as ‘sovereignty’ and/or ‘territoriality.’ Nonetheless, it has been underlined that ‘constructivism’ itself does not fully account for such an understanding of emancipation and its various processes, despite its status in IR theory as the via-media approach between the ‘mainstream’ and the ‘critical’ theory.

---

<sup>244</sup> On the difference between those various modes of inquiry, also see Louis M. Imbeau, Sule Tomkinson, and Yasmina Malki, “Descriptive, Explanatory, and Interpretive Approaches,” Ch.20 in Jean-Frederic Morin, Christian Olsson and Ece Ozlem Atikcan (eds.), *Research Methods in the Social Science: An A-Z of Key Concepts* (Oxford University Press, 2021), pp.81-85.

While norms co-constitute, it is only by going in the direction of ‘critical’ or ‘post-positivist’ IR theory that one would be able to examine the broader atmosphere of Great Power politics that is also at play in situations of civil war. The following subsection of this Chapter has importantly underlined that ‘critical’ IR theory enables the arrival at an understanding of the mainstream, ‘problem-solving’ camp of IR theory that is made up of ‘realism’ and ‘liberalism’ as ahistorical, conservative in its end, and ‘territorially trapped.’ Under such a view, the international legal system itself could be said to be conservatively enforcing of the post-WWII global territorial status quo in a manner that denies alternatives to the ‘territorial state,’ unless it suits the interests of the most powerful states in the system to accommodate the opposite. In addition, global governance instruments such as humanitarian interventions and humanitarian assistance become themselves understood, to use the language of Cox (1981), as remedies to “problems arising in various parts of a complex whole in order to smooth the functioning of the whole.”<sup>245</sup> Even more, the absence of any other international frameworks of relevance to the day-to-day governance of populations living within the territorial enclaves of NSAGs become viewed as purposeful, as it facilitates the implicit designation of those territories by powerful states as ‘*terra nullius*’ and their use as negligible pawns that can be bid against domestic and international opponents alike.

Finally, this Chapter has stated the ontological and epistemological compatibilities between ‘postcolonial’ IR theory and the present mode of enquiry, and it has emphasised that this ‘critical’ approach is to IR theory what TWAIL is to international legal discourse. The last subsection has underlined that those two critical approaches in IR theory and international legal discourse ultimately form the theoretical basis of our present conceptualisation of the territorial enclaves of NSAGs as the ‘*terra nullius*’ of our contemporary international society. With the overall purpose of underscoring the catastrophic humanitarian outcome of such situations on affected populations, while their territory is notably being used as theatre of ‘proxy wars’ amongst and in-between influential regional and international players, the next part of this thesis (Part II) puts this main theoretical proposition to the test through an empirical assessment of the situation in Yemen and Libya (2011-2015).

---

<sup>245</sup> Cox (1981), pp.129-130.

## **PART II: CASE STUDIES**

#### Chapter IV: Analytical Framework and Methodology

As we have seen through Chapter III of this thesis, the main tenants of any ‘critical’ approach to the study of international relations include ‘historicism,’ or the framing of a key issue of analysis within its appropriate historical context. As Cox (1981) highlights, ‘critical’ theory is indeed “theory of history.”<sup>246</sup> For example, ‘realists’ such as Mearsheimer have often approached the ‘rise of China’ as a new phenomenon, whereas ‘critical’ scholars such as John Hobson have paid a closer attention to China’s prominence in world history in a manner that instead places China at the heart of Asian civilisations that have existed for thousands of years before the Westphalian, European order came into existence.<sup>247</sup> Instead of viewing a contemporary issue such as the question of China as an isolated phenomenon, and taking the existence of this territorial state as a given,<sup>248</sup> the ‘critical’ approach seeks to identify patterns of historical continuities and discontinuities in a manner that more importantly exposes the ideological bias of a ‘mainstream’ approach like that of ‘realism,’ as emanating from the interests of hegemonic international players e.g., the US and its affiliated analysts.

In addition, the ‘critical’ approach rejects the insistence of ‘mainstream’ theory to separate between the ‘domestic’ and the ‘international.’ We may recall that this is the second reason for Agnew’s (1994) labelling of ‘mainstream’ theory as “territorially trapped.” In this regard, Beate Jahn (2018) has criticised how classic ‘liberalism’ and the writings of John Locke have framed the success story of ‘liberalism’ as an entirely domestic European affair going international, as well as the ‘romantic’ account of liberal internationalism on the 1800s - Europe’s so called ‘peaceful century’ and/or the *belle epoque* of European history. Importantly, Jahn underlines that this level of romanticism ignores how the “establishment of liberalism...required policies of colonialism, which Locke’s writings – political and philosophical – constantly advocate and defend.”<sup>249</sup> In other words, rather than taking the notion of ‘peace’ that

---

<sup>246</sup> Cox (1981), p.129.

<sup>247</sup> See John Mearsheimer, “The Rise of China Will not be Peaceful at All,” *The Australian*, 18/11/2005, available at <https://www.mearsheimer.com/wp-content/uploads/2019/06/The-Australian-November-18-2005.pdf> (accessed 12/02/2022); John Hobson, *The Eastern Origins of Western Civilisation* (Cambridge University Press, 2004).

<sup>248</sup> See Agnew (1994) on the ‘territorial trap.’

<sup>249</sup> Beate Jahn, “Liberal Internationalism: Historical Trajectory and Current Prospects,” *International Affairs* 94:1 (2018), pp.43-61, p.50.

surrounds the mainstream narrative on the Concert of Europe and/or Pax Britannica for granted, the ‘critical’ approach draws on such ‘domestic’ vs. ‘international’ dynamics and explains the success of liberal internationalism in the 1800s instead on the basis of how nearly 80% of the landmass of the world were then subjected to colonialism by different European states. Peace at home was thus sustained by the externalisation of domestic problems, war, and resource extraction abroad; much like the way ‘neoliberalism’ of the 1970s led to the invasion of markets in the Global South through the opening of sweatshops by multinational corporations and the policies of the IMF and the World Bank. This further connects with the identification of Cox (1981) of the ‘state-society complex’ as the central unit of analysis in ‘critical’ IR theory, as opposed to the state-centric approach of ‘mainstream’ theory.

Indeed, ‘historicism’ alone does not lead to a ‘critical’ approach in IR theory. For example, the ‘international society’ framework is supposedly historical, but its state-centrism have led to the kind of shortcomings at the non-state domain of MENA that are highlighted by Buzan et. al. (2009). As we have seen in Chapter III on IR theory, the ‘critical’ approach is ‘interpretive’ as opposed to being ‘descriptive’ and/or ‘explanatory.’ This makes it more suitable for a study such as the present one of the co-constitutive nature of the relationship between social forces and non-status quo entities within the boundaries of the territorial state, the *micro* level of state institutions, and the more *macro* level of the hegemonic international order of today.

The ‘mainstream’ approach and the ‘critical’ approach stand on opposite ends of the ontological and epistemological spectrum. On the one hand, the ‘mainstream’ approach is ontologically ‘foundationalist,’ or pro-establishment; and on the other hand, the ‘critical’ approach is ‘anti-foundationalist’ and/or anti-establishment. The mainstream narrative emanates from a belief in the existence of an objective reality, and it seeks through its epistemologically positivist and/or normative approach to prescribe various remedies to existing world problems by way of ensuring the smooth functioning of the international system in favour of dominant, hegemonic international players e.g., the ‘civilising mission’ of the 1800s. This is the camp of politicians, statecraft and their affiliated academics and research institutes. Meanwhile, the critical epistemologies of the opposing camp deconstruct the notion of objectivity in the ‘mainstream’ approach, in a manner that is more concerned with the need to expose the ideological bias of this camp in the interest of a more

egalitarian international society. The ‘critical’ approach is the domain of activists and civil society of various socialist, feminists and/or postcolonialist backgrounds, who lack the means to necessarily prescribe, but collectively call for ‘emancipation’ by rejecting the accumulation of power in the hands of the few through biased norms and institutions. Some call for reforms, others call for a revolution.

Accordingly, a ‘realist’ such as Mearsheimer (2001) could be concerned with the concept of ‘hegemony’ as a ‘tragedy of great power politics’ and as one possible explanation/end-result of a potential confrontation between the US and China. However, a Gramscian or a post-Marxist use of ‘hegemony’ would seek instead to illustrate the cultural dominance of a domestic and transnational class of ultra-rich capitalist elites, by way of a critique of capitalism and inequality.

Similarly, a ‘realist’ approach to ‘hegemony’ could seek to explain Great Power politics and possibly offer a strategic advice to competing regional and international players on how best to emerge victorious out of the ‘security dilemma’ of the international system. In juxtaposition, TWAIL and ‘postcolonialism’ concern themselves with the *outcome* of such Great Power politics on subaltern, marginalised communities in our contemporary international society that are either considered ‘collateral damage’ by the mainstream narrative or are intentionally sacrificed to advance regional and/or international hegemonic interests. The first approach is concerned with the pursuit of ‘power;’ the latter often becomes intertwined with the notion of ‘defiance’ in the face of the unjust ramifications of ‘power.’ ‘Realism’ and/or ‘liberalism’ represent the camp of state officials such as Trump, while TWAIL and ‘postcolonialism’ are the embodiments of national liberation movements and ‘postcolonial’ revolts such as those of Gandhi and Mandela.

Importantly, the proposed application of ‘*terra nullius*’ to the territorial controls of NSAGs in Yemen and Libya is herein offered as a theoretical bridge to the current gap in the relevant literature, which emanates from the kind of limitations in readily available frameworks that are highlighted by Part I. In other words, this thesis does not endorse such a colonial legacy, nor does it propose its utilisation as a policy tool. To the contrary, the main objective here is to expose the *continued existence* of such colonial practices in our contemporary international system, which have evidently been endorsed and internalised by influential players from MENA’s own political fabric. Indeed, based on TWAIL and the ‘postcolonial’ approach, the following two

Chapters aim to illuminate precisely how the politics of '*terra nullius*' have never ceased to exist, with the ultimate objective of calling for the abandonment of those practices of the colonial era, and according instead the lives of impacted populations a higher degree of importance.

Therefore, the analytical framework of this thesis is 'critical.' As demonstrated by the analysis of the situation in Yemen and Libya (2011-2015) in Chapters V-VI, this analytical approach does not concern itself with who wins and who loses amongst MENA's competing regional and international players. Rather, it aims to underscore the fate of impacted populations, which remains largely unaccounted for in the race of those external forces for regional and/or international dominance. For example, whether any of the four cases of state creation under the UN system that are highlighted by Part I apply to Yemen and Libya's sub-state dominions is explored, while also offering a critical assessment of how Great Power interests have resulted in either accommodating or denying such potential claims at secession e.g., in South Yemen. Beyond 'self-determination,' the lens of '*terra nullius*' makes it additionally possible to consider those other situations where the territorial controls of non-secessionary NSAGs e.g., the Houthis have been accommodated by external players, and/or where the historical subdivision lines of either country have been exploited to advance the regional and international interests of key, influential players.

Notably, a historical approach is taken to contextualise the post-2011 seeming return of Yemen and Libya to their pre-existing sub-state boundaries within the context of their post-independence/post-colonial territorial make up. Instead of viewing the fall of Sanaa in North Yemen in late 2014 under the control of the Houthis and/or the subsequent Saudi-led war against them as an isolated phenomenon, the historical makeup of Yemen is analysed, and any possible 'irredentist' dimensions are explored along with a consideration of whether such dimensions have been exploited by external players. Similarly, the authenticity of the various calls for 'federalism' in Cyrenaica, East Libya in the aftermath of the Libyan Uprising are analysed through a consideration of the post-colonial, post-independence makeup of Libya and an assessment of the regional and international influence.

In other words, the *meso*, *micro* and *macro* levels of analysis of Part I are reflected by the 'critical' analysis of each case study, to emphasise the dynamic nature of interaction between various entities within both countries, the regional political



atmosphere of MENA, and the international community at large. Indeed, the emergence of the territorial state in MENA and the instability of the post-colonial make-up of many of the states of the region cannot possibly be explored through a ‘territorially-trapped’ approach such as that of the ‘mainstream’ camp in IR theory, nor through a parallel approach such as that of the English school that is more concerned with the conservative preservation of international ‘order’ at all costs, humanitarian or otherwise. With the belief in the possibility of making more history within ‘critical’ IR circles closely in mind,<sup>250</sup> those three levels of analysis, which are even more possible via the lens of ‘*terra nullius*,’ ultimately underline the deficiencies of readily available frameworks such as ‘self-determination,’ underscore the prominence of Great Power politics in all such situations of civil war, and, most importantly, place the fate of affected populations and their catastrophic humanitarian situation centre stage. Each of the next two Chapters therefore concludes with an illustration of the severe humanitarian realities in and out of the territorial controls of NSAGs.

In conjunction with this analytical framework, the following empirical study of the situation in Yemen and Libya pioneers in its methodological approach the analysis of local news reports with the help of the Computer Assisted Qualitative Data Analysis Software ‘NVIVO.’ This reliance on local news reports in the Arabic language is intentional, and meant as one possible response to contemporary calls to ‘decolonise’ the curriculum, and by implication the generation of knowledge itself.<sup>251</sup> In other words, the methodological undertaking of the present study emanates from the sub-question of ‘critical’ theory, on how best to ‘decolonise’ research itself in response to the prominent call to empower ‘subaltern’ voices in international society.<sup>252</sup> In total, I downloaded and analysed 18,759 daily reports from Yemen and 24,733 daily reports from Libya covering the 60-month research timeframe of this

---

<sup>250</sup> See Linklater (2010), p.280.

<sup>251</sup> See for instance James Muldoon, “Academics: it’s time to get behind decolonising the curriculum.” *The Guardian*, 20/03/2019, available at: <https://www.theguardian.com/education/2019/mar/20/academics-its-time-to-get-behind-decolonising-the-curriculum>, (accessed 09/02/2021). Also see Eve Tuck and K. Wayne Yang, “Decolonization is not a Metaphor,” *Decolonization: Indigeneity, Education & Society*, 1:1 (2012), pp.1-40.

<sup>252</sup> See Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous Peoples* (Zed Books, 2012. 2<sup>nd</sup> ed). Also see Miguel Zavala, “What do we Mean by Decolonizing Research Strategies? Lessons from Decolonizing, Indigenous, Research Projects from New Zealand and Latin America,” *Decolonization: Indigeneity, Education & Society*, 2:1 (2013), pp.55-71.

thesis (2011-2015), and with the overall objective of testing or confirming the main theoretical proposition of this thesis on ‘*terra nullius*,’ as derived from the analysis of Part I of the relevant literature and the preceding statement of the analytical framework.<sup>253</sup>

This further falls in line with the ‘theory-centric’ approach in ‘process-tracing’ research. As Derek Beach and Rasmus Pederson (2013) highlight, “the selection of sources in process-tracing research is not driven by random sampling; instead, we select sources based on the type of evidence that is best suited to enable us to engage in a critical theory test...source selection is theory-driven.”<sup>254</sup> Building on the limitations in applicable legal and theoretical frameworks that are highlighted by Part I, this thesis has proposed that we critically examine the territorial controls of NSAGs as the ‘*terra nullius*’ of our contemporary international society. Therefore, through the use of non-partisan, non-governmental news reports in the present empirical study of the situation in Yemen and Libya (2011-2015), the validity of this theoretical proposition will be put to the test by a data-rich and theory-centric ‘process-tracing’ approach.

Accordingly, this study of the situation in post-Arab Uprising Yemen and Libya offers one ‘constructive’ way of engaging the valuable insights of ‘critical’ IR theory into methodological avenues that give more agency to local populations as writers of their own history. ‘Critical’ IR theory is indeed neither ‘constructive’ nor remedial in its critique, with one possible exception being the real-world contributions of (liberal) ‘feminism,’ since this camp of IR theory is setting itself up against the ‘problem-solving’ camp and its various remedial strategies. And while every research inquiry requires a certain degree of due diligence regarding its use of data, the present methodological approach further challenges ‘patriarchal’ and/or ‘orientalist’ dogmas that view distant populations as voiceless entities and their literature as lacking credibility.<sup>255</sup> In this regard, lessons can certainly be learnt from

---

<sup>253</sup> On ‘theory-confirming’ and/or ‘theory-infirming’ case studies, see Jessica Luciano Gomes and Miriam Gomes Saraiva, “Cast Study,” Ch.9 in Jean-Frederic Morin, Christian Olsson and Ece Ozlem Atikcan (eds.), *Research Methods in the Social Science: An A-Z of Key Concepts* (Oxford University Press, 2021), pp.38-40.

<sup>254</sup> Derek Beach and Rasmus Pedersen, *Process-Tracing Methods: Foundations and Guidelines* (University of Michigan Press, 2013), pp.12 & 132.

<sup>255</sup> See especially Edward Said, *Orientalism* (Pantheon Books, 1978).

auto-ethnographic research and efforts to ‘reverse the colonial gaze’ in fieldwork involving indigenous people.<sup>256</sup>

Notably, this study has resulted in the construction of two lengthy timelines of events that occurred in Yemen and Libya between and including 2011 – 2015, in accordance with how the Yemenis and the Libyans reported themselves as well as my own translations from Arabic to English. I wrote those two keyword-searchable events timelines of 132,183 words on Yemen (219 pages), and 283,632 words on Libya (436 pages) as I manually carried out the analysis of all reports on ‘NVIVO,’ and I have made both events timelines publicly available by way of further enriching existing knowledge and academic debates.<sup>257</sup> Since I embarked on this study from the starting point of assuming no prior knowledge of the situation in either country, the arrival at such a broad picture and data-rich account of what took place in Yemen and Libya after their Uprisings in 2011 can be considered its main outcome.

This methodological approach can thus be described as ‘diachronic,’ which is a research methodology (diachrony) that is compatible with a critical endeavour such as the present one. As established by Colin Hay (2002), there are two main methodological approaches to the study of revolutions and political change; one is ‘synchronic’ and the other one is ‘diachronic.’<sup>258</sup> On the one hand, the ‘synchronic’ approach examines a certain moment in history in isolation from how that juncture was reached, and in a way that instead examines the juncture’s symbolic value to the researcher’s field of interest. ‘Synchrony’ as an alternative methodological avenue is arguably what underpins the ‘mainstream’ approach to the study of international relations. For example, the image of female activists at Cairo’s Tahrir Square is often analysed by ‘liberal feminists’ as a symbol of the empowering impact of UN development programs.

---

<sup>256</sup> See Naja Graugaard, “Auto Ethnography: Unsettling Colonial Research Relations,” in A. Merrild Hansen & C. Ren (eds.), *Collaborative Methods in Arctic Research: Experiences from Greenland* (Routledge, 2020).

<sup>257</sup> See Mahmoud M A Abdou, “Libya Events Timeline (2011-2015),” *Figshare*, 01/06/2021, available via [https://figshare.com/articles/thesis/Libya\\_Events\\_Timeline\\_2011-2015\\_/14706141](https://figshare.com/articles/thesis/Libya_Events_Timeline_2011-2015_/14706141) (accessed 21 June 2021); and Mahmoud M A Abdou, “Yemen Events Timeline (2011-2015),” *Figshare*, 01/06/2021, available via [https://figshare.com/articles/thesis/Untitled\\_Item/14706123](https://figshare.com/articles/thesis/Untitled_Item/14706123) (accessed 21 June 2021).

<sup>258</sup> Colin Hay, “Continuity and Discontinuity in the Analysis of Political Change,” Ch.4 in *Political Analysis: A Critical Introduction* (Palgrave Macmillan, 2002), pp.135-167.

On the other hand, as an approach that is more historical in its scope, ‘diachrony’ examines the process of political change over time and space with the hope of improving our understanding of how that same point in history was reached, and/or how it has evolved thereafter. In the Egyptian context of the 2011 Uprisings, this alternative approach could entail the study of the sequence of events that either led to that same moment at Tahrir Square or proceeded from thereon afterwards. For example, through such a ‘critical’ approach, a ‘postcolonial’ feminist could instead emphasise the various accounts of direct violence and harassment those same female activists experienced at Tahrir Square, by way of underlining the tendency of culturally incompatible development programs to reproduce the same patterns of gender violence they seek to eradicate.

I have therefore favoured the ‘diachronic’ approach for its ‘historicism,’ despite the very laborious nature of carrying it out – the manual analysis of a total of 43,492 in this case.<sup>259</sup> Afterall, ‘historicism’ is one of the main underlying principles of the critical approach. Following those same ‘diachronic’ grounds, Part I of this thesis has already narrated how modern statehood in MENA was established during the era of late 19<sup>th</sup> – early 20<sup>th</sup> century European colonialism, and through the ‘vanguardist,’ coercive way the various institutions of ‘international society’ spread from Europe to MENA. And as illustrated by the different tables of subsections I-II below, this approach can importantly permit the isolation of any key segment of news reports e.g., those covering the various reactions of regional and/or international players for further analysis.

In other words, the present study could be further described as ‘contextual’ in its approach. “When applied to legal research,” explains Auke Willems (2021), “contextual analysis considers the environment in which a legal principle, a law, or a case operates...different levels or claims of authority [could here] be considered, such as national, regional (e.g., European Union Law), and international legal systems (e.g., United Nations).”<sup>260</sup> This correlates with the *macro*, *micro* and *meso*

---

<sup>259</sup> On ‘process-tracing’ see Jochem Rietveld, “Process-Tracing: Tracing the Causal Pathways Between Independent and Dependent Variables,” Ch.51 in Morin et. al. (eds.) (2021), pp.219-222.

<sup>259</sup> See especially Edward Said, *Orientalism* (Pantheon Books, 1978).

<sup>260</sup> Auke Willems, “Contextual Analysis: Putting Research into Context,” Ch.14 in Morin et. al. (eds.) (2021), pp.62-63. Also see Mauro Caprioli and Claire Dupuy, “Levels of Analysis,” Ch.37 in Morin et. al. (eds.) (2021), pp.155-157; and Leeann Bass and Holli A. Semetko, “Content Analysis,” Ch.13 in Morin et. al. (eds.) (2021), pp.56-61.

levels of analysis of this thesis, as further elaborated on in the preceding statement of the analytical framework. Significantly, rather than separating the ‘domestic’ from the ‘international,’ this study explores in its positioning of the *meso*-population level centre stage the dynamic and fluid interplays between the domestic political landscape of Yemen and Libya, the regional political atmosphere of MENA, and the broader international community.

With that in mind, it is important to note that the present study of local news reports is neither a ‘content’ nor a ‘discourse’ analysis exercise, which are more suitable for a research project that is instead informed by ‘post-structuralism’ in IR theory (see Chapter III.IV). Therefore, ‘NVIVO’ has herein been used for the specific purpose of dissecting a large sum of data into various categories for further analysis. In other words, it is not the language of the reports, but the overall picture that they help establish that is of interest to this study. Those categories or ‘electronic dossiers’ of reports could then be easily singled out as I wrote the various subsections of the next two chapters. Together with the events timelines, they represent the ‘raw data’ that could be interpreted differently by different people, depending on their theoretical starting point.

#### **IV.I. Yemen**

For the situation in Yemen, I relied heavily on the daily, Yemeni news website of marebpress.net due to its independence and ease of access, but since there is a gap in the archival records of *Mareb Press* in relation to the period of 01 November 2013 – 12 June 2014, the two online, daily Yemeni news websites of the independent al-tagheer.com and the official Yemeni Army’s website of 26sept.net have additionally been used. There was a second archival gap on *Al Tagheer’s* website, which is why a third source was needed, and in the end, I used 26sept.net to cover the period of 01 November 2013 – 27 April 2014 and al-tagheer.com to cover the period of 28 April 2014 – 12 June 2014. I covered the rest of the research timeframe of 01 January 2011 – 31 December 2015 through news reports from marebpress.net. For the month of October 2014, the month immediately following the fall of Sanaa under the control of the Houthis, my corresponding ‘NVIVO’ database contains daily news coverage from both marebpress.net and 26sept.net by way of capturing the official government’s response to that important juncture in post-2011 Yemen.

I was first introduced to the online news platforms of Yemen while carrying out a three-month, unpaid internship in London (11/2013-01/2014) with the UN Inquiry into “the civilian impact and human rights implications of the use of drones and other forms of targeted killings for the purpose of counter-terrorism and counter-insurgency.”<sup>261</sup> While this inquiry was tasked with investigating the disproportionate number of civilian casualties from such operations, and the clarification of applicable international legal frameworks, I was personally asked to translate witness statements and news reports from Arabic to English. However, this experience still gave me valuable insights into the different news outlets of Yemen, based on which I excluded other available sources and selected the above outlined ones for the purposes of this current research project.

Notably, given the objective of its methodology to accord more voice to local agency and actors, I have for the large part excluded official government and partisan news websites. And since Mareb Press was considered ‘the voice of the Yemeni Uprising,’ I have sought through my heavy reliance on its news coverage to capture the events of the Uprisings and their aftermath based on the demands of the Yemeni people for socio-economic change, not those of Saleh’s regime in its violent crackdown on popular revolts and public rallies. This further emphasises the ‘critical’ orientation of the present research project, since it is the Yemeni population that was made to pay the price of Great Power politics, by a regional and international political community that placed its security interests above the populations’ own demands for a thundering political transformation.

It is also worth highlighting that the reports of Mareb Press were predominantly signed by Mareb Press itself, as opposed to any specific authors, which is an indication of different reporting styles between regional outlets in MENA and e.g., British counterparts such as The Guardian or The Independent. At the same time, one can also note that *Mareb Press* was ranked by *Forbes-Middle East* as the number one news outlet in Yemen, and as number 16 in the Arab world in terms of its online presence over the 13-month timeframe of 31 August 2011 – 31 August 2012.<sup>262</sup>

---

<sup>261</sup> For the final report of this inquiry, which was submitted to the UN Human Rights Council by Special Rapporteur Ben Emmerson QC in early 2014. See UN Doc A/HRC/25/59, 11 March 2014. Available via <http://www.un-documents.net>. Also see <http://unsrct-drones.com> (accessed 13/02/2021).

<sup>262</sup> *Mareb Press*, 01/01/2013, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=50515](https://marebpress.net/news_details.php?lng=arabic&sid=50515), (accessed 09/02/2021).

Regardless, it is fair to say that journalism follows an entirely different writing style from academic writing, one that crucially does not contain any theoretical reflections. This applies to Yemeni (and Libyan) news outlets as well. And while all news reports from Yemen that I used for this thesis are publicly available information, it is crucial to further emphasise that I downloaded them during the academic year of 2018-2019. Those reports continue to be available in my various offline ‘NVIVO’ databases, but some of the reports that I downloaded from 26sept.net have since then been deleted from the online archives of that website. The website of *Al Tagheer* seems to have also been taken offline.

Table 5 below provides a monthly breakdown of all Yemeni news reports as I downloaded and analysed them from the three specific news websites of *Mareb Press*, *Al Tagheer*, and *26 September*. This table further provides a monthly trace of an overall number of 998 reports that I deleted after a closer examination of their content on ‘NVIVO.’

**Table 5:** Yemen’s Dataset

Yemen (2011 - 2015)	2011	Before	After	Deleted	2012	Before	After	Deleted	2013	Before	After	Deleted	2014	Before	After	Deleted	2015	Before	After	Deleted
	1	245	222	23	1	144	143	1	1	225	212	13	1	232	188	44	1	409	386	23
	2	385	343	42	2	163	159	4	2	176	166	10	2	203	166	37	2	445	419	26
	3	562	507	55	3	166	156	10	3	236	232	4	3	213	184	29	3	583	575	8
	4	612	543	69	4	182	178	4	4	236	226	10	4	223	188	35	4	563	555	8
	5	518	448	70	5	188	186	2	5	214	207	7	5	316	302	14	5	589	584	5
	6	460	356	104	6	162	156	6	6	249	238	11	6	266	255	11	6	465	458	7
	7	249	207	42	7	185	184	1	7	188	181	7	7	202	193	9	7	503	501	2
	8	219	181	38	8	163	160	3	8	213	207	6	8	285	280	5	8	489	481	8
	9	245	224	21	9	175	173	2	9	223	220	3	9	432	423	9	9	426	423	3
	10	225	212	13	10	162	155	7	10	212	205	7	10	444	439	5	10	472	468	4
	11	276	259	17	11	181	180	1	11	251	218	33	11	475	467	8	11	502	499	3
	12	273	264	9	12	196	193	3	12	225	197	28	12	457	449	8	12	581	580	1
18759	Total 4269			Total 2067			Total 2648			Total 3748			Total 6027							
998	Deleted 503			Deleted 44			Deleted 139			Deleted 214			Deleted 98							
17761	New Total 3766			New Total 2023			New Total 2509			New Total 3534			New Total 5929							

While this study relies primarily on the above-named three websites from Yemen, my dataset on Yemen could still be described as ‘self-triangulated’ since a total number of 5,635 reports, or 32% of the remaining 17,761 reports has either been republished from other Yemeni sources, or has been translated by those three websites from foreign (non-Yemeni) websites into Arabic.<sup>263</sup> This percentage rises to 34% of 15,342 reports when taking into account the fact that the ‘codes’ or categories of ‘Foreign Sources’ and ‘Other Yemeni Sources’ in Table 6 below were only established after I conducted a pilot study of 2,482 reports covering the first six

<sup>263</sup> On ‘data triangulation’ see Sabine Caillaud, “Triangulation,” Ch.68 in Morin et. al. (eds.) (2021), pp.292-296.

months of 2011. The list of those other sources is rather extensive, but it includes, amongst others, Yemeni sources such as *Saba News Agency*, *Akhbar Al Youm*, and *Al Thawra*; regional sources such as *Okaz*, *Aljazeera*, *Al Quds Al Araby*, *Al Hayat*, and *The New Arab*; and international news outlets and NGO sources such as *AFP*, *Reuters*, *Andolu*, *CNN*, *BBC*, *The Guardian*, *The Washington Post*, *Foreign Affairs*, *New York Times*, *Human Rights Watch*, *ICRC*, and *Amnesty International*.

In addition, given the sheer volume of the data, I created six separate databases (two for the year 2011 and its pilot study), and I combined the coding results of those separate databases into the final coding reports of Tables 6-7 below. The overall size of those six databases is about 9GB, and due to language and other ‘NVIVO’ related incompatibilities, I drew those corresponding tables on ‘Excel’ as opposed to ‘NVIVO.’

The ‘codes’ that I created on ‘NVIVO’ can be best described as ‘red threads’ that connect the news reports (in parts or in whole) together and make it easier to single out any category of reports for further analysis and/or at different stages of the writing process. In addition, the overall sum of the percentage column in Table 6 below is notably 221%, which is indicative of the fact that I coded most reports (in parts or in whole) simultaneously under multiple different categories. At the same time, since ‘NVIVO’ does not seem to be fully compatible with Arabic, this prevented me from using other features of the software such as ‘keyword search.’ This has still been partially overcome by the lengthy events timeline of 219 pages on Yemen that I also wrote while carrying out the analysis.<sup>264</sup>

**Table 6:** The Top 30 Main Categories of Reports from Yemen (Coverage =/+ 100 Reports)

Code	2011	2012	2013	2014	2015	Total	%
Regional and International Reactions	753	550	750	855	2796	<b>5704</b>	<b>32</b>
Foreign Sources	346	567	445	900	2289	<b>4547</b>	<b>26</b>
The Houthis	244	236	360	1375	1891	<b>4106</b>	<b>23</b>
President Saleh and the Former Regime	1121	329	166	261	305	<b>2182</b>	<b>12</b>
President Hadi	108	251	304	496	929	<b>2088</b>	<b>12</b>
The Humanitarian Dimension - Death Toll, IDPs, Refugees	524	226	147	294	627	<b>1818</b>	<b>10</b>
Al Qaeda in Yemen	457	541	259	365	157	<b>1779</b>	<b>10</b>
Conditions within the Territories of NSAGs	70	155	198	362	677	<b>1462</b>	<b>8</b>

<sup>264</sup> Mahmoud M A Abdou, “Yemen Events Timeline (2011-2015),” *Figshare*, 01/06/2021, available via [https://figshare.com/articles/thesis/Untitled\\_Item/14706123](https://figshare.com/articles/thesis/Untitled_Item/14706123) (accessed 21 June 2021).



Tribal & Local Governance and Security Committees	76	108	36	74	978	<b>1272</b>	<b>7</b>
The Southern Case	344	257	326	171	97	<b>1195</b>	<b>7</b>
The Yemeni Uprising	371	65	68	219	410	<b>1133</b>	<b>6</b>
Transitional Period (2011 – 2015)	90	290	207	368	146	<b>1101</b>	<b>6</b>
National Dialogue Process	2	199	627	231	29	<b>1088</b>	<b>6</b>
Other Yemeni Sources	71	185	120	533	179	<b>1088</b>	<b>6</b>
Fall of Governorates and Cities out of Government Control	273	188	49	384	124	<b>1018</b>	<b>6</b>
The Yemeni Opposition	649	44	56	98	108	<b>955</b>	<b>5</b>
Mediation Initiatives and Agreements	54	39	53	247	505	<b>898</b>	<b>5</b>
The Government of National Accords	34	198	222	371	6	<b>831</b>	<b>5</b>
Socio-Economic Conditions	64	152	161	217	<b>150</b>	<b>744</b>	<b>4</b>
Tribal Politics	392	97	81	101	56	<b>727</b>	<b>4</b>
Yemeni Civil Society Organisations	287	55	64	75	88	<b>569</b>	<b>3</b>
The GCC Initiative and its Implementation Mechanism	356	69	62	63	7	<b>557</b>	<b>3</b>
Army and Ruling Party Defections	329	53	38	44	17	<b>481</b>	<b>3</b>
Explosions & Assassinations	21	113	103	114	48	<b>399</b>	<b>2</b>
Arab Uprisings Elsewhere e.g., in Libya, Syria, and Egypt	107	23	83	41	58	<b>312</b>	<b>2</b>
Conditions at the Yemeni - Saudi Borders	7	15	65	34	181	<b>302</b>	<b>2</b>
The Response of NGOs	74	53	42	28	99	<b>296</b>	<b>2</b>
The National Partnership Government of Technocrats				206	39	<b>245</b>	<b>1</b>
Pre-Arab Uprisings Yemen	226					<b>226</b>	<b>1</b>
Friends of Yemen Conferences		41	32	33	13	<b>119</b>	<b>1</b>

The ‘coding’ process was informed by the analytical and methodological approach of the thesis. Given the sheer volume of the data, I mainly focused on the situation within and at the forefront of the territorial controls of NSAGs, the way those territorial gains (and losses) came about, the reaction of other domestic, regional, and international influential players, and the magnitude of the resultant humanitarian crisis. The general dynamics of the political situation as it unfolded after 2011 are still summarised and interwoven into the analysis of the Chapter on Yemen. What the analysis presented by that chapter (Chapter V) particularly demonstrates is the overwhelming weight of regional and international reactions to the 2011 Yemeni Uprising, to the extent that the trajectory that the Uprising initiated towards democratic accountability and socio-political change was quickly reversed back to the pre-Uprising domestic and regional status-quo. Moreover, rather than improving the situation of the Yemeni population, those competing regional and international forces led to an overall worsening of the political, socioeconomic, and geopolitical realities of one of the poorest countries in the world. This importantly underscores the feasibility of critically examining the territorial controls of NSAGs as the ‘*terra nullius*’ of our contemporary international society, as the analysis of Chapter V will seek to demonstrate.

In addition, since the interdisciplinary approach of this thesis is informed by ‘critical’ IR theory and TWIAL in public international law discourse, rather than comparative politics and/or theories of domestic politics, this has led to various levels of ‘coding’ trade-offs. Following my pilot study of the first six months of the Uprising, I notably reduced my coding of protests and public rallies to make the various categories of news reports that my study has generated as relevant to the present analysis as possible. Resultantly, the categories of reports that are summed up in Table 6 above and detailed in a lengthier manner in Table 7 below are rather reflective of the *meso*, *micro* and *macro* levels of analysis of this thesis. The ‘diachronic’ approach of this empirical study further permits the examination of how each of those simultaneously moving parts e.g., the reactions of Member States of the Gulf Cooperation Council (GCC) has evolved over time, or on a year-by-year basis, to flag up key junctures and major turning points.

Besides the thirty ‘codes’ that are presented by Table 6, this study has further generated a total number of seven additional main ‘codes,’ seventy-nine 2<sup>nd</sup> degree ‘codes,’ thirty-five 3<sup>rd</sup> degree ‘codes,’ and six codes of the 4<sup>th</sup> degree (see Table 7). Those categories of reports that transcend the particular focus of this thesis could still offer valuable insights for potential future publications on relevant issues such as the transitional justice process of Yemen (and Libya) between and including 2011-2015.

**Table 7:** All Codes, Yemen

Code	2 <sup>nd</sup> Degree	3 <sup>rd</sup> Degree	4 <sup>th</sup> Degree	2011	2012	2013	2014	2015	Total	%
Regional and International Reactions				753	550	750	855	2796	<b>5704</b>	<b>32</b>
	The Arab Coalition						19	1503	<b>1522</b>	<b>9</b>
		Operation ‘Restoring Hope’ (21/04/2015)						1213	<b>1213</b>	
		“Liberation” of Cities (14/07/2015 onwards)						731	<b>731</b>	
		Operation ‘Firmness Storm’ (26/03/2015)						244	<b>244</b>	
	The UN System			190	170	254	278	472	<b>1364</b>	<b>8</b>
		Benomar		73	90	112	96	69	<b>440</b>	
		UNSC		7	38	62	105	98	<b>310</b>	
		Weld Al Sheikh (27 April 2015 onwards)						176	<b>176</b>	
		World Bank		2	16	17	19	6	<b>60</b>	
		World Food Programme			6	9	16	20	<b>51</b>	

	IMF		3	11	11	2	<b>27</b>	
	UN Human Rights Enquiry	19					<b>19</b>	
	UNDP		5	6	3	2	<b>16</b>	
	UNHCR					12	<b>12</b>	
	WTO			8	3		<b>11</b>	
	The GCC	11	84	152	245	664	<b>1156</b>	<b>7</b>
	Saudi Arabia	4	36	71	109	299	<b>519</b>	
	UAE		8	15	30	154	<b>207</b>	
	Oman				5	79	<b>84</b>	
	Qatar		6	9	8	38	<b>61</b>	
	Kuwait		1	6	15	11	<b>33</b>	
	Sanaa Office		2	5	8		<b>15</b>	
	The US	191	178	152	163	175	<b>859</b>	<b>5</b>
	Iran		79	82	94	160	<b>415</b>	<b>2</b>
	The EU	20	70	81	118	49	<b>338</b>	<b>2</b>
	The UK	6	14	29	43	13	<b>105</b>	
	France	5	5	12	13	17	<b>52</b>	
	Germany	1	12	10	12	4	<b>39</b>	
	Weapon Shipments and Smuggling Operations	7	22	80	20	32	<b>161</b>	<b>1</b>
	Private Weapon Ownership		2	7	5	4	<b>18</b>	
	Russia	3	9	28	26	87	<b>153</b>	<b>1</b>
	Turkey	12	14	26	12	31	<b>95</b>	<b>1</b>
	Egypt			4	15	61	<b>80</b>	
	China	1	2	12	11	4	<b>30</b>	
	Jordan			3	2	10	<b>15</b>	
	Foreign Sources	346	567	445	900	2289	<b>4547</b>	<b>26</b>
	The Houthis	244	236	360	1375	1891	<b>4106</b>	<b>23</b>
	The Expansion of the Houthis Out of Saada	20	41	54	731	350	<b>1196</b>	
	Houthi - Saleh Alliance	10	12	15	85	653	<b>775</b>	
	Houthi - Tribal Clashes	27	34	24	217	343	<b>645</b>	
	Houthi - Salafist Clashes	91	34	91	29	2	<b>247</b>	
	Iranian Support		24	38	31	124	<b>217</b>	
	Houthi - Al Qaeda Clashes		4	6	111	28	<b>149</b>	
	Houthi - Islah (Opposition) Clashes	17	19	7	43	37	<b>123</b>	
	Houthi - Houthi Clashes		2	2	7	36	<b>47</b>	
	Pre-Uprising wars vs. the Houthis in Saada	17					<b>17</b>	
	Pre -Uprisings Qatari Mediation Initiatives	10					<b>10</b>	
	President Saleh and the Former Regime	1121	329	166	261	305	<b>2182</b>	<b>12</b>
	Government & Republican Guard Crackdown	624	44				<b>668</b>	
	Obstructions	147	132	32	26		<b>399</b>	

	Immunity (Impunity) & Transitional Justice	45	75	43	12	10	<b>185</b>	
	Sanctions	17	49	16	57	17	<b>156</b>	
	Pro-Regime Protests	116					<b>116</b>	
	State of Emergency	9					<b>9</b>	
President Hadi		108	251	304	496	929	<b>2088</b>	<b>12</b>
	A Government in Exile - Saudi Arabia (25 March 2015)					412	<b>412</b>	
	Return to Aden (15 July 2015)					263	<b>263</b>	
	A President from Aden (21 February – 25 March 2015)					132	<b>132</b>	
	Conflict with Saleh		34	24	38	8	<b>104</b>	
The Humanitarian Dimension - Death Toll, IDPs, Refugees		524	226	147	294	627	<b>1818</b>	<b>10</b>
	African Migrants	9	11	26	32	4	<b>82</b>	
	Kidnappings			7	28	13	<b>48</b>	
	Enforced Disappearances				3	43	<b>46</b>	
	Human Trafficking		7	4	4		<b>15</b>	
	Child Soldiers		4	1	2	8	<b>15</b>	
	Child Labour			2	1	3	<b>6</b>	
	Slavery		2	1	1		<b>4</b>	
Al Qaeda in Yemen		457	541	259	365	157	<b>1779</b>	<b>10</b>
	Drone Warfare	21	132	76	48	33	<b>310</b>	
Conditions within the Territories of NSAGs		70	155	198	362	677	<b>1462</b>	<b>8</b>
Tribal & Local Governance and Security Committees		76	108	36	74	978	<b>1272</b>	<b>7</b>
The Southern Case		344	257	326	171	97	<b>1195</b>	<b>7</b>
	Al Beidh	3	40	60	14	7	<b>124</b>	
	Armed Branch		38	47	7		<b>92</b>	
	Iranian Support		31	34	7	8	<b>80</b>	
	Land and Unlawful Dismissal Committees			26	22		<b>48</b>	
	Ali Nasser	1	14	14	8	10	<b>47</b>	
	Attas	3	16	14	4	9	<b>46</b>	
	Federalism	7	24	13			<b>44</b>	
	Baa'oum	5	13	11	2	1	<b>32</b>	
	Hirak - Islah (Opposition) Clashes		4	11	1		<b>16</b>	
	Secessionist Hirak - Saleh Alliance		2	4	1		<b>7</b>	
	Sanctions		3	4			<b>7</b>	
The Yemeni Uprising		371	65	68	219	410	<b>1133</b>	<b>6</b>
Transitional Period 2011 - 2015		90	290	207	368	146	<b>1101</b>	<b>6</b>
	Military and Security Affairs Committee	33	204	183	343	37	<b>800</b>	
	Army Reconstruction	14	151	91	58	36	<b>350</b>	
	US Involvement		2	22	1		<b>25</b>	
	Jordanian Help		1	8			<b>9</b>	
	Turkish Help			3	1		<b>4</b>	

		EU Help			2			<b>2</b>		
		Saudi Influence		1				<b>1</b>		
National Dialogue			2	199	627	231	29	<b>1088</b>	<b>6</b>	
	Nine Working Groups				297	21	4	<b>322</b>		
		Southern Case			163	14	4	<b>181</b>		
		Saada Case			64	1		<b>65</b>		
		Transitional Justice & National Reconciliation			30	5		<b>35</b>		
		State Reconstruction and Building			27			<b>27</b>		
		Good Governance			22	2		<b>24</b>		
		Security and Armed Forces			17	1		<b>18</b>		
		Human Rights and Freedoms			14			<b>14</b>		
		Sustainable Development			12			<b>12</b>		
		Institutional Independence and Special Issues			10			<b>10</b>		
	Post-Conference Arrangements					133	12	<b>145</b>		
		Constitutional Committee					38	8	<b>46</b>	
		Federal Regions Committee					38	5	<b>43</b>	
		Implementation & Oversight Committee					4	4	<b>8</b>	
	Technical Committee			70	40			<b>110</b>		
	Federalism - a United State Solution				71	4	3	<b>78</b>		
	Harmonisation and Outreach Committee			17	34	4		<b>55</b>		
	Socio - Economic Conditions				11	2	9	<b>22</b>		
	Constitutional Committee			3	9			<b>12</b>		
Youth & Women Representation				9	1	1	<b>11</b>			
Other Yemeni Sources			71	185	120	533	179	<b>1088</b>	<b>6</b>	
Fall of Governorates and Cities out of Government Control			273	188	49	384	124	<b>1018</b>	<b>6</b>	
The Yemeni Opposition			649	44	56	98	108	<b>955</b>	<b>5</b>	
Mediation Initiatives and Agreements			54	39	53	247	505	<b>898</b>	<b>5</b>	
	Geneva (06/2015) & Biel (12/2015) Conferences						259	<b>259</b>		
	Riyadh Conference (17 May 2015)						32	<b>32</b>		
The Government of National Accords			34	198	222	371	6	<b>831</b>	<b>5</b>	
	High Commission for Elections and Polls			2	14	12		<b>28</b>		
	Human Rights Enquiry			7			6	<b>13</b>		
	Youth Dialogue Ministerial Committee			7	2			<b>9</b>		
Socio - Economic Conditions			64	152	161	217	150	<b>744</b>	<b>4</b>	
	Pipeline Explosions and the Petrol and Gas Crisis		15	53	37	85	8	<b>198</b>		
	Attacks on Electricity Supply Lines			16	21	33	6	<b>76</b>		
Tribal Politics			392	97	81	101	56	<b>727</b>	<b>4</b>	
Yemeni Civil Society Organisations			287	55	64	75	88	<b>569</b>	<b>3</b>	

The GCC Initiative and Its Implementation Mechanism	356	69	62	63	7	557	3
Army and Ruling Party Defections	329	53	38	44	17	481	3
Ali Muhsin Al Ahmar	50	35	37	43	17	182	
Explosions & Assassinations Targeting the Yemeni Armed Forces	21	113	103	114	48	399	2
Plane Crashes		3	14	1		18	
Arab Uprisings Elsewhere e.g., in Libya, Syria, and Egypt	107	23	83	41	58	312	2
Conditions at the Yemeni - Saudi Borders	7	15	65	34	181	302	2
Joint Saudi - Yemeni Military Committee		4	4	1		9	
The Response of NGOs	74	53	42	28	99	296	2
The National Partnership Government of Technocrats				206	39	245	1
Pre-Arab Uprisings Yemen	226					226	1
Pre - Uprising Instabilities, Elections and Constitutional Changes	57					57	
Yemeni Reactions to Arab Uprisings Elsewhere	55					55	
Joint Meeting Parties (Yemeni Opposition)	39					39	
February 2009 Agreement: National Reconciliation Committee	25					25	
The General People's Congress (Ruling Party)	25					25	
International Response – Pre-Arab Uprisings	14					14	
Pre-Arab Uprisings Saleh Speeches	8					8	
Yemen in 2010	3					3	
Friends of Yemen Conferences		41	32	33	13	119	1
The Salafists	36	35	15	7		93	1
Presidential Elections	8	64				72	0
Transitional & National Council(s)	68					68	0
Tuhama Hirak - Hodeida	2		13	37		52	0
Land Committee				6		6	
Institutional Revolution	3	30	9	1		43	0
Hadramawt Case			21	17		38	0
Sunni vs. Shia Divide in Yemen	17					17	
Transitional Period, while Saleh was being Treated in Saudi Arabia	12					12	0

#### IV.II. Libya

In the case of Libya, it has admittedly been more difficult to find an online news website with an archival record extending as far back as 2011. The main reason for this is arguably the serious levels of curtailment on ‘freedom of speech’ that were

enforced by Qaddafi's regime.<sup>265</sup> In the immediate aftermath of the 2011 Libyan Uprising, Libya's journalism sector tellingly experienced its era of 'renaissance' with more than 300 daily/weekly news agencies established by February 2012; 180 in Benghazi alone.<sup>266</sup> In this regard, it is possible to state that the online infrastructure of Yemeni news websites was already more established than that of Libya. Many of the online archives of emerging Libyan news websites such as *libyaakhbar.com*, *almarsad.co*, *218tv.net*, *Libyaalahrar.tv*, *almotawaset.com*, *addresslibya.com*, *almashhadlibya.com*, *alwasat.ly* and/or *ewanlibya.ly* unfortunately extend as far back as 2015/2016 only.

For the purposes of the present study, I therefore relied heavily on the website of *Libya Al Mostakbal* or *libya-al-mostakbal.org*, which is a news outlet that was established in 2003 by the prominent Libyan human rights activist and former regime opposition member Hassan Muhammad Al Amin. It seems likely that the coverage of this news website was discontinued in July 2017 due to a shortage of funding, but its archival records remain in place. Importantly, the selection of this website stems from the same notion of granting more voice to local agency and the forces of the (Libyan) Uprisings. As an 'anti-establishment' news outlet that was repeatedly censored and taken offline by the former Libyan regime, its reports are evidently informative and well-suited for the overall objective of providing a 'critical' assessment of the fate of populations living within and at the forefront of the territories of NSAGs.

In total, I downloaded and analysed 24,733 reports from *Libya Al Mostakbal*, and I deleted an accumulative total of 643 of those reports after a closer examination of their content on 'NVIVO.' The sheer size of the corresponding five 'NVIVO' databases (one for each year of the research timeframe) that I built up is 12.86GB. Despite being relatively less numerous, the news reports that I downloaded and analysed on Yemen are more extensive (averaging 1-2 pages each) than those of *Libya Al Mostakbal*, which are on average less than one page long. At the same time, the reports of both *Mareb Press* and *Libya Al Mostakbal* are all stamped with the institutional name, as opposed to that of any certain journalists or authors. And while

---

<sup>265</sup> See for instance Rami Musa, "Libya Country Report," *Media Landscape*, available at: <https://medialandscapes.org/country/libya> (accessed 08/02/2021).

<sup>266</sup> *Libya Al Mustakbal*, 08/12/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18671> (accessed 09/12/2021).

this highlights a key difference in the reporting style of such MENA-specific outlets vis-à-vis their western counterparts, it further underscores the reputation of both news agencies as ‘the voice’ of their respective Uprising. As I carried out this analysis of Libyan news reports on ‘NVIVO’ over the duration of the 2019-2020 academic year, I additionally wrote an events timeline of 436 pages on Libya which I have similarly made publicly available.<sup>267</sup>

Table 8 below provides a monthly breakdown of all the reports on Libya that I downloaded and analysed. There were several short gaps in the archival records of *Libya Al Mostakbal*, which specifically span the duration of 13–17 January 2011, 01–26 February 2011, 06–15 March 2011, 22–28 August 2012, and 30 November – 02 December 2013 and add up to about 1.5 months in duration. However, for the reasons previously stated, it has not been possible to find an alternative news website to cover those rather negligible gaps in Libya’s five-year research timeframe. In addition, while carrying out the analysis, it became clear that once coverage resumed after a given archival gap, e.g., due to government censorship, subsequent reports either offered a summary of what happened in-between, or they made retrospective reference to the events that were missed. In other words, there remains an element of continuity in the corresponding event timeline on Libya, despite those short gaps in real-time coverage.

**Table 8:** Libya’s Dataset

Libya (2011 - 2015)	2011	Before	After	Deleted	2012	Before	After	Deleted	2013	Before	After	Deleted	2014	Before	After	Deleted	2015	Before	After	Deleted
	1	130	110	20	1	368	363	5	1	272	258	14	1	519	509	10	1	281	276	5
	2	41	38	3	2	346	339	7	2	360	346	14	2	650	639	11	2	170	166	4
	3	259	237	22	3	280	278	2	3	589	535	54	3	722	710	12	3	292	279	13
	4	508	483	25	4	373	360	13	4	488	451	37	4	673	666	7	4	365	351	14
	5	657	650	7	5	374	364	10	5	515	475	40	5	707	698	9	5	421	409	12
	6	477	471	6	6	363	352	11	6	458	432	26	6	521	510	11	6	440	423	17
	7	415	411	4	7	373	370	3	7	421	414	7	7	497	487	10	7	423	409	14
	8	419	416	3	8	210	204	6	8	403	399	4	8	440	439	1	8	532	523	9
	9	274	272	2	9	358	351	7	9	478	474	4	9	371	366	5	9	401	387	14
	10	359	358	1	10	485	464	21	10	573	565	8	10	368	366	2	10	483	475	8
	11	250	248	2	11	508	485	23	11	496	494	2	11	330	328	2	11	432	425	7
	12	162	162	0	12	399	386	13	12	382	375	7	12	359	357	2	12	513	502	11
24733	Total	3951			Total	4437			Total	5435			Total	6157			Total	4753		
643	Deleted	95			Deleted	121			Deleted	217			Deleted	82			Deleted	128		
24090	New Total	3856			New Total	4316			New Total	5218			New Total	6075			New Total	4625		

After I deleted a total of 643 reports, I divided the remaining 24,090 reports into twenty-seven main ‘codes’ or categories as illustrated by Table 9 on the following page. The percentage column in this table also adds up to more than 200% (213% in

<sup>267</sup> Mahmoud M A Abdou, “Libya Events Timeline (2011-2015),” *Figshare*, 01/06/2021, available via [https://figshare.com/articles/thesis/Libya\\_Events\\_Timeline\\_2011-2015\\_/14706141](https://figshare.com/articles/thesis/Libya_Events_Timeline_2011-2015_/14706141) (accessed 21 June 2021).



this case), which once again demonstrates how I simultaneously coded most reports, in part or in full, under more than one given category. An additional number of thirty-one 2<sup>nd</sup> degree ‘codes’ and thirty-six 3<sup>rd</sup> degree ‘codes’ were also generated by this study, as further narrated by the subsequent [Table 10](#). Evidently, the more coding that I carried out, the more efficient the process became, and I divided the news reports on Libya into fewer categories or ‘codes’ than the ones I established by my analysis of Yemeni reports. For example, building on my pilot study of the first six months of the Yemeni Uprising, I grouped all reports on protests and public rallies in Libya under the category of ‘the Libyan Uprising.’ This aggregation of similar categories of reports in the case of my analysis of Libyan news reports was still offset by the lengthier events timeline that I wrote on Libya, as the intention remains to enrich existing knowledge and literature as much as human capacities permit.

**Table 9:** Main Codes, Libya

Code	2011	2012	2013	2014	2015	Total	%
External Reactions	2179	1708	1774	2628	2415	<b>10704</b>	<b>44</b>
Foreign Sources	2795	1173	1437	1062	707	<b>7174</b>	<b>30</b>
NSAGs After the fall of Qaddafi	461	992	1592	2150	924	<b>6119</b>	<b>25</b>
The Humanitarian Dimension	597	434	590	1263	1178	<b>4062</b>	<b>17</b>
The General National Congress		507	1786	1291	247	<b>3831</b>	<b>16</b>
Qaddafi's Regime & The Libyan Opposition	2708					<b>2708</b>	<b>11</b>
Libya's Islamists	49	240	332	591	839	<b>2051</b>	<b>9</b>
Other Libyan Sources	443	234	525	366	227	<b>1795</b>	<b>7</b>
Rights, Freedoms and Transitional Justice	71	702	605	239	125	<b>1742</b>	<b>7</b>
The House of Representatives				402	949	<b>1351</b>	<b>6</b>
Socio-Economic Conditions	60	164	389	411	228	<b>1252</b>	<b>5</b>
National Reconciliation & Dialogue	168	60	110	188	718	<b>1244</b>	<b>5</b>
Libya's Oil & Gas Sector	96	157	390	273	99	<b>1015</b>	<b>4</b>
Restructuring the Security and Armed Forces	20	247	367	162	84	<b>880</b>	<b>4</b>
Libya's Civil Society Organisations	74	261	244	146	84	<b>809</b>	<b>3</b>
The Libyan Uprising	392	110	127	53	9	<b>691</b>	<b>3</b>
The Rebuilding of Libya		234	209	56	32	<b>531</b>	<b>2</b>
Elections			104	381	7	<b>492</b>	<b>2</b>
Hafter	8	5	1	308	121	<b>443</b>	<b>2</b>
Tribal Politics	49	81	100	89	105	<b>424</b>	<b>2</b>
Libya's Historical Regions & Federalism	18	91	131	138	40	<b>418</b>	<b>2</b>
The Constitutional Committee		41	135	143	58	<b>377</b>	<b>2</b>
The Government of National Accords					304	<b>304</b>	<b>1</b>
Libya's Minority Groups	36	68	77	56	57	<b>294</b>	<b>1</b>
The Response of NGOs	98	106	37	27	20	<b>288</b>	<b>1</b>
Arab Uprisings Elsewhere	43	45	69	27	2	<b>186</b>	<b>1</b>
Lockerbie's Case	11	20	16	1	1	<b>49</b>	<b>0</b>

It is worth noting that the percentage of ‘Foreign Sources’ that informed the coverage of *Libya Al Mustakbal* decreased from 73% in 2011 to 15% in 2015, suggesting an increased level of autonomous reporting with the progression of Libyan lives beyond Qaddafi’s regime. Similarly, the reliance on ‘Other Yemeni Sources’ in the coverage of *Libya Al Mostakbal* spiked at 10% in 2013 but decreased to 5% in 2015. In general terms, Libya’s Dataset is also ‘self-triangulated’ with an overall % of coverage from both categories of ‘Foreign Sources’ and ‘Other Libyan Sources’ amounting to 8,969 reports or 37%. This is comparable to Yemen’s 32-34%. Other sources used by *Libya Al Mustakbal* include the following international sources: *The Guardian*, *New York Times*, *CNN*, *The Washington Post*, *UPI*, *BBC*, *Reuters*, *The Time*, *Swiss Info*, *AFP*, and *France Press*; regional sources: *Al Manara*, *Anadolu Agency*, *Aljazeera*, *Al Arabiya*, *Kuwait News*, *Al Quds*, *Al Shrouq Al Jadeed*, and *Al Araby Al Jadeed*; and local sources such as *Qoreinah Al Jadeedah* and *Libya Al Horra*.

Lastly, and similarly to how the process of coding Yemen’s news reports unfolded, while coding and analysing Libya’s news reports I was mainly interested in those reports that address the situation within and at the forefront of Libya’s own NSAG-controlled territories and historical sub-state regions, the reactions of the regional and international community, and the humanitarian situation of Libya e.g., the unfolding refugee crisis in the Mediterranean. In other words, this study of the situation in Libya (2011-2015) follows the same analytical and methodological frameworks of the thesis, which are ‘critical’ and mainly concerned with underscoring the *outcome* of Great Power politics on Libya’s own humanitarian situation.

Accordingly, this coding process informs the analysis presented by Chapter VI on Libya in a manner that stems from TWAIL and ‘postcolonialism’ in ‘critical’ international theory, not from e.g., theories of comparative politics. The patterns of similarity and/or divergence in-between the two case studies are still analysed, and the general developments of the Libyan Uprising are also highlighted. Any categories of news reports that are herein established but seemingly transcend the particular focus of this thesis can be revisited when considering potential future publication on Libya and Yemen e.g., possibly on the two countries’ transitional justice process.

**Table 10:** All Codes, Libya

Code	2 <sup>nd</sup> Degree Codes	3 <sup>rd</sup> Degree Codes	2011	2012	2013	2014	2015	Total	%
External Reactions			2179	1708	1774	2628	2415	<b>10704</b>	<b>44</b>
	The African Union and the Arab League		549	744	816	1610	1200	<b>4919</b>	<b>20</b>
		Egypt	72	216	405	804	435	<b>1932</b>	
		Tunisia	269	205	165	349	419	<b>1407</b>	
		Algeria	64	90	83	135	193	<b>565</b>	
		Morocco	5	23	17	28	50	<b>123</b>	
		Sudan	13	30	37	99	46	<b>225</b>	
		Jordan	19	59	20	90	26	<b>214</b>	
		Palestine		26	18	17		<b>61</b>	
		Lebanon	7	37	11	9	17	<b>81</b>	
	The EU		597	350	366	460	590	<b>2363</b>	<b>10</b>
		Italy	109	73	81	126	226	<b>615</b>	
		The UK	237	106	90	93	83	<b>609</b>	
		France	181	73	98	99	68	<b>519</b>	
		Germany	45	16	23	21	44	<b>149</b>	
		Malta	7	20	15	26	38	<b>106</b>	
		Austria	8	14	12	2	3	<b>39</b>	
		Switzerland	12	10	5	5	2	<b>34</b>	
		Belgium	11	2	1		1	<b>15</b>	
	The UN & Affiliated Organisations		344	233	218	221	569	<b>1585</b>	<b>7</b>
		UNSC	44	26	33	20	70	<b>193</b>	
		ICC & Interpol	136	108	67	18	13	<b>342</b>	
		UNHCR	13	5	1	9	8	<b>36</b>	
		IOM	21	2	2		6	<b>31</b>	
		WHO	4	2	1		1	<b>8</b>	
		IMF	3	8	8		1	<b>20</b>	
		UNICEF		2	7	4	6	<b>19</b>	
		World Bank	1	2	6		1	<b>10</b>	
		UNESCO		6	1	3	5	<b>15</b>	
		World Food Programme	16	1			4	<b>21</b>	
		UN Human Rights	16	11	3	2	2	<b>34</b>	
	The US		310	206	228	198	130	<b>1072</b>	<b>4</b>
	The GCC		139	109	79	119	106	<b>552</b>	<b>2</b>
		The UAE	41	54	23	37	42	<b>197</b>	
		Qatar	78	45	22	39	26	<b>210</b>	
		Saudi Arabia	5	13	17	34	22	<b>91</b>	
		Kuwait	15	1	4	10	6	<b>36</b>	
	Russia		93	47	69	49	68	<b>326</b>	<b>1</b>
	Turkey		86	33	28	69	49	<b>265</b>	<b>1</b>
	NATO & The 2011 Intervention		682	38	30	12	31	<b>793</b>	<b>3</b>
	China		34	13	7	14	17	<b>85</b>	<b>0</b>
	North & South Korea		2	2	1	58	15	<b>78</b>	
	Canada		18	10	2	7	9	<b>46</b>	
	Iran		6	19	7	5	3	<b>40</b>	
	Japan		5	2	2	3		<b>12</b>	
	Australia		6	7	1			<b>14</b>	
	Iraq			22	16	9	1	<b>48</b>	
Foreign Sources			2795	1173	1437	1062	707	<b>7174</b>	<b>30</b>
Armed Groups and the Post-2011 Security Situation			461	992	1592	2150	924	<b>6119</b>	<b>25</b>

The Humanitarian Dimension		597	434	590	1263	1178	<b>4062</b>	<b>17</b>	
	Death Toll	220	117	216	545	455	<b>1553</b>		
	Refugees	86	96	141	237	339	<b>899</b>		
	Kidnapping & Enforced Disappearances	24	69	103	341	242	<b>779</b>		
	Rape	26	7	11	2		<b>46</b>		
	IDPs	28	36	35	44	66	<b>209</b>		
The General National Congress			507	1786	1291	247	<b>3831</b>	<b>16</b>	
	The National Accords, Temporary & National Rescue Governments		269	1148	928	76	<b>2421</b>	<b>10</b>	
Qaddafi's Regime & The Libyan Opposition		2708					<b>2708</b>	<b>11</b>	
	The Libyan Opposition	1217					<b>1217</b>		
		National Transitional Council	890	767	19	10	5	<b>1691</b>	<b>7</b>
		Transitional Government	159	485				<b>644</b>	
		National Front to Save Libya	3	11	4			<b>18</b>	
	Fall of & Conditions within Cities out of Regime Control	875					<b>875</b>		
	Regime Crackdown & Suppression of Freedoms	619					<b>619</b>		
	Libya in 2010	5					<b>5</b>		
Libya's Islamist Groups		49	240	332	591	839	<b>2051</b>	<b>9</b>	
	Al Qaeda, Terrorism, Extremism			123	179	445	711	<b>1458</b>	<b>6</b>
		Ansar Al Sharia		25	32	124	26	<b>207</b>	
		Daesh/ISIS					484	<b>484</b>	
	Libya's Muslim Brotherhood	5	41	92	74	35	<b>247</b>	<b>1</b>	
Other Libyan Sources		443	234	525	366	227	<b>1795</b>	<b>7</b>	
Rights, Freedoms, and Transitional Justice		71	702	605	239	125	<b>1742</b>	<b>7</b>	
The House of Representatives					402	949	<b>1351</b>	<b>6</b>	
	The Temporary Government				131	595	<b>726</b>		
Socio-Economic Conditions		60	164	389	411	228	<b>1252</b>	<b>5</b>	
National Reconciliation & Dialogue		168	60	110	188	718	<b>1244</b>	<b>5</b>	
Libya's Oil & Gas Sector		96	157	390	273	99	<b>1015</b>	<b>4</b>	
Restructuring the Security and Armed Forces		20	247	367	162	84	<b>880</b>	<b>4</b>	
Libya's Civil Society		74	261	244	146	84	<b>809</b>	<b>3</b>	
The Libyan Uprising		392	110	127	53	9	<b>691</b>	<b>3</b>	
The Rebuilding of Libya			234	209	56	32	<b>531</b>	<b>2</b>	
Elections				104	381	7	<b>492</b>	<b>2</b>	
Haftar		8	5	1	308	121	<b>443</b>	<b>2</b>	
Tribal Politics		49	81	100	89	105	<b>424</b>	<b>2</b>	
Libya's Regions and Federalism		18	91	131	138	40	<b>418</b>	<b>2</b>	
The Constitutional Committee			41	135	143	58	<b>377</b>	<b>2</b>	
Government of National Accords						304	<b>304</b>	<b>1</b>	
Libya's Minority Groups		36	68	77	56	57	<b>294</b>	<b>1</b>	
	The Toubou	8	49	21	33	40	<b>151</b>		
	The Touareq	9	8	15	14	32	<b>78</b>		
	The Amazigh (Berber)	25	18	36	18	7	<b>104</b>		
The Response of NGOs		98	106	37	27	20	<b>288</b>	<b>1</b>	
Arab Uprisings Elsewhere		43	45	69	27	2	<b>186</b>	<b>1</b>	
Lockerbie's Case		11	20	16	1	1	<b>49</b>	<b>0</b>	

## **Chapter V: The Situation in Yemen (2011-2015)**

As the TWAIL-informed analysis of public international law that is presented by Chapter II indicates, state-creation based on ‘self-determination’ has been permitted under the UN System mainly in situations where a territory has been seeking independence from foreign occupation. Outside such a ‘colonial’ context, ‘self-determination’ was granted to groups seeking to secede from already established states only in the following three cases: Bangladesh (1971), Kosovo (2008), and South Sudan (2011). The independence of those three states was justified by ‘remedial secession,’ or based on severe violations of the human rights of their respective inhabitants that in some cases amounted to genocide and ethnic cleansing. Since 1945, new states have also emerged because of ‘the breakup of political unions’ e.g., the Soviet Union, in which case the approval of the former central government has always constituted one of the main prerequisites.

Nonetheless, exceptions to those general, *macro*-level norms of PIL have always been made because of Great Power politics, and with devastating consequences for the affected populations. For example, even in the case of former colonial entities such as Palestine, Israel’s influence on US politics continues to prevent the creation of an independent Palestinian state, and a ‘non-self-governing territory’ such as Western Sahara is similarly still not independent due to the strength of Morocco’s relations with the West. The independence of Bangladesh and South Sudan would also not have been permitted if it ran contrary to the interests of influential players such as those of one or more of the Permanent Members of the UNSC, and Kosovo’s independence is still not as widely recognised because of the objection of Serbia - an ally of Russia. Similarly, in the case of ‘the breakup of political unions,’ early recognition was extended to the constituent republics of Yugoslavia by various European states, to, primarily, safeguard European interests. Given the objective of the UN System itself to preserve the post-WWII global territorial status quo, prominent cases outside the ‘colonial’ context such as Chechnya, the Sikh of India, and Iraqi Kurdistan were also not granted ‘remedial secession’ despite the severe human rights violations that were committed against their respective populations.

Together with TWAIL, the approach of ‘postcolonialism’ in IR theory as justified by Chapter III of this thesis further enables the arrival at the observation that many influential states in our contemporary international system intervene in, or even

instigate, the civil wars of other states, exploit the ethnic or historic division lines of those weaker states to advance their own hegemonic interests, and practically treat resultant sub-state territorial enclaves as '*terra nullius*.' In the absence of an agreement on the overall status of those emerging territorial enclaves by and through NSAGs, the shortcomings of directly applicable *micro*-level PIL frameworks to the administrative capacities of NSAGs such as IHL and IHRL become clearly seen through the lens of '*terra nullius*' as purposeful. If NSAGs are not recognised, nor intended to be recognised, as having the capacity to 'self-rule' through a formal recognition of their independence, then keeping them and their respective territories in an endless state of 'legal limbo,' as '*terra nullius*,' enables the bidding of those territories against domestic, regional, and/or international opponents alike. In other words, such divisive strategies from the colonial era ultimately serve as a 'window-creation' technique that continues to be operational and in full-force in our contemporary international system.

At the same time, with the evolution of international law in the direction of holding external parties responsible for the actions of an entity they fund and support against their opponents,<sup>268</sup> relevant 'proxy wars' between Great Powers such as the US and Russia are often fought on-the-ground by a third derivative entity. For example, Iran and Saudi Arabia would typically be bid against one another at the regional level of MENA, and they would then end up supporting opposite warring parties in a civil war such as that of Yemen. This carries the overall effect of distancing the main superpower patron from the actions of the local warring party in the civil war in question, while bringing about catastrophic humanitarian outcomes in a deafening atmosphere of international criminal impunity.

Meanwhile, if the legal status of a people's territory is in flux, the humanitarian aspects of their situation are bound to be catastrophic. This paradoxically seems to be an issue of a marginal concern to an international system that has been created and constantly adjusted at the service of Empire, while periodically paying lip service to the mantra of 'justice' and 'equality.' This is not to say that granting such territorial enclaves their independence as new states is the only solution; it is rather the classic

---

<sup>268</sup> See for instance the *Tadic* case before the International Criminal Tribunal for the Former Yugoslavia, 2 October 1995, Case No. IT-94-1-AR72. Also see the *Nicaragua v. United States* case before the International Court of Justice, Judgment of 27 June 1986.

colonial legacies of ‘divide and rule’ and of treating various enclaves within established states as ‘*terra nullius*’ that must instead be overcome.

This ‘critical’ study of the unfortunate situation in Yemen (2011-2015) offers a testimony to the devastating outcomes of Great Power politics in all such situations of civil war, as well as to the feasibility of studying the territorial controls of NSAGs as the ‘*terra nullius*’ of our present international society. Utilising this conceptual lens based on TWAIL and ‘postcolonialism,’ it becomes possible to argue that, on the one hand, the call for the independence of some territorial entities such as South Yemen could be suppressed, and such territories could become turned into a ‘*terra nullius*’ instead, because of the security concerns of different regional and international players. On the other hand, the territorial acquisitions of other entities such as the Houthis could be facilitated and used as a theatre of ‘proxy wars’ amongst and in-between regional and international rivals. In other words, the situation in Yemen evidences a remarkable pattern of contestations over territory in our contemporary international system that go beyond any ethnic or ‘irredentist’ calls for ‘secession,’ to the extent that the territorial campaigns of any given NSAG could be either facilitated or fought by external forces bent on upholding the classic colonial legacy of ‘divide and rule.’

In such a manner, the overall ‘sovereignty’ of a state undergoing civil turmoil becomes suspended, the pre-existing sub-division lines of a country such as Yemen become exploited at the service of ulterior, hegemonic interests; and an endless state of domestic anarchy becomes enforced on the ground. From the perspective of ‘postcolonialism,’ the ‘international’ has indeed always been a place of colonialism. Therefore, once a regional or an international intervention is launched into a state undergoing civil war, that state practically departs the zone of ‘*de jure*’ authority, its domestic sphere becomes an extension of international ‘anarchy,’ and the ‘race to the bottom’ of competing regional and international players leads to its territorial fragmentation as suits the interests of such expansionist, neo-colonial entities.

Accordingly, this Chapter of the thesis offers a ‘critical’ analysis of the territorial controls of NSAGs in Yemen (2011 – 2015) through the lens of ‘*terra nullius*,’ which is in turn informed by TWAIL and ‘postcolonialism.’ Firstly, the scene is set through an illustration of the key reactions of the Gulf Cooperation Council (GCC) to major junctures in the Yemeni Uprising, by way of also taking the analysis from the *macro-*

level to the more *micro* or regional level of MENA. Thereafter, the ‘tribe’ is underscored as the main, *meso*-level ‘window’ of external players into Yemen’s domestic sphere; and subsequently the dynamics between all three levels of analysis are explored in a separate subsection on each of Yemen’s historical regions: the South and the North. Lastly, the ‘irredentist’ dimension in the rise of the Houthi movement is accentuated with specific reference to the international, Yemeni-Saudi border region, and an illustration of the country’s dire humanitarian situation is finally provided to demonstrate the outcome of ‘*terra nullius*’ politics on the marginalised and silenced Yemeni population.

### **V.I. The GCC and the 2011 Yemeni Uprising**

When I embarked on the present analysis of the situation in Yemen during the second year of my PhD studies, or during the 2018-2019 academic year, I admittedly underestimated the serious ramifications of the reactions of key GCC States to the 2011 Yemeni Uprising and other popular revolts in MENA. This is arguably due to the insufficient levels of understanding that one could gain by relying on Western sources of information such as *BBC* and *CNN*, as well as the fact that only by tracing the process of change in the Yemeni context through a ‘critical,’ ‘diachronic,’ and ‘contextual’ study like the present one would those patterns of external involvement become fully appreciated.

In the wake of the 2011 Arab Uprisings, the GCC states were mainly concerned that the Arab Uprisings, if left uncontained, would expand into their own domestic spheres of influence. But their response to those popular revolts could be underlined as the main reason behind Yemen’s present fragmentation into various territorial enclaves under the control of NSAGs, before such territorial subdivisions were in turn used as a theatre of ‘proxy war’ against the GCC itself.

According to *Mareb Press*, the 2011 Uprising started on 15 January 2011 or immediately after the fall of President Benali in Tunisia, as small protests at Sanaa University organised by the Yemeni Socialist Party. This was the second largest Yemeni opposition group, and the successor of the Communist Party that ruled South Yemen until 1990. From 3 February 2011 onwards, public rallies were organised by The Joint Meeting Parties, or the general coalition of Yemeni opposition parties that included six of the largest opposition groups such as the Islah Party and the Socialist



Party itself. The small-scale protests at Sanaa University demanded the resignation of President Ali Abdullah Saleh from the outset, while the 3 February 2011 protests were initially organised in rejection of proposed amendments to the Yemeni Constitution that would have made Saleh a President for life and would have ruled-in the possibility of transferring his powers to his son Ahmad. From March 2011 onwards, the protesters formed their own commissions for the organisation of protests and public rallies, which eventually called for civil disobedience that took its hold on the various governorates of Yemen.

One of the main milestones in the Yemeni Uprising was arguably reached on 18 March 2011, when 52 protesters were killed at Change Square in the capital Sanaa and roughly 600 others were injured. Concurrently, the GCC intervened to end the protests in Bahrain, while at least 75 Saudi tanks and armoured vehicles were sent to the Yemeni seaport of Aden.<sup>269</sup> At the peak of the crackdown of Saleh's regime on the Uprising in late 2011, Saudi Arabia sent additional tanks and weapon supplies to Yemen and a high-level meeting took place between Saleh and King Abdullah bin Abdelaziz Al Saud in Saudi Arabia.<sup>270</sup> This meeting was convened before Saleh concluded his medical treatment in the Kingdom and abruptly returned to Sanaa on 23 September 2011 to personally oversee his government's crackdown on the Yemeni Uprising. In turn, Saleh's medical treatment in the Saudi Kingdom was a result of a tribal death warrant that was issued against him on 26 May 2011 because of his government's treatment of peaceful protests.<sup>271</sup> On 3 June 2011 he was severely injured, while eleven of his close associates were killed in an explosion at the Mosque of the Presidential Palace in Sanaa.<sup>272</sup> The formal process of transferring Saleh's powers to his successor Abedrabbuh Mansur Hadi then took place in November 2011, in accordance with a GCC Initiative that was co-sponsored by the US and the EU and endorsed by the UNSC.<sup>273</sup>

---

<sup>269</sup> *Mareb Press*, 14/03/2011, available in Arabic at: [https://marebpress.net/news\\_details.php?lng=arabic&sid=31905](https://marebpress.net/news_details.php?lng=arabic&sid=31905), (accessed 09/02/2021).

<sup>270</sup> *Mareb Press*, 20/09/2011, available in Arabic at [https://marebpress.net/news\\_details.php?sid=36636](https://marebpress.net/news_details.php?sid=36636), (accessed 09/02/2021).

<sup>271</sup> *Mareb Press*, 26/05/2011, available in Arabic at [https://marebpress.net/news\\_details.php?sid=34175](https://marebpress.net/news_details.php?sid=34175), (accessed 09/02/2021).

<sup>272</sup> *Mareb Press*, 05/06/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=34386](https://marebpress.net/news_details.php?lng=arabic&sid=34386), (accessed 09/02/2021).

<sup>273</sup> See for instance UNSC Press Release No. SC/10296.

Following a public referendum on Hadi's presidency on 21 February 2012, which was boycotted by both the Houthis and the Southern Hiraq Movement, Hadi was declared the President of the country on 24 February 2012 by 6,636,192 votes or 99.8% of all possible Yemeni votes.<sup>274</sup> However, not only did the UN-backed GCC Initiative assign Saleh the role of "the President of the President"<sup>275</sup> and allow him to keep his position as the Head of the former ruling party, The General People's Congress, but it also granted him and his close associates immunity from criminal prosecution on the backdrop of an uproar of criticism from the Yemeni public and Non-Governmental Organisations (NGOs) alike. Accordingly, the more efforts that the GCC made through the shuttle diplomacy of its Secretary General Abdullatif bin Rashid Al Zayyani to contain the situation in Yemen, the more that the situation in that country instead fell out of step with the interests of the organisation.

The success of popular revolts in Tunisia and Egypt in removing Benali and Mubarak from their respective power positions constituted an important source of inspiration for Yemen's own public rallies, and it steadily led to a change in the political status quo of Yemen that the GCC wished to otherwise maintain by keeping Saleh involved in the management of Yemeni politics. In addition, unlike in Bahrain, the heavy use of live ammunition on 18 March 2011 against Yemen's peaceful protests provoked a series of Army defections and Ruling Party resignations in Yemen, most notably by Major General Ali Muhsin Al Ahmar, the Commander of the former North-western Brigade of the Yemeni Army and his forces. Crucially, following his defection, Major General Al Ahmar ordered his troops to abandon their stations in what was by then the Houthis' main area of influence (the North-western region of Yemen) and to instead protect public rallies at Change Square in Sanaa. As a result, the Governorate of Saada, where six rounds of armed conflict were fought between Al Ahmar's forces and the Houthis between July 2004 and February 2010 immediately fell under the control of the Houthis.<sup>276</sup>

Not only did the GCC's efforts to contain the situation in Yemen lead to divisions within the Yemeni Army, but they also reawakened and created more enemies for

---

<sup>274</sup> *Mareb Press*, 24/02/2012, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=40954](https://marebpress.net/news_details.php?lng=arabic&sid=40954), (accessed 09/02/2021).

<sup>275</sup> *Mareb Press*, 15/03/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=41610](https://marebpress.net/news_details.php?sid=41610), (accessed 09/02/2021).

<sup>276</sup> *Mareb Press*, 25/03/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=32316](https://marebpress.net/news_details.php?lng=arabic&sid=32316), (accessed 09/02/2021).

the GCC itself. It is indeed worth recalling that Saudi Arabia was one of the main belligerents of the sixth Saada war, which took place immediately before the Yemeni Uprising or between August 2009 and February 2010. Therefore, the Kingdom's continued support of Saleh against the wishes of the Yemeni people is certainly an issue that put Saudi Arabia on a collision course with the Houthis themselves. Most notably, on 24 November 2011, the day when Saleh signed the GCC Initiative at long last, the supreme leader of the Houthis Abdulmalik Al Houthi announced his movement's rejection of the "belittling" Initiative and vowed to prevent its implementation on the ground.<sup>277</sup>

In an interview with *Aljazeera* on 18 February 2012, Al Ahmar stated his willingness to apologise to the Houthis for the six Saada wars, underlining that he was only following the orders of Saleh's regime.<sup>278</sup> However, the immunity from criminal prosecution that was extended to Saleh through the UN-backed GCC Initiative obstructed the process of transitional justice in post-Uprising Yemen, in a manner that instead accorded the interests of regional and international Great Powers a higher degree of importance. As will shortly be seen, Al Ahmar was also scapegoated for the Saada wars instead of Saleh. As part of the agenda of Yemen's National Dialogue Conference, and on 21 August 2013, the opposition-led government of Prime Minister Mohammed Basindwah still extended an apology to the Houthis over the six rounds of conflict in Saada, which was happily accepted by them.<sup>279</sup>

Nonetheless, as part of the Saudi Kingdom's attempt to crackdown on those who support the Yemeni Uprising on its own soil, more than 126,697 Yemenis were deported from Saudi Arabia between January - October 2013 alone.<sup>280</sup> Similar arrest and deportation campaigns against Yemeni citizens were also carried out by the UAE.<sup>281</sup> And as those deportations of Yemeni workers and their families worsened the socio-economic conditions of a large segment of the Yemeni population, they

---

<sup>277</sup> *Mareb Press*, 24/11/2011, available in Arabic at [https://marebpress.net/news\\_details.php?sid=38088](https://marebpress.net/news_details.php?sid=38088), (accessed 09/02/2021).

<sup>278</sup> *Mareb Press*, 18/02/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=40716](https://marebpress.net/news_details.php?sid=40716), (accessed 09/02/2021).

<sup>279</sup> *Mareb Press*, 23/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=59069](https://marebpress.net/news_details.php?sid=59069), (accessed 09/02/2021).

<sup>280</sup> *26 September*, 31/12/2013, available in Arabic at [https://www.26sep.net/news\\_details.php?sid=98772](https://www.26sep.net/news_details.php?sid=98772), (accessed 27/02/2020).

<sup>281</sup> *Mareb Press*, 19/01/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=51237](https://marebpress.net/news_details.php?sid=51237), (accessed 09/02/2021).

unintentionally boosted the recruitment efforts of the Houthis in their various territorial campaigns.<sup>282</sup> An increasing number of Saudi-funded tribes in the country's Northern region,<sup>283</sup> most notably the Salafists, were also defeated by the Houthis in a manner that was key to their territorial expansions throughout the rest of the country. But even those important defeats did not make such influential GCC Member States change their course of action in Yemen, nor did they make them retract their support of Saleh.

Saudi Arabia paradoxically responded to the July 2014 victory of the Houthis in the key governorate of Amran in the Northern parts of Sanaa by attempting to mediate between Hadi, Saleh and Al Ahmar.<sup>284</sup> This failed mediation attempt at such a late stage of the transitional process further evidenced the reluctance of the conservative establishment in Saudi Arabia to accommodate the demands of the Yemeni people for change, and indeed demonstrated the Kingdom's reluctance to abandon its historical alliance with Saleh. The irony is that Saleh was the one who refused to reconcile with Al Ahmar.<sup>285</sup> In addition, in late 2014 Saudi Arabia suspended its political and material support of Hadi to further pressure him to accept a political role for Saleh in the management of post-Uprising Yemeni political affairs.<sup>286</sup>

Other GCC states such as the UAE have also played a very divisive role in post-Uprising Yemen. The UAE has notably been supportive of the secession of the South as was demonstrated by the various gatherings that it hosted for the leadership of, and tribes affiliated with, the Southern Hirak Movement as well as its more recent fallout with Saudi Arabia over the same issue.<sup>287</sup> Even more, the UAE has arguably been the instigator of the GCC's unsuccessful biddings of the largest Yemeni opposition group, the Islah Party, which it has often connotated as the Yemeni branch of the regional Muslim Brotherhood organisation, against the Houthis. Remarkably,

---

<sup>282</sup> *Mareb Press*, 17/06/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=56820](https://marebpress.net/news_details.php?sid=56820), (accessed 09/02/2021).

<sup>283</sup> For an account on the Saudi-patronage system with Yemeni tribes, please see Marieke Brandt, *Tribes and Politics in Yemen, A History of the Houthi Conflict* (Oxford University Press, 2017).

<sup>284</sup> *Mareb Press*, 28/07/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=101352](https://marebpress.net/news_details.php?sid=101352), (accessed 09/02/2021).

<sup>285</sup> *Mareb Press*, 28/07/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=101351](https://marebpress.net/news_details.php?sid=101351), (accessed 09/02/2021).

<sup>286</sup> *Mareb Press*, 03/08/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=101421](https://marebpress.net/news_details.php?sid=101421), (accessed 09/02/2021).

<sup>287</sup> See for instance, Andrew England and Simeon Kerr, "UAE Attacks on Yemen Reveal Fractures in Saudi-Led Coalition," *The Financial Times*, 29/08/2019, available at <https://www.ft.com/content/48f44b08-caa5-11e9-a1f4-3669401ba76f>, (accessed 21/02/2020).

the fall of Sanaa under the control of the Houthis in September 2014 came about one year after most GCC Member States lent significant material, logistic, and political support to the Egyptian Army as it ousted the Muslim Brotherhood from power in Egypt, and violently cracked down on members of this organisation to the point of ‘genocide.’<sup>288</sup> Colombian mercenaries paid by the UAE were even more shockingly reported as the main executors of the Egyptian Army’s massacres against Muslim Brotherhood rallies in Al Nahda and Rabaa Al Adawiya in Egypt on 14 August 2013, which resulted in at least 2,110 deaths and thousands of injuries.<sup>289</sup>

A month earlier, the UAE supported the regime of the new Egyptian President El-Sisi with a \$1bn grant and a \$2bn deposit at Egypt’s Central Bank, Kuwait pledged another \$4bn in assistance to the new Egyptian regime, and Saudi Arabia pledged \$5bn more.<sup>290</sup> On 19 August 2013, the Saudi Foreign Minister Emir Saud Al Faisal warned the West not to pressure the new Egyptian regime and indeed pledged that his country would replenish any shortages in foreign aid to Egypt resulting from Western sanctions vis-à-vis the new Egyptian regime over crimes it committed against the Muslim Brotherhood.<sup>291</sup> Until recently, this unconditional support of Sisi by most GCC states constituted the main reason behind the fallout between Muslim Brotherhood-leaning Qatar and the rest of the GCC’s Member States.

In Yemen, a deal was reportedly brokered through the former commander of the Republican Guard and then Yemeni Ambassador to the UAE, Saleh’s son Ahmad, to facilitate the Houthis’ territorial expansions in order to “exterminate” Yemen’s branch of the Muslim Brotherhood, the Islah Party.<sup>292</sup> However, as the Houthis entered Islah neighbourhoods in Sanaa in early September 2014 and armed clashes

---

<sup>288</sup> *Mareb Press*, 17/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=58834](https://marebpress.net/news_details.php?sid=58834); *Mareb Press*, 19/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=58912](https://marebpress.net/news_details.php?sid=58912); and *Mareb Press*, 19/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=58929](https://marebpress.net/news_details.php?sid=58929), (accessed 09/02/2021).

<sup>289</sup> *Mareb Press*, 17/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=58834](https://marebpress.net/news_details.php?sid=58834); and *Mareb Press*, 15/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=58800](https://marebpress.net/news_details.php?sid=58800), (accessed 09/02/2021).

<sup>290</sup> *Mareb Press*, 18/07/2013, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=57975](https://marebpress.net/news_details.php?lng=arabic&sid=57975), (accessed 09/02/2021).

<sup>291</sup> *Mareb Press*, 19/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=58929](https://marebpress.net/news_details.php?sid=58929); and *Mareb Press*, 19/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=58912](https://marebpress.net/news_details.php?sid=58912), (accessed 09/02/2021).

<sup>292</sup> *Mareb Press*, 13/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=102610](https://marebpress.net/news_details.php?sid=102610), (accessed 09/02/2021).

broke out, Islah announced its decision not to confront the Houthis<sup>293</sup> and it subsequently signed a peace agreement with them.<sup>294</sup> Those ideologically-driven bargains also led to major setbacks in the various ground assaults that the Saudi – led Coalition launched against the Houthis from 15 July 2015 onwards. As reported by the deceased Saudi journalist Jamal Khashoggi, they were most prominent on the ground during the last quarter of 2015.<sup>295</sup>

In December 2015, the prominent Islah leader Mohammed Al Saady denied the allegations of his party's ties to the Muslim Brotherhood, clarifying that the Islah Party shares similar ideological grounds with the Muslim Brotherhood "in a manner that is common across the Muslim World."<sup>296</sup> Meanwhile, Saudi Arabia was banning the circulation of Muslim Brotherhood literature, which it considers an existential threat to its own, Wahhabi interpretation of Sunni Islam.<sup>297</sup>

Accordingly, it is possible to argue that the territorial gains and losses of the Houthis in Yemen were to a large extent unleashed as a direct result of the involvement of the GCC in Yemeni affairs. In Yemen, the GCC aimed to preserve a role for Saleh in running the country's political affairs, stop the territorial expansions of the Shia Houthis, and keep its ideological nemesis of the Muslim Brotherhood organisation out of the country's political scene. Those extensive levels of GCC meddling in inter-Yemeni affairs, particularly its anti-Muslim Brotherhood lethargies, were arguably what led to the decision of the UNSC to expedite its negotiations with Iran over the latter's nuclear power program, and to the ultimate decision of the US Administration of President Barak Obama to politically empower the Houthis as they marched into Sanaa in late 2014. It is indeed hardly a coincidence that following the hawkish policies of US President Donald Trump, and the return of the 'Democrats' to power in the US via the presidency of current US President Joe Biden, that the issue of

---

<sup>293</sup> *Mareb Press*, 15/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=102679](https://marebpress.net/news_details.php?sid=102679), (accessed 09/02/2021).

<sup>294</sup> *Mareb Press*, 13/12/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=105751](https://marebpress.net/news_details.php?lng=arabic&sid=105751), (accessed 09/02/2021).

<sup>295</sup> *Mareb Press*, 15/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114154](https://marebpress.net/news_details.php?lng=arabic&sid=114154); *Mareb Press*, 23/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114401](https://marebpress.net/news_details.php?lng=arabic&sid=114401); and *Mareb Press*, 24/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114430](https://marebpress.net/news_details.php?lng=arabic&sid=114430), (accessed 09/02/2021).

<sup>296</sup> *Mareb Press*, 07/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114918](https://marebpress.net/news_details.php?lng=arabic&sid=114918), (accessed 09/02/2021).

<sup>297</sup> *Mareb Press*, 02/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114740](https://marebpress.net/news_details.php?lng=arabic&sid=114740), (accessed 09/02/2021).

Iran's 'nuclear power deal' is back on the table of international policy making. Now that the Houthis have also been removed from the US list of 'terrorist organisations,' US pressures are currently being exerted on Saudi Arabia to end its war in Yemen.

## V.II. The Central Role of 'the Tribe' on the Yemeni Political Scene

The present analysis of local, daily news reports from Yemen through the lens of '*terra nullius*' has firstly enabled the consideration of the above stated regional dynamics vis-à-vis Yemen's political parties and NSAGs. Notably, those dynamics underscore the central role that influential GCC states such as Saudi Arabia and the UAE have played on the post-Uprising Yemeni political scene. This study has made it possible to arrive at the additional observation that the fragmentation of Yemen in the aftermath of its 2011 popular revolts has been a result of the political vacuum that the absence of official government institutions left throughout the country's domestic sphere. For example, according to the Geneva Graduate Institute, Yemen is ranked second to the US in terms of private gun ownership.<sup>298</sup> And with political instabilities spanning the entire country, local (tribal) initiatives to defend the population and/or to restore public order were indeed established in various parts of the country.

Accordingly, the territorial fragmentation of Yemen has come about in the form of shifting alliances between, on the one hand, the different tribes of the country; and on the other hand, the official authorities, the Houthis, the Southern Hirak Movement, Al Qaeda, and/or the Army defectors. Each of those entities also presented themselves as 'windows' for foreign involvement in Yemen's domestic sphere. Besides the support that they received from their regional and international allies, none of them succeeded in acquiring any parts of the country's territory without forming an alliance with the relevant tribes or defeating such tribes in battle. By the end of May 2011, this situation already resulted in the former regime's loss of effective control over 80% of Yemeni territory<sup>299</sup> since it was primarily through the support of 'the tribe' that Saleh's regime remained in power for thirty-three years.<sup>300</sup>

For example, the tribe of Arhab in the Northern part of Sanaa started attacking army headquarters in May 2011, causing a severe backlash by the forces of the Republican

---

<sup>298</sup> *Mareb Press*, 27/12/2012, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=50341](https://marebpress.net/news_details.php?lng=arabic&sid=50341), (accessed 09/02/2021).

<sup>299</sup> *Mareb Press*, 27/05/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=34205](https://marebpress.net/news_details.php?lng=arabic&sid=34205), (accessed 09/02/2021).

<sup>300</sup> For a discussion, see Marieke Brandt, 2017.

Guard throughout the remainder of 2011 and well into 2012 on the pretence of “fighting Al Qaeda.” The most significant showdown between tribal leaders and their followers on the one hand, and Saleh’s forces on the other also took place between May and June 2011, as the regime shelled the house of its own messenger to the Yemeni opposition and then Tribal Chief of Hashid, Shaikh Sadiq Al Ahmar. This led to intense fighting in Al Hasba area in Sanaa between the Clan of Al Ahmar (Hashid) and regime forces, and the Republican Guard later admitted that at least 700 of its soldiers were killed, and 2,200 others were injured in those clashes.<sup>301</sup> Significantly, this culminated in the injury of Saleh himself and his subsequent departure for treatment in Saudi Arabia.

In addition, following the fall of the governorate of Al Jawf that is located next to Saada along the Yemeni-Saudi borders to the tribe of Bakeil, the leaders of this second-largest tribal conglomerates in Yemen also formed various coalitions in Taz in order to protect the protesters from regime crackdown at Freedom Square.<sup>302</sup> Such ‘popular committees’ were also created in the Houthi-controlled region of Saada itself as early as March 2011, and armed fighters belonging to the various tribes of Yemen soon became placed at the forefront of all battlegrounds across the country. In mid-2011, when sectarian fighting commenced between the Houthis and the Saudi – backed Salafist tribes of Dammaj, Kisher, Al Jawf, Nahim, Qitaf and Amran, thousands of Salafist tribesmen convened a conference in Al-Hudaydah in December 2011 and vowed to aid the embattled Salafist tribes of Dammaj and nearby cities.<sup>303</sup> Tribes affiliated with the Islah Party also came to the aid of the Salafists and fought against the Houthis in their various battles against the tribes of the North. Those local dynamics are arguably the reason why the UAE and its allies ultimately (and unsuccessfully) backed Islah against the Houthis.

Furthermore, four areas in Shibwa and the city of Mihfid in Abyan in the Southern parts of the country fell under the control of tribes affiliated with the Southern Hirak

---

<sup>301</sup> *Mareb Press*, 15/02/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=40591](https://marebpress.net/news_details.php?sid=40591), (accessed 09/02/2021).

<sup>302</sup> *Mareb Press*, 01/06/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=34304](https://marebpress.net/news_details.php?lng=arabic&sid=34304), (accessed 09/02/2021).

<sup>303</sup> *Mareb Press*, 20/12/2011, available in Arabic at [https://marebpress.net/news\\_details.php?sid=38902](https://marebpress.net/news_details.php?sid=38902), (accessed 09/02/2021).



Movement as early as March 2011.<sup>304</sup> Armed clashes between Southern Hirak activists and their affiliated tribes on the one hand, and the Security Forces on the other also took place in the Southern city of Dalea from early 2012 until the convention of Yemen's National Dialogue Conference in early 2013. This came about hand in hand with mounting calls for the 'secession' of the South by elements of Hirak led by Ali Salem Al Beidh. As will shortly be seen, fighters belonging to the various tribes of the South also played an important role in Yemen's war against Al Qaeda at various junctures between 2011 – 2015. Southern tribal fighters were importantly also the main driving force behind the Saudi-led campaigns to take back Aden from the Houthis in early 2015, and they subsequently formed the backbone of the new Yemeni Army after the return of Hadi's government to Aden in July 2015 from its exile in Saudi Arabia.<sup>305</sup>

With the realignment of the country's tribes along the newly established and/or resurrected main sources of influence and territorial control, be they domestic, regional, or international; Yemen's main tribal conglomerates have in sum realigned themselves in-between the country's two main historic regions of the North and the South. In this respect, and of the different NSAGs that were active on the Yemeni political scene between 2011-2015, the Southern Hirak Movement was evidently the least violent. Except for the activities of radical elements within this Movement that were led by Al Beidh. However, the regional and international response to the various activities of Hirak has generally resulted in the suppression of its call for the independence of the South. This was the case even regarding the peaceful call for 'secession' that was made by moderate elements within this movement that were led by the likes of Haider Abu Bakr Al-Attas.

### **V.III. South Yemen, the War on Al Qaeda, and Hirak**

Now that an illustration of Yemen's turbulent domestic and regional environment 2011-2015 has been given, this subsection examines the interplays between both levels of analysis and the international level in South Yemen, while also emphasising the outcome of those co-constitutive relationships on Yemen's own population.

---

<sup>304</sup> *Mareb Press*, 24/03/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=32278](https://marebpress.net/news_details.php?lng=arabic&sid=32278), (accessed 09/02/2021).

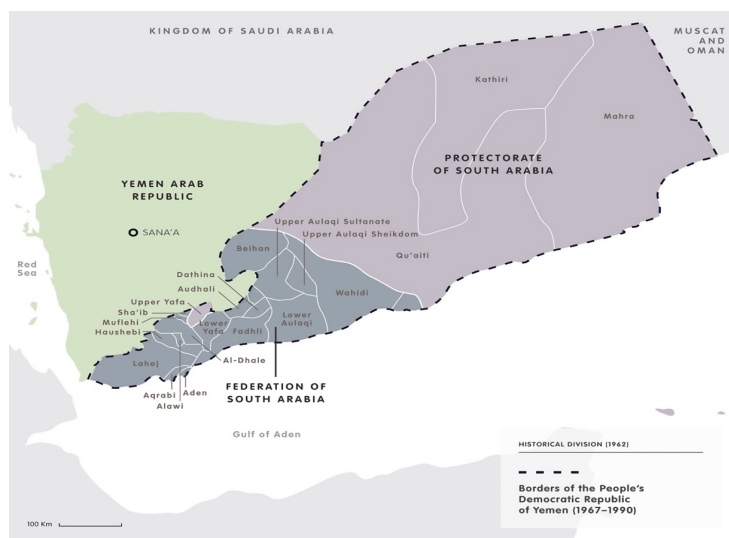
<sup>305</sup> *Mareb Press*, 04/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111700](https://marebpress.net/news_details.php?lng=arabic&sid=111700), (accessed 09/02/2021).

Importantly, it can be argued from a TWAAIL and a ‘postcolonial’ perspective that most of the historic region of South Yemen was transformed in the immediate aftermath of the 2011 Yemeni Uprising into a ‘*terra nullius*,’ and one of the main battlegrounds of the global ‘war on terror.’ This was mainly due to the heavy presence of, and vast swathes of land that Ansar Al Sharia (an offshoot of Al Qaeda in the Arabian Peninsula, thereafter Al Qaeda) controlled in that part of Yemen. From their subjection to various forms of extrajudicial killings by drones, to their entrapment at the forefront of all military campaigns against Al Qaeda, the inhabitants of this part of Yemen were in turn the most affected.

In 1994, South Yemen’s armed attempt to secede from the political union that this region entered into with North Yemen four years earlier was crushed by Saleh’s regime. This led to the establishment of the Southern Hirak Movement in 2007, which originally demanded the independence of the South through peaceful means but then became more militant in its approach as Yemen edged closer towards the 2011 Uprising. This second call for secession still faced a severe backlash by Saleh’s regime, especially during the early stages of the 2011 Uprising and in places such as Rodfan, Lahij and Abyan, but a ceasefire agreement was eventually reached on 6 March 2011.

However, as Al Qaeda occupied many parts of South Yemen from March 2011 onwards, local councils for running government institutions and ‘popular committees’ for defending cities were formed by Hirak in many Southern cities and Governorates including Yafea, Rodfan, Aden, and Hadhramaut. While this effectively turned Hirak into a NSAG in control of territory, the heavy presence of Al Qaeda in South Yemen made Hirak’s renewed call for its independence fall out of step with the interests of the main sponsors of the GCC Initiative, if the particularities of any given call for independence have ever been prioritised over the interests of relevant external players that is.

Since Al Qaeda was founded by an exiled Saudi citizen, Bin Laden, concerns about the spread of Al Qaeda by a sudden removal of Saleh from the Yemeni political scene have arguably even strengthened the resistance of various GCC Member States to the process of political change in Yemen. In turn, the former president himself used the threat of Al Qaeda and its territorial gains and losses to his own advantage, or to appeal for the continued support of regional players such as the GCC of his regime.

**Map 1:** Yemen's Historical Sub-Division Lines<sup>306</sup>

As early as 28 March 2011, an ‘Islamic State’ was declared in Abyan in the South amidst wide condemnations of how various parts of this Southern Governorate were surrendered by Saleh’s forces to Al Qaeda without a fight.<sup>307</sup> In particular, “High-level orders” were given to the commanders of the Mechanical Brigade in Zanjabar, Abyan to surrender their positions to Al Qaeda despite their victory in the battlefield, which allowed Al Qaeda to expand its zone of influence westwards in Lahij and to march towards Aden.<sup>308</sup> The city of Radaa in Baydaa was also reportedly surrendered to Al Qaeda without a fight.<sup>309</sup> By 30 April 2012, the ‘Emir’ of Al Qaeda in Abyan, Jalal Balaedy claimed that his organisation controlled more than 60,000km<sup>2</sup> (around 3.5x the area of Kuwait) from Shibwa to Baydaa in the South.<sup>310</sup>

Accordingly, the situation presented by Al Qaeda occupied centre stage of international deliberations on Yemen, not just those of the GCC and the vindictive, former Yemeni president. Quite remarkably, the UNSC failed to pass any resolutions

<sup>306</sup> Source: European Council on Foreign Relations.

<sup>307</sup> *Mareb Press*, 29/03/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=32415](https://marebpress.net/news_details.php?lng=arabic&sid=32415), (accessed 26/10/2020). Also see *Aljazeera Arabic*, “The Al Qaeda Informant” [Motion Picture], 04/06/2015, available at <https://www.aljazeera.net/programs/al-jazeeraspecialprograms/2015/6/4/مخبر-القاعدة> (accessed 09/02/2021).

<sup>308</sup> *Mareb Press*, 15/06/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=34631](https://marebpress.net/news_details.php?lng=arabic&sid=34631), and *Mareb Press*, 15/06/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=34638](https://marebpress.net/news_details.php?lng=arabic&sid=34638), (accessed 26/10/2020).

<sup>309</sup> *Mareb Press*, 16/01/2012, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=39692](https://marebpress.net/news_details.php?lng=arabic&sid=39692), (accessed 26/10/2020).

<sup>310</sup> *Mareb Press*, 30/04/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=43094](https://marebpress.net/news_details.php?sid=43094), (accessed 26/10/2020).

when it convened to discuss Yemen on 18 April 2011, in comparison to how it had already established a no-flight zone over Libya as early as 17 March 2011. The very first UNSC resolution on Yemen, Res. No.2014, was also not passed until 21 October 2011 and it noticeably expressed the UNSC's concerns over the increased activities of Al Qaeda in the country. Such heavily securitised provisions in UNSC Res.2014 were intriguingly expressed hand in hand with a call for increasing the provision of humanitarian assistance to Yemen, which is a testimony to the argument that I make in Part I of this thesis on how 'humanitarianism' is a complementary global governance tool that is often invoked to the rescue of failed, liberal peacebuilding projects e.g., the shuttle diplomacy of UN Special Envoy Jamal Benomar in the Yemeni context.<sup>311</sup>

At the enforcement level, while the ground troops of Al Ahmar and other Army defectors coordinated their campaigns against Al Qaeda with the tribal militias of the South, they were being aided by significant Saudi and US logistic and material support.<sup>312</sup> And as the main steps in the process of reconstructing the Yemeni Army were being implemented by Hadi's government in 2012, the issue of Al Qaeda occupied centre stage of the deliberations of Yemen's Military and Security Affairs Committee that reportedly maintained open communication channels with the US Department of Defence.

As highlighted by Chapter IV, the main objective of this 'critical' study of Great Power politics in Yemen is to emphasise the *outcome* of such external involvement on Yemen's own population. Indeed, the most immediate result of the international community's response to a popular revolt that sought to improve the socio-economic conditions of the impoverished Yemeni population was to turn South Yemen instead into a '*terra nullius*,' and one of the main battlegrounds against Al Qaeda. Such insensitivities to the demands of the Yemeni population were even counterproductive, as they arguably gave Al Qaeda itself some of its most lucrative

---

<sup>311</sup> Also see Mahmoud Abdou, "Humanitarian Assistance and Peacebuilding: Congruence as a By-product of Incompatibility," *International Human Rights Centre*, 20/04/2018. <https://inhrscentre.wixsite.com/mysite/mahmoud>, (accessed 27/07/2021).

<sup>312</sup> *Mareb Press*, 11/09/2011, available in Arabic at [https://marebpress.net/news\\_details.php?sid=36458](https://marebpress.net/news_details.php?sid=36458), (accessed 26/10/2020).

recruitment strategies, given the significant losses in human life that were caused by the US use of drones.<sup>313</sup>

Indicatively, in 2011-2013, the US intensified its drone strikes in Yemen, and by the end of 2012 it was reported that at least 1,952 Yemenis were killed by those drone strikes alone.<sup>314</sup> Amnesty International investigated six of those drone strikes from 2009, 2012 and 2013, and it underlined that 70% of the resultant 82 deaths were civilians.<sup>315</sup> Meanwhile, as fighting raged on, the territories that were acquired and effectively controlled by Al Qaeda became uninhabited ‘ghost towns,’ with most of the residents of such ‘*terra nullius*’ tragically forced to become either refugees or IDPs.<sup>316</sup> Those who remained were subjected to extreme forms of Sharia law, witnessing in particular various beheadings and other extreme forms of capital punishment.

The developments in South Yemen in the years immediately following the 2011 Uprising culminated in an official notice by the ten countries that sponsored the GCC Initiative (GCC states, the Permanent Members of the UNSC and the EU) through UN Special Envoy Jamal Benomar to the leaders of South Yemen that only through dialogue would the Southern Issue be resolved.<sup>317</sup> The very first UNSC Resolution on Yemen, Res. No. 2014 of October 2011 additionally reaffirmed the UNSC’s “commitment to the unity, sovereignty, independence and territorial integrity of Yemen,” by way of signalling the UNSC’s rejection of the Southern call for independence. In a meeting with Southern Hirak leadership in Cairo, Benomar further conveyed the message that “the Permanent Members of the UNSC were not interested in discussing the Southern claim to ‘self-determination’ at that particular point in time.”<sup>318</sup>

---

<sup>313</sup> *Mareb Press*, 10/07/2012, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=45460](https://marebpress.net/news_details.php?lng=arabic&sid=45460); and *Mareb Press*, 04/12/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=49611](https://marebpress.net/news_details.php?sid=49611), (accessed 10/02/2021).

<sup>314</sup> *Mareb Press*, 25/12/2012, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=50283](https://marebpress.net/news_details.php?lng=arabic&sid=50283), (accessed 26/10/2020).

<sup>315</sup> *Mareb Press*, 22/10/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=60881](https://marebpress.net/news_details.php?sid=60881), (accessed 26/10/2020).

<sup>316</sup> *Mareb Press*, 11/03/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=41460](https://marebpress.net/news_details.php?sid=41460), (accessed 26/10/2020).

<sup>317</sup> *Mareb Press*, 05/11/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=48738](https://marebpress.net/news_details.php?sid=48738), (accessed 09/02/2021).

<sup>318</sup> *Mareb Press*, 11/11/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=48920](https://marebpress.net/news_details.php?sid=48920), (accessed 09/02/2021).

By the end of 2013, Al Qaeda's quest for territory was rendered impotent and the organisation was arguably turned into an underground movement of loose militants in Hadramout, Baydaa and other Southern cities. On 11 February 2015, Ansar Al Sharia in Yemen also withdrew its allegiance to Bin Laden's successor Ayman Al Zawahiri, and it swore allegiance instead to Al Baghdadi, the Calif of ISIS.<sup>319</sup> However, by the end of 2015, as the Saudi-led Coalition was preoccupied with its war against the Houthis, many parts of Abyan and other Southern cities were once again captured by Al Qaeda.<sup>320</sup> A recent report by Amnesty International even indicates that the UAE, an ally of the West, has been supplying Al Qaeda and other extremist Salafist groups that are operating in the South with weapons it had obtained from the US and its allies, throughout the various battles of the Saudi-led coalition against the Houthis and their newly formed alliance with Saleh and the Republican Guard forces of his regime.<sup>321</sup> In other words, even the activities of a widely vilified terrorist organisation such as Al Qaeda have been facilitated in the Yemeni context by domestic and regional, Western-allied players alike when and if this fell in line with their policies vis-à-vis their opponents.

In its own regard, the call for the secession of South Yemen encountered many additional obstacles and major setbacks arising from the disunity of its advocates and the existence of sharp divisions within the leadership of Hirak. At the start of the Yemeni uprisings, the leaders of the Southern Hirak Movement called on their supporters to unify behind the slogan of the revolution, the removal of Saleh from power, as the ultimate approach to reaching a just resolution for the Southern Case. But with the return of Saleh from medical treatment in Saudi Arabia, the Southern Hirak Movement notably became divided into those who called for 'secession' and those who preferred a 'federal solution' to the Southern predicament. More than 600 Southern delegates participated in a conference in Cairo, Egypt between 20-22 November 2011 that carried the slogan of "together for the right of 'self-

---

<sup>319</sup> *Mareb Press*, 11/02/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=107220](https://marebpress.net/news_details.php?lng=arabic&sid=107220), (accessed 26/10/2020).

<sup>320</sup> *Mareb Press*, 14/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113227](https://marebpress.net/news_details.php?lng=arabic&sid=113227), (accessed 26/10/2020).

<sup>321</sup> See for instance Eliza Mackintosh, "UAE 'recklessly' supplying Yemeni militias with foreign arms, Amnesty reports," *CNN*, 11/02/2015. Available at <https://edition.cnn.com/2019/02/05/middleeast/uae-yemen-militias-amnesty-intl/index.html>, (accessed 29/09/2020).

determination’ for the people of the South.”<sup>322</sup> In addition, when Yemen was preparing for its first Presidential elections after Saleh in February 2012, armed clashes erupted in Mansoura, Aden, and other Southern cities between those who supported the elections (the advocates of federalism) and those who did not (the secessionists).

In the lead up to Yemen’s National Dialogue Conference in 2013, Al Beidh further mobilised his supporters around the call for ‘secession,’ which was temporarily even exploited by external players such as Iran vis-à-vis Saudi Arabia. Indeed, in late 2012 to early 2013, it was most prominently Iran that lent significant levels of support to Southern, secessionist hardliners such as Al Beidh and his followers. This included Iran’s gift to Al Beidh of the Beirut-based news channel *Aden Live*,<sup>323</sup> which further stemmed from Iran’s reaction to the support that GCC states like Saudi Arabia and Qatar have given to the Syrian opposition in its fight against the Iran-backed Assad regime.

Therefore, Iran was working on expanding its own regional sphere of influence into Yemen, first through a failed strategy of implicitly declaring South Yemen a ‘*terra nullius*’ vis-à-vis Saudi Arabia through its support of Hiraq, and subsequently and more extensively through the Houthis and their own territorial enclaves. In other words, the politics of ‘*terra nullius*’ have evidently become internalised by different countries from MENA’s own political mosaic, thereby emphasising the fragility of the ‘post-colonial’ makeup of many of the states of the region. When on 15 February 2013 the UNSC threatened to impose sanctions on Al Beidh for “obstructing the peace process,” Russia (Iran’s own patron) allegedly intervened to water-down the UNSC’s statement against him on behalf of Iran.<sup>324</sup> But given the subsequent negotiations of the ‘Iran nuclear power deal,’ and once Iran’s more favoured entity of the Houthis established its control over most of the populous parts of Yemen in

---

<sup>322</sup> The final statement of this conference can be found in Arabic at *Mareb Press*, 24/11/2011, [https://marebpress.net/news\\_details.php?sid=38097](https://marebpress.net/news_details.php?sid=38097), (accessed 09/02/2021).

<sup>323</sup> See for example *Mareb Press*, 28/10/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=48574](https://marebpress.net/news_details.php?sid=48574); *Mareb Press*, 18/12/2012, available in Arabic at [https://marebpress.com/news\\_details.php?sid=50040](https://marebpress.com/news_details.php?sid=50040); *Mareb Press*, 22/03/2013, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=53456](https://marebpress.net/news_details.php?lng=arabic&sid=53456); *Mareb Press*, 29/06/2013 available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=57288](https://marebpress.net/news_details.php?lng=arabic&sid=57288), and *Mareb Press*, 17/03/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=107999](https://marebpress.net/news_details.php?lng=arabic&sid=107999) (accessed 09/02/2021).

<sup>324</sup> *Mareb Press*, 15/02/2013, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=52194](https://marebpress.net/news_details.php?lng=arabic&sid=52194), (accessed 09/02/2021).

2015, Iran tellingly transferred the ownership of the news channel *Aden Live* to the Houthis.<sup>325</sup>

As can be justified by the TWAIL-informed analysis of applicable PIL from Chapter II, and since no systematic, gross violations of human rights amounting to genocide were committed in South Yemen by the end of 2015, the case of ‘state creation’ based on ‘the breakup of political unions’ is Yemen’s most relevant international precedence. The attempt of the South in 2011-2013 to claim ‘secession’ based instead on ‘self-determination’ is rather an expression of a dynamic best explained by Fred Halliday (2009) and outlined by the third section of Chapter III above, on how international norms became co-constitutively internalised by the region and often invoked by its population against the international system itself.<sup>326</sup>

To this day, however, Saudi Arabia has maintained its opposition to all calls for breaking the ‘political union’ that South Yemen entered with North Yemen in 1990, and it has insured the continued existence of Yemen’s central government that is headed by President Hadi. Therefore, the formal objection of the Saudi-backed government of President Hadi to the secession of the South disqualifies it for independence based on ‘the breakup of political unions.’ Exceptions to those established international norms are certainly made only when they serve the interests of such influential external players. And even if the facilitation of the independence of the South based on the 1967 border demarcations of the British or *uti possidetis juris* instead could have still saved Yemen from the horrors of what lay ahead (see subsection VI below on Yemen’s humanitarian situation), the security dimension remained more important in the view of relevant regional and international players than the impact of the situation on the Yemeni population.

By 2015, Hadi’s government became either exiled in Saudi Arabia or based in Aden, the historic capital of the South. This paradoxically makes the present-day, internationally recognised government of Yemen based mostly within the sub-territorial entity of the South, while the Houthis continue to be in control of most of the Northern region. And while Yemen’s legal system continued to the extent

---

<sup>325</sup> *Mareb Press*, 17/03/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=107999](https://marebpress.net/news_details.php?lng=arabic&sid=107999), (accessed 09/02/2021).

<sup>326</sup> See Fred Halliday, “The Middle East and Conceptions of ‘International Society’,” in Buzan et. al. (eds.) (2009), pp.1-23.



possible to be functional in the South throughout the timeframe of 2011-2015, starting with the fall of Saada under the control of the Houthis in early 2011 the country's North slowly became a 'blackhole' of domestic (and international) legal discontinuity. Recently, a fallout between Saudi Arabia and its ally the UAE also resulted in the April 2020 'self-autonomy' declaration of the anti-Hadi, Aden-based and UAE-supported Southern Transitional Council.<sup>327</sup> Of all those different territorial enclaves that make up contemporary Yemen, only the parts of the South that are under the authority of Hadi's government enjoy 'international status' e.g., they are able to benefit from the continuity of diplomatic relations that the former regime established for Yemen. The rest have remained unrecognised, '*terra nullius*' where entities such as Iran and the UAE have been competing for influence and control via different NSAGs vis-à-vis Saudi Arabia and its own allied Yemeni parties.

#### **V.IV. North Yemen and the Faustian Bargains to Empower the Houthis**

Perhaps to an even greater degree, the TWAAIL and 'postcolonial' approach of this thesis along with its 'critical' methodology permit the study of the Houthi-controlled region of North Yemen as '*terra nullius*.' In addition, it equally emphasises the devastating outcomes of such divisive colonial policies for the over 20 million inhabitants of this part of the country.

The year 2013 was the year of Yemen's National Dialogue Conference, which started on the second anniversary of the massacre that the former regime committed on 18 March 2011 against unarmed protesters. As stipulated by the GCC Initiative and the Implementation Mechanism of UN Envoy Jamal Benomar, the commencement of this Conference was the second main step in the transitional process; second only to the process of restructuring the Yemeni Army into seven main divisions.<sup>328</sup> Despite major obstacles on the path of national reconciliation, including those pertaining to the territorial gains and losses of NSAGs such as Al Qaeda and the Houthis, the Conference was concluded on 24 January 2014 and it primarily led to a national agreement to resolve the Southern Case through a decentralised, federal system of

---

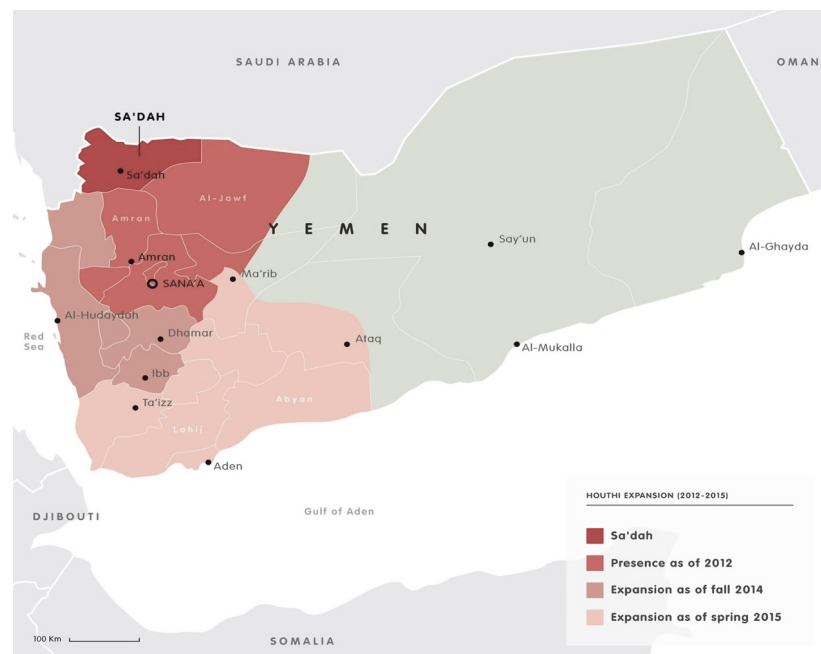
<sup>327</sup> See for instance Andrew England & Simon Kerr, 'UAE Attacks on Yemen Reveal Fractures in Saudi-Led Coalition,' *The Financial Times*, 08/2019, available at <https://www.ft.com/content/48f44b08-caa5-11e9-a1f4-3669401ba76f> (accessed 29/09/2020).

<sup>328</sup> The latter is available in Arabic at *Mareb Press*, 24/11/2011, [https://marebpress.net/news\\_details.php?sid=38075](https://marebpress.net/news_details.php?sid=38075), (accessed 12/02/2021).

governance.<sup>329</sup> By 10 February 2014, Yemen also became divided into six federal regions by way of removing the classic division lines of the country into two main geographical regions.

However, as a subsequent step to their acquisition of many parts of the country's North, the Houthis rejected the new federal system and they vowed to thwart its implementation on the ground, in the manner they also rejected the GCC Initiative and its grant of immunity to Saleh. The stated Houthi objective was to dismiss the opposition-led government of Basindwah, particularly after reforms imposed on that government by the World Bank and the IMF led to the removal of a government subsidy on petrochemical products on 30 July 2014. An UN-sponsored 'Peace and Partnership Agreement' was eventually signed, which stipulated new prices for petrochemicals, called for the withdrawal of Houthi militants out of Yemeni cities, and led to the dissolution of Basindwah's government. In addition, Khaled Bahah was appointed Yemen's new Prime Minister with the approval of all Yemeni political parties as well as external players. Nonetheless, the Houthis continued to delay their withdrawal from Yemeni cities and instead they acquired even more territory.

**Map 2:** The Territorial Campaigns of the Houthis in Yemen<sup>330</sup>



<sup>329</sup> The document of "Guarantees and Solutions to the Southern Case" is available on 26 September, 24/12/2013, available in Arabic at [https://www.26sep.net/news\\_details.php?sid=98535](https://www.26sep.net/news_details.php?sid=98535), (accessed 22/02/2020).

<sup>330</sup> Source: European Council on Foreign Relations.

Following the Houthi's seizure of the Republican Palace and the Presidential House in Sanaa in January 2015, Hadi and his new Prime Minister Bahah importantly resigned<sup>331</sup> and they were shortly thereafter placed under a Houthi house arrest. Hadi was then secretly "smuggled out" of Sanaa to Aden<sup>332</sup> and Bahah was released from his house arrest on 17 March 2015.<sup>333</sup> The new President then withdrew his resignation in a statement made out of his government's new base in Aden,<sup>334</sup> and he was arguably still within his legal rights to do so since the Houthis dissolved the Yemeni Parliament on 11 February 2015, or before it had gotten the chance to discuss Hadi's resignation.<sup>335</sup> Meanwhile, as the Houthis sent their troops into Aden and started shelling and launching airstrikes on Aden's Presidential Palace,<sup>336</sup> the Saudi-led Coalition started on 26 March 2015 its own airstrikes against Houthi targets throughout the country. Those airstrikes came as part of the Coalition's 'Firmness Storm,' but nearly one month later the operation was renamed 'Restoring Hope' by way of emphasising the added element of (modest) humanitarian relief operations. By mid-July 2015, major ground operations to reclaim Yemeni cities from the control of the Houthis were also launched.

Judging by the fact that the Saudi-led intervention in Yemen formally emanated from a request that Hadi's government submitted to the UNSC and the Arab League,<sup>337</sup> the international legal conditions for a 'just war' (*jus ad bellum*) were no doubt fulfilled. This assessment can indeed be confirmed by the wide-ranging regional and international support that the military operations of the Saudi-led Coalition have

---

<sup>331</sup> *Mareb Press*, 22/01/2015, available in Arabic at [https://marebpress.net/news\\_details.php?sid=106777](https://marebpress.net/news_details.php?sid=106777); and [https://marebpress.net/news\\_details.php?sid=106779](https://marebpress.net/news_details.php?sid=106779) (accessed 12/02/2021).

<sup>332</sup> *Mareb Press*, 21/02/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=107426](https://marebpress.net/news_details.php?lng=arabic&sid=107426); [https://marebpress.net/news\\_details.php?lng=arabic&sid=107427](https://marebpress.net/news_details.php?lng=arabic&sid=107427); and [https://marebpress.net/news\\_details.php?lng=arabic&sid=107434](https://marebpress.net/news_details.php?lng=arabic&sid=107434) (accessed 12/02/2021).

<sup>333</sup> *Mareb Press*, 17/03/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=107987](https://marebpress.net/news_details.php?lng=arabic&sid=107987), (accessed 12/02/2021).

<sup>334</sup> *Mareb Press*, 23/02/2015, available in Arabic at [https://marebpress.net/news\\_details.php?sid=107474](https://marebpress.net/news_details.php?sid=107474), (accessed 12/02/2021).

<sup>335</sup> See for instance *Mareb Press*, 11/02/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=107193](https://marebpress.net/news_details.php?lng=arabic&sid=107193), (accessed 12/02/2021).

<sup>336</sup> *Mareb Press*, 25/03/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=108213](https://marebpress.net/news_details.php?lng=arabic&sid=108213) & [https://marebpress.net/news\\_details.php?lng=arabic&sid=108215](https://marebpress.net/news_details.php?lng=arabic&sid=108215), (accessed 12/02/2021).

<sup>337</sup> *Mareb Press*, 25/03/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=108211](https://marebpress.net/news_details.php?lng=arabic&sid=108211), (accessed 12/02/2021); *Mareb Press*, 25/03/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=108224](https://marebpress.net/news_details.php?lng=arabic&sid=108224), (accessed 12/02/2021).

received, except for the reaction of Iran and to a lesser extent that of Russia and China (see [Figure 2](#)). However, the escalation of the situation in Yemen in the direction of major military operations could have certainly been avoided. Significantly, the way the territorial campaigns of the Houthis were accommodated is very difficult to explain using readily available normative and conceptual frameworks such as ‘self-determination,’ ‘remedial secession’ and/or ‘the breakup of political unions.’ Based on TWAIL and ‘postcolonialism,’ the fall of Yemen’s own capital under the control of a dissident armed group such as the Houthis could instead be characterised as an outcome of ‘*terra nullius*’ politics.

**Figure 2:** Members of the Saudi – Led Coalition in Yemen



To borrow the term of Marieke Brandt in *Tribes and Politics in Yemen: A History of the Houthi Conflict*,<sup>338</sup> it was at the minimum ‘Faustian bargains’ that ultimately resulted in the rise of the Houthis to power positions in the country’s North. Despite his eagerly asserted neutrality, UN Special Envoy Jamal Benomar was strikingly present in person while vital facilities in the country’s capital were being captured by Houthi militants, and as the ‘Peace and Partnership Agreement’ was being signed at the Presidential House on 22 September 2014. Benomar was indeed accused by Hadi’s government of facilitating the Houthis’ territorial campaigns, and Hadi’s government accordingly requested from the UN that he be replaced.<sup>339</sup> Hadi further declared the inter-Yemeni talks that Benomar was leading in early 2015 at the Movenpick Hotel in Sanaa illegal, and he stressed from Aden that his government

<sup>338</sup> Marieke Brandt (2017), p.337.

<sup>339</sup> *Mareb Press*, 25/03/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=108218](https://marebpress.net/news_details.php?lng=arabic&sid=108218), (accessed 26/10/2020).

would not be bound by the results of those talks.<sup>340</sup> By April 2015, or after major military operations were commenced by the Saudi-led Coalition, Benomar was replaced by Ismail Weld Al Sheikh as the Special Envoy of the UN to Yemen.

Here, it is important to bear in mind that the five Permanent Members of the UNSC and Germany were the main signatories of the infamous ‘Iran nuclear deal.’ Therefore, while the GCC was preoccupied with its own agenda to prevent the success of the Arab Uprisings in empowering its ideological antagonists, influential members of the UNSC that were dismayed by the GCC’s support of Sisi’s regime in Egypt were arguably crafting their own agenda. In other words, the fall of Sanaa took place during the post-Uprisings fallout between the UNSC and the GCC, while parallel rapprochements were being made between the UNSC and Iran that ultimately led to the signing of that infamous ‘nuclear power deal.’ Therefore, the territorial expansions of the Houthis were arguably accommodated by the Great Power Managers of our contemporary international society (the UNSC) in a ‘quid pro quo’ manner of concessions from both Iran and the GCC. Iran agreed that it would in exchange use nuclear power for only peaceful means, while the GCC was made to accept the rise of the Houthis in exchange of the UNSC turning a blind eye to its unwavering support of the return of the military to power in Egypt. In other words, when the territorial expansions of a NSAG such as the Houthis fall in line with the interests of powerful international players, they are accommodated; and if they do not, like in the other case of the Southern Hirak Movement, they are boycotted and secluded.

The ten sponsors of the GCC Initiative, including the GCC itself, indeed commended and called for the speedy implementation of the UN-sponsored ‘Peace and Partnership Agreement,’ which was signed on the day that immediately followed the fall of Sanaa or on 22 September 2014.<sup>341</sup> By doing so, not only did the GCC give its consent to the political empowerment of the Houthis in Yemen, but its reaction was ironically a key component of the diplomatic cover that enabled the Houthis to expand the scope of their territorial campaigns beyond Sanaa. If the US and other Western countries were pressured by Saudi Arabia and its GCC allies to accept the

---

<sup>340</sup> *Mareb Press*, 17/03/2015, available in Arabic  
[https://marebpress.net/news\\_details.php?lng=arabic&sid=107998](https://marebpress.net/news_details.php?lng=arabic&sid=107998), (accessed 26/10/2020).

<sup>341</sup> *Mareb Press*, 05/10/2014, available in Arabic at  
[https://marebpress.net/news\\_details.php?lng=arabic&sid=103307](https://marebpress.net/news_details.php?lng=arabic&sid=103307), (accessed 12/02/2021).

new Egyptian regime, the latter had to accept the West's envisioned settlement for the Yemeni conflict. At another level, this further coincided with GCC efforts to bid the Houthis against the-GCC designated branch of the Muslim Brotherhood in Yemen, the Islah Party. "We've been betrayed, back-stabbed and deserted by domestic and external forces alike," said dismayed Hadi after the fall of the capital Sanaa.<sup>342</sup>

Intriguingly, in the lead up to the fall of Sanaa, many meetings took place in Washington DC between the Yemeni Minister of Defence Mohammed Nasser Al Ahmad, top officials from the US Department of Defence and the Foreign Affairs Committee in US Congress. Al Ahmad also met with the Head of the UN Peacekeeping Forces in New York.<sup>343</sup> The fall of Sanaa crucially came about immediately after the new structure of the Yemeni army went into effect in August 2014, which was the date specifically set by the Chairman of the Reconstruction of the Armed Forces Nasser Al Harby.<sup>344</sup> Faced with a passive reaction from the official Yemeni Armed Forces to the territorial expansions of the Houthis, Hadi met with top tribal and clan dignitaries from across the country on 6 September 2014 and he appealed for their help in confronting the "the Houthi threat."<sup>345</sup> On that same day, Al Ahmad stated that "the armed forces are a neutral institution that is detached from any political affiliations, and that stands at an equal distance between all Yemeni parties."<sup>346</sup>

While Al Ahmad's above statement explains the lack of direct confrontations between the official Yemeni Armed Forces and the Houthis when the latter entered Sanaa, it additionally emphasises the fact that the Yemeni army was restructured principally around the need to fight Al Qaeda. Indeed, from thereon the Houthis effectively became the main 'proxy' for fighting Al Qaeda in Baydaa and other

---

<sup>342</sup> *Mareb Press*, 23/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=102938](https://marebpress.net/news_details.php?sid=102938) & [https://marebpress.net/news\\_details.php?sid=102951](https://marebpress.net/news_details.php?sid=102951) (accessed 12/02/2021).

<sup>343</sup> *26 September*, 04/04/2014, available in Arabic at <https://www.26sep.net/nprint.php?lng=arabic&sid=101843>, and <https://www.26sep.net/nprint.php?lng=arabic&sid=101856>, (accessed 28/03/2019).

<sup>344</sup> *26 September*, 14/04/2014, available in Arabic at [https://www.26sep.net/news\\_details.php?sid=102128](https://www.26sep.net/news_details.php?sid=102128), (accessed 28/03/2019).

<sup>345</sup> *Mareb Press*, 06/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=102353](https://marebpress.net/news_details.php?lng=arabic&sid=102353), (accessed 12/02/2021).

<sup>346</sup> *Mareb Press*, 06/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=102354](https://marebpress.net/news_details.php?lng=arabic&sid=102354), (accessed 26/10/2020).

Southern Yemeni cities. And in their respective military campaigns against Al Qaeda, the Houthis were even backed by US drones and weapon supplies from the Yemeni army, authorised by President Hadi himself.<sup>347</sup> For the first time in the movement's history, a Houthi delegation led by Ali Al Emad further travelled to Washington in November 2014 and held various talks with US officials at The Madison Hotel.<sup>348</sup> As US President Barak Obama stated in October 2014, Yemen became "a model for international operations against terrorist organisations."<sup>349</sup> Other extremist Shia groups such as Al Hashd Al Shaaby in the Iraqi context were subsequently also supported by the US and its allies, during that same era of their 'honeymoon' with Iran and in the fight against extremist Sunni groups other than Al Qaeda like ISIS in the Iraqi city of Mosul. From a 'postcolonial' perspective, this only evidences the continued existence of colonial legacies such as 'divide and rule' and more specifically '*terra nullius*' in our contemporary international system.

Meanwhile, similar 'Faustian bargains' were being struck amongst and in-between Yemen's own domestic parties. In its documentary "The Road to Sanaa," *Aljazeera* points out that Al Ahmad, as well as President Hadi himself, were directly responsible for the fall of Amran under the control of the Houthis in July-August 2014, which paved the way for the fall of Sanaa shortly thereafter.<sup>350</sup> The way the Brigadier General of Brigade 310 in Amran Hamid Al Qushaibi was executed by Houthi militants despite the coming into force of an agreement to surrender Brigade 310 to the Military Police was in particular nothing short of 'score settlement.' This was due to the key role that Al Qushaibi and his forces played in Al Ahmar's wars on the Houthis between 2004-2010. Instead of partaking in Al Qushaibi's funeral, Hadi notably chose to visit the now Houthi-controlled Governorate of Amran the day that the funeral was taking place in Sanaa.

---

<sup>347</sup> *Mareb Press*, 25/10/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=103938](https://marebpress.net/news_details.php?lng=arabic&sid=103938), *Mareb Press*, 25/10/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=103943](https://marebpress.net/news_details.php?lng=arabic&sid=103943), and *Mareb Press*, 25/10/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=103965](https://marebpress.net/news_details.php?lng=arabic&sid=103965), (accessed 26/10/2020).

<sup>348</sup> *Mareb Press*, 18/11/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=104873](https://marebpress.net/news_details.php?lng=arabic&sid=104873), (accessed 26/10/2020).

<sup>349</sup> *Libya Al Mostakbal*, 18/10/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/56760>, (accessed 12/02/2021).

<sup>350</sup> Safa Karman and Gamal al-Moliky, "The Road to Sanaa," *Aljazeera World*, 24/06/2015, available via <https://www.aljazeera.com/programmes/aljazeeraeworld/2015/06/road-sanaa-150624060410650.html> (accessed 22/02/2020).

*Al Quds Al Araby* further reports that Hadi made a similar deal to surrender Sanaa without a fight, and to scapegoat his now Military Advisor Ali Muhsin Al Ahmar the way he had already “sacrificed” Al Qushaibi in Amran.<sup>351</sup> Hadi and Al Ahmar tellingly had an altercation at the Presidential House in Sanaa on 21 September 2014, since Hadi was refusing to authorise the use of Yemen’s Airforce against Houthi targets in Sanaa the way he temporarily authorised such airstrikes in Amran. Hadi instead ordered Al Ahmar to return to the embattled grounds of the Sixth Military Division, which was formerly the First Armoured Division of the Yemeni Army,<sup>352</sup> but Al Ahmar managed to escape to Saudi Arabia by making use of his established Salafist connections.<sup>353</sup> On that same day of 21 September 2014, the day when Sanaa fell under the control of the Houthis, the former HQ of Al Ahmar’s First Armoured Division constituted the main theatre of war and at least 200 members of Al Ahmar’s forces were also ‘summarily-executed’ by the Houthis.<sup>354</sup>

Here, we might recall that Saleh refused to reconcile with Al Ahmar just two months before the fall of Sanaa, when Saudi Arabia unsuccessfully attempted to mediate between him, Hadi and Al Ahmar. Therefore, and given the insistence of the GCC at that juncture to assign Saleh a vital role in post-Uprising Yemeni politics, one of the most immediate results of the restructuring process of the Yemeni Army was clearly its purge of Al Ahmar and his close associates. With the emerging Houthi-Saleh alliance closely in mind, it is arguably the case that Al Ahmar and his close associates were also blamed for the six rounds of conflict in Saada instead of Saleh, in the absence of a more credible transitional justice process. It can be further recalled that the various campaigns against Al Qaeda in 2011-2013 were primarily led by Al Ahmar, so with this General out of the picture, the fight against Al Qaeda was one of the main bargaining chips at the disposal of the Houthis themselves, especially with the various attacks that Al Qaeda had by then also orchestrated against them closely in mind. Those developments ultimately demonstrate that the Houthi-Saleh alliance,

---

<sup>351</sup> *Mareb Press*, 23/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=102936](https://marebpress.net/news_details.php?sid=102936), (accessed 12/02 /2021).

<sup>352</sup> *Mareb Press*, 21/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=102886](https://marebpress.net/news_details.php?sid=102886), (accessed 12/02/2021).

<sup>353</sup> Marieke Brandt (2017) describes Al Ahmar as a Salafist himself.

<sup>354</sup> *Mareb Press*, 25/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=103009](https://marebpress.net/news_details.php?sid=103009), (accessed 12/02/2021); *Mareb Press*, 21/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=102864](https://marebpress.net/news_details.php?sid=102864), (accessed 12/02/2021).



which was the main driving force behind the subsequent military campaigns to bring the rest of Yemen under the control of the Houthis, was facilitated in its inception by the GCC and the West.

Importantly, there were at least 100,000 soldiers from the Saleh-controlled, Republican Guard division of the former Yemeni Army in Sanaa when the city fell to an incoming group of only 5,000 Houthi militants.<sup>355</sup> If the GCC was eager to keep Saleh active on the Yemeni scene, Saleh himself was willing to strike various kinds of deals to achieve that same result. He previously even ordered the surrender of many parts of the country to Al Qaeda by way of appealing for the continued support of the GCC and the West. But when Saleh attempted to double deal, or to collaborate with his previous GCC allies after becoming a Houthi ‘strongman,’ he was ultimately executed by the Houthis in December 2017.

Nonetheless, as the forces of the Houthi-Saleh alliance started occupying various Yemeni cities in the South (including Aden) in early 2015, an international coalition led by Saudi Arabia commenced its war against this alliance by way of notably curtailing Iran’s influence in the region. After Beirut, Baghdad, and Damascus, Sanaa indeed became the fourth Arab capital to enter Iran’s sphere of influence, which was a statement proudly retorted by the Deputy Mayor of Tehran, Ali Reda Zakany at the Iranian Parliament on the day when Sanaa fell.<sup>356</sup> By extension, the West was not willing to stand idle as Russia’s influence was steadily increasing in MENA through Iran, and as the Houthi-Saleh alliance was refusing to withdraw its militias out of Yemeni cities or to implement the terms of the ‘Peace and Partnership Agreement.’ Besides, the politics of ‘*terra nullius*’ in the ‘post-colonial’ landscape of MENA were evidently effective when applied to a NSAG such as the Houthis and the territories they control in North Yemen, not to entire states controlled by those officially unrecognised entities.

However, as shown by Map 3 below, the Houthis have to this date managed to maintain their effective control over most of the territory that previously comprised North Yemen. In addition, despite the many military campaigns against Al Qaeda,

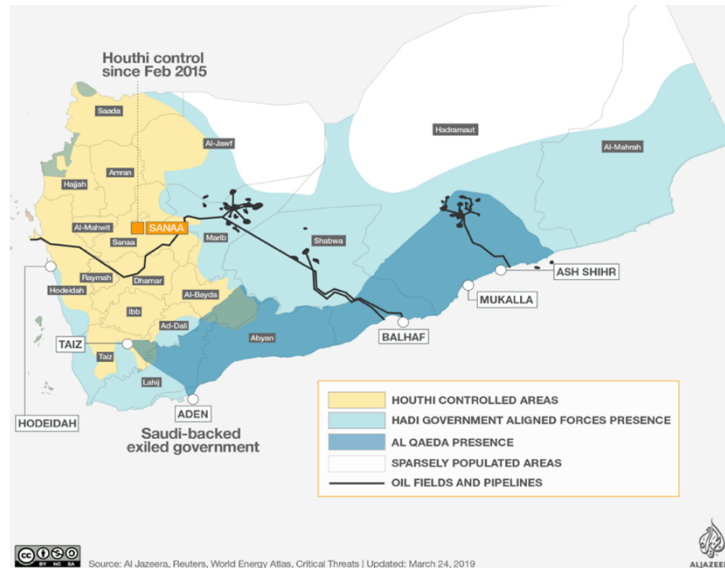
---

<sup>355</sup> *Mareb Press*, 28/11/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=105240](https://marebpress.net/news_details.php?lng=arabic&sid=105240), (accessed 12/02/2021).

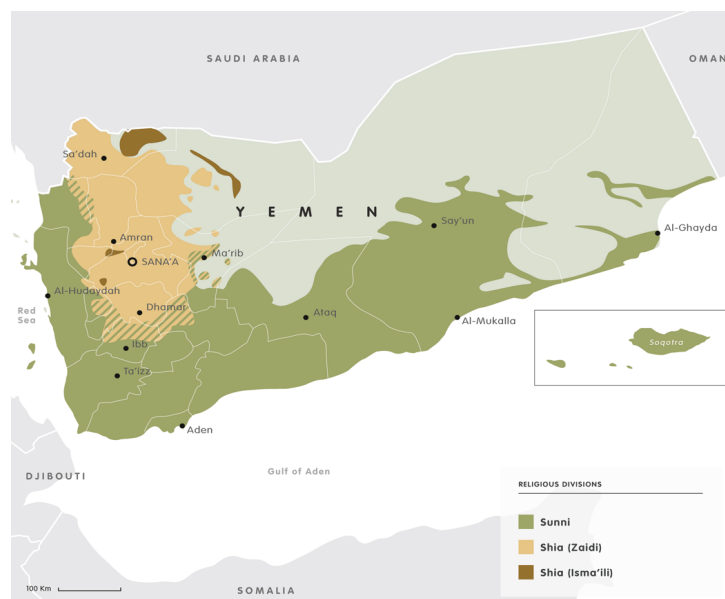
<sup>356</sup> *Mareb Press*, 22/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=102903](https://marebpress.net/news_details.php?sid=102903), (accessed 26/10/2020).

the militants of this other NSAG have continued to be present throughout the territory of South Yemen.

**Map 3:** Yemen's Present Territorial Sub-divides



**Map 4:** Yemen's Ethnic Division Lines<sup>357</sup>



When comparing [Map 3](#) to [Map 4](#), it also becomes clear that Yemen's present territorial divisions are rather reflective of the country's religious breakdown into Sunni and Shia strongholds, as opposed to its classic North vs. South divide. This is dangerous, as it renders the future of Yemen's social fabric unstable, and it keeps the

<sup>357</sup> Source: European Council on Foreign Relations.

door open to civil turmoil. It is additionally reminiscent of the way that Belgium and France set the Hutus and the Tutsis against one another in Rwanda, through their colonial policies of ‘divide and rule’ that ultimately resulted in the horrific Rwandan genocide. Iraq’s ethnic division lines were similarly agitated by the 2003 US invasion and its bloody aftermath of sectarian fighting.

#### **V.V. Houthi *Irredentism*, and the Instability of Yemeni-Saudi Borders**

Besides its regional rivalry with Iran, and how that is often worsened and/or exploited by the interests of powerful international players, Saudi Arabia has evidently also been preoccupied with the threat that the Houthis pose to its own ‘territorial integrity.’ The history of the Yemeni-Saudi borders region certainly deserves to be examined, as it gives the rise of the Houthi movement a distinct ‘irredentist’ dimension. It crucially also obscures the future of Saudi Arabia’s present border demarcations with Yemen. From the perspective of TWAIL and ‘postcolonialism,’ it further adds reason to the decision of the Great Powers that are managing the post-1945 global territorial status quo, most notably the US, France, and the UK, to ultimately support the Saudi-led Coalition in its war against the Houthis. Ever since 1945, the external boundaries of states have indeed been conservatively preserved by the UN System and the Permanent Member States of the UNSC.

The Houthis are often referred to as a revival Zaidi movement. Significantly, the second website that I used for this empirical study, or 26sept.net is named after the date of the revolution that ended in 1962 more than one thousand years of Zaidi rule in North Yemen. During the fighting that took place between the Houthis and the Saudi-supported Salafists of Dar Al Hadeith in Dammaj in 2011, it was telling that the Houthis insisted on a Salafist withdrawal from the grounds of a site they acquired in 1984 to protect Dar Al Hadeith.<sup>358</sup> Similarly, in late September 2014, the Houthis refused to pull their militias out of the grounds of the First Armoured Division and to hand back control of key property in the capital Sanaa to Hadi’s government, citing historical documents proving the previous ownership of such facilities by the family of Yahya Mohammad Hamid ed-Din. This is the Zaidi Imam who governed North Yemen from 1918 to 1948, and such property was confiscated during the 26

---

<sup>358</sup> *Mareb Press*, 08/11/2011, available in Arabic at [https://marebpress.com/news\\_details.php?sid=37682](https://marebpress.com/news_details.php?sid=37682), (accessed 12/02/2021).

September 1962 revolution against the Zaidi Monarchy.<sup>359</sup> When the Houthis entered Al-Hudaydah on the Western coast of Yemen in October 2014, they initially faced popular unrest leading to their temporary withdrawal from a historic castle and other key locations instigated by the tribe of Al Zaranique that has a long-held grievance, or a blood feud, with Hamid ed-Din. Legend has it, he imprisoned 700 members of this tribe and starved them to death.<sup>360</sup>

Nonetheless, during the five-year timeframe of the present study, the Houthis in North Yemen did not make any explicit ‘irredentist’ declarations, nor did they attempt to secede. They left this *de jure* option for the Southern Hirak Movement to explore while they themselves were busy altering the *de facto* situation on the ground. It is noted that a ‘Northern Hirak’ was established in 2013 by Yemen’s Ambassador to Syria Abdulwahab Al Tawaf with the objective of achieving autonomy in the northern part of the country.<sup>361</sup> Al Tawaf even set the symbolic date of 26 September 2013 as the date of officially launching this movement.<sup>362</sup> However, by 18 May 2014, Al Tawaf announced the cessation of all the activities of the Northern Hirak, either as an endorsement of the conclusions of the National Dialogue Conference or, more plausibly, in preparation for his movement’s territorial expansions towards Sanaa in an (unsuccessful) bid to militarily subject the rest of the country under its effective control.<sup>363</sup> And following the Houthi takeover of the Yemeni Army and other major parts of the country during the second half of 2014, the website of 26Sept.net became a symbolic mouthpiece of the Houthi-installed government in Sanaa.<sup>364</sup>

Importantly, most of the present coverage of 26Sept.net is based on the narrative of “heroic” Houthi attacks on the Saudi regions of Asir, Jizan, and Najran, amongst other parts of the Southwestern corner of Saudi Arabia. Those were historically parts of Yemen, but they became administered by Saudi Arabia after its signing of the Taef

---

<sup>359</sup> *Mareb Press*, 29/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=103174](https://marebpress.net/news_details.php?sid=103174), (accessed 12/02/2021).

<sup>360</sup> *Mareb Press*, 12/10/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=103468](https://marebpress.net/news_details.php?lng=arabic&sid=103468), (accessed 12/02/2021).

<sup>361</sup> *Mareb Press*, 22/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=59029](https://marebpress.net/news_details.php?sid=59029), (accessed 12/02/2021).

<sup>362</sup> *Mareb Press*, 31/08/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=59349](https://marebpress.net/news_details.php?sid=59349), (accessed 12/02/2021).

<sup>363</sup> *Al Thagheer*, 18/05/2014, available in Arabic at <http://al-tagheer.com.com/news68377.html>, (accessed 27/02/2020).

<sup>364</sup> On the Houthi takeover of Sanaa, see for instance *Mareb Press*, 23/11/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=105039](https://marebpress.net/news_details.php?sid=105039), (accessed 12/02/2021).

Agreement with Yemen in 1934. They were subsequently annexed by Saudi Arabia through the Treaty of Jeddah (2000). Saleh's signing of the Treaty of Jeddah officially relinquished all Yemeni claims to the Southwestern parts of Saudi Arabia, but the 'founding father' of the Houthi movement Yahya al-Houthi (Abdulmalik's elder brother) considered the case "far from closed."<sup>365</sup>

**Map 5:** The Parts of Yemen (in Yellow) that Became Administered by Saudi Arabia in 1934



During the sixth Saada war, Houthi militants indeed infiltrated into Saudi territory and managed to seize Al-Khawbah city, Jabal Dawd and parts of Jabal Dukhan and Bani Malik for about a month.<sup>366</sup> To the disadvantage of local tribes, the Treaty of Jeddah additionally replaced the patronage-based borders security system that was established by the Taef Agreement and along the Yemeni-Saudi borders region with a fortified fence. According to *BBC*, Saudi Arabia started the construction of this 2000km-long fence in April 2013.<sup>367</sup> And after the UNSC imposed sanctions on Saleh in October 2014 for obstructing the implementation of the 'Peace and Partnership Agreement,' the now Houthi-allied former President intensified his

<sup>365</sup> Qtd in Brandt (2017), p.246.

<sup>366</sup> Brandt (2017), p.310.

<sup>367</sup> *Mareb Press*, 10/04/2013, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=54189](https://marebpress.net/news_details.php?lng=arabic&sid=54189), (accessed 12/02/2021).

verbal attacks on Saudi Arabia and threatened to “reopen the border delimitation case.”<sup>368</sup>

One of the primary targets of the Houthi-Saleh alliance as the airstrikes of the Saudi-led Coalition were being carried out was indicatively the international borders region between Yemen and Saudi Arabia. In 2015, the attempts of the Houthi-Saleh alliance to infiltrate the Yemeni – Saudi borders and carry out attacks within the Kingdom were also numerous. For example, on 25 May 2015 at least 12 Houthi militants were killed at the borders, and on 6 June 2015 a more serious attempt by tens of Houthi militants backed by Republican Guard forces on Jizan and Najran was also stopped.<sup>369</sup> In addition, a minimum of 100 militants from the Houthi-Saleh alliance, as well as five Saudi soldiers were reportedly killed along the Yemeni-Saudi borders on 14 September 2015,<sup>370</sup> and the pictures of dead militants from the Houthi-Saleh alliance in the streets of the Saudi village of Raboaa in Asir notably “went viral” on social media on 08 November 2015.<sup>371</sup> Various other infiltration attempts were reported by *Mareb Press* on 01 May, 12-15 and 24 September, 11-14 October, 14 and 28 November, and on 1 December 2015, leading to tens of casualties on both sides of the borders.

In other words, if the ‘irredentist’ dimension in the rise of the Houthi movement did not result in any formal declarations of independence by this NSAG on behalf of the Northern part of the country by 2015, ‘irredentism’ has nonetheless resulted in a very intense situation along Yemen’s borders with Saudi Arabia, or along the ‘Taef line.’ Those developments led to a military build-up by Saudi Arabia along its borders with Yemen. Combat-ready helicopters were rushed into the region on 13 April 2014, a large squadron of heavily equipped Saudi Strike Forces were also sent to the borders region on 11 May 2015, and another squadron specialised in guerrilla warfare was

---

<sup>368</sup> *Mareb Press*, 07/11/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=104497](https://marebpress.net/news_details.php?lng=arabic&sid=104497), (accessed 12/02/2021).

<sup>369</sup> *Mareb Press*, 25/05/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=109966](https://marebpress.net/news_details.php?lng=arabic&sid=109966), and *Mareb Press*, 06/06/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=110293](https://marebpress.net/news_details.php?lng=arabic&sid=110293), (accessed 12/02/2021).

<sup>370</sup> *Mareb Press*, 14/09/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112576](https://marebpress.net/news_details.php?lng=arabic&sid=112576), and [https://marebpress.net/news\\_details.php?lng=arabic&sid=112597](https://marebpress.net/news_details.php?lng=arabic&sid=112597), (accessed 12/02/2021).

<sup>371</sup> *Mareb Press*, 08/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113899](https://marebpress.net/news_details.php?lng=arabic&sid=113899), (accessed 12/02/2021).

despatched to the borders on 13 December 2015.<sup>372</sup> Houthi mortar fire on Saudi cities e.g., those reported by *Mareb Press* on 12-13 May and on 8 June 2015,<sup>373</sup> additionally led to the establishment of a buffer zone by Saudi Arabia on the Yemeni side of the borders in mid-June 2015, and to various military incursions by Saudi Arabia into different parts of North Yemen. Those include Mount Makhrouq on 14 August 2015, Boqa and Waela in North-western Saada on 01 September 2015, Kitaf and Boqa on 9 December 2015, Hardd on 16 December 2015, and Al Khaleeqa and Al Mahbat areas in Saada on 28 December 2015.<sup>374</sup>

On 8 June 2015, Bahrain additionally became the first Coalition country to send ground troops to Saudi Arabia's borders with Yemen, and five of its soldiers were killed on 4 September 2015.<sup>375</sup> Furthermore, around 7,000 Yemeni soldiers were trained by the Saudi-led Coalition and sent back to Yemen to maintain the security of Aden.<sup>376</sup> Ultimately, the Emirati Brigadier General in Yemen estimated that by December 2015 at least 4,000 Saudi, Emirati, Bahraini and Sudanese soldiers were also present on Yemeni territory and were leading the various battles to recapture Yemeni cities from the Houthis e.g., those of Mareb, Al Jawf and Taz. According to *New York Times*, about 450 of the soldiers that the UAE itself sent to Yemen were importantly mercenaries from South America (Colombia, Panama, AL Salvador, and

---

<sup>372</sup> *Mareb Press*, 13/04/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=108845](https://marebpress.net/news_details.php?lng=arabic&sid=108845); *Mareb Press*, 11/05/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=109567](https://marebpress.net/news_details.php?lng=arabic&sid=109567); and *Mareb Press*, 13/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115147](https://marebpress.net/news_details.php?lng=arabic&sid=115147) (accessed 12/02/2021).

<sup>373</sup> *Mareb Press*, 14/06/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=109585](https://marebpress.net/news_details.php?lng=arabic&sid=109585); *Mareb Press*, 13/05/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=109632](https://marebpress.net/news_details.php?lng=arabic&sid=109632); and *Mareb Press*, 08/06/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=110364](https://marebpress.net/news_details.php?lng=arabic&sid=110364) (accessed 12/02/2021).

<sup>374</sup> *Mareb Press*, 14/06/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=110500](https://marebpress.net/news_details.php?lng=arabic&sid=110500); *Mareb Press*, 14/08/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=111936](https://marebpress.net/news_details.php?lng=arabic&sid=111936); *Mareb Press*, 01/09/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=112293](https://marebpress.net/news_details.php?lng=arabic&sid=112293); *Mareb Press*, 09/12/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=114986](https://marebpress.net/news_details.php?lng=arabic&sid=114986); *Mareb Press*, 16/12/2015, available in Arabic [https://marebpress.net/news\\_details.php?sid=115215](https://marebpress.net/news_details.php?sid=115215); and *Mareb Press*, 28/12/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=115614](https://marebpress.net/news_details.php?lng=arabic&sid=115614), (accessed 12/02/2021).

<sup>375</sup> *Mareb Press*, 08/06/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=110367](https://marebpress.net/news_details.php?lng=arabic&sid=110367); and *Mareb Press*, 04/09/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112360](https://marebpress.net/news_details.php?lng=arabic&sid=112360) (accessed 12/02/2021).

<sup>376</sup> *Mareb Press*, 02/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114746](https://marebpress.net/news_details.php?lng=arabic&sid=114746) (accessed 12/02/2021).

Chile) who were integrated into the UAE's Armed Forces through a deal with the Private Military Contractor 'Blackwater.' A remaining total of 1,800 of such soldiers were still undergoing training in the UAE by the end of 2015.<sup>377</sup>

Meanwhile, many unsuccessful attempts were made by the Houthi – Saleh alliance to launch ballistic missiles type Scud towards various Saudi targets, including the Southern regions of the Kingdom as well as vital Saudi facilities such as Aramco. The largest Saudi Airbase in the Southern part of the Kingdom was targeted on 10 June 2015,<sup>378</sup> another military base was targeted on 15 October 2015,<sup>379</sup> and King Khaled's Airbase in Kahmis Mshait was targeted by a ballistic missile on 13 December 2015.<sup>380</sup> Yet another Scud missile targeting Asir was intercepted on 23 December 2015 and another one targeting Najran was intercepted on 27 December 2015.<sup>381</sup> Those missile attacks significantly intensified following the declaration by the Houthis of a target list of 300 vital facilities in Saudi Arabia while the second round of inter-Yemeni talks was taking place in Biel, Switzerland. The Houthis reportedly informed UN Envoy Weld Al Sheikh that the announcement of that list was made "by mistake."<sup>382</sup> Eventually, it was reported that at least 300 ballistic missiles came under the control of the Houthis,<sup>383</sup> but the large majority of these were either destroyed on the ground before they were launched, or they were struck down in mid-air.

#### V.VI. Yemen's Catastrophic Humanitarian Affairs (2011-2015)

It is important to reiterate that by taking an approach that is informed by TWAAIL and 'postcolonialism,' the present study of Yemen has principally aimed to outline the outcomes of Great Power politics and lingering colonial legacies such as '*terra*

---

<sup>377</sup> *Mareb Press*, 26/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114506](https://marebpress.net/news_details.php?lng=arabic&sid=114506), (accessed 12/02/2021).

<sup>378</sup> *Mareb Press*, 10/06/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=110400](https://marebpress.net/news_details.php?lng=arabic&sid=110400), (accessed 12/02/2021).

<sup>379</sup> *Mareb Press*, 15/10/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=113257](https://marebpress.net/news_details.php?lng=arabic&sid=113257), (accessed 12/02/2021).

<sup>380</sup> *Mareb Press*, 13/12/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=115117](https://marebpress.net/news_details.php?lng=arabic&sid=115117), (accessed 12/02/2021).

<sup>381</sup> *Mareb Press*, 23/12/2015, available in Arabic [https://marebpress.net/news\\_details.php?lng=arabic&sid=115456](https://marebpress.net/news_details.php?lng=arabic&sid=115456); and *Mareb Press*, 27/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115570](https://marebpress.net/news_details.php?lng=arabic&sid=115570), (accessed 12/02/2021).

<sup>382</sup> *Mareb Press*, 21/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115406](https://marebpress.net/news_details.php?lng=arabic&sid=115406), (accessed 12/02/2021).

<sup>383</sup> *Mareb Press*, 06/06/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=110301](https://marebpress.net/news_details.php?lng=arabic&sid=110301), (accessed 12/02/2021).



*nullius*’ on Yemen’s own population. Indicatively, while the status of Yemen’s various territorial enclaves has remained in flux, the impact of the situation on the Yemeni population has been severe. The present utilisation of the conceptual framework of ‘*terra nullius*’ relevant to the territorial enclaves of NSAGs is therefore helpful, especially for a ‘critical’ evaluation of the international and regional prioritisation of security concerns over the fate of impacted populations. A ‘*terra nullius*’ has indeed always lacked recognition of its inhabitants’ right to exist on equal footings as those of external parties’, and by looking at such enclaves through this lens it becomes clear that the absence of an international legal framework for their administration is intentional. Most importantly, this paucity of relevant norms facilitates the treatment of those territories and their respective populations by the present international system as either zones of ‘contagion’ that must be isolated and purged of the ‘terrorists,’ and/or or as expendable clients that can be bid against domestic and international opponents, irrespective of the humanitarian outcomes.

By mid-2011, UNICEF had already warned that Yemen was facing an imminent humanitarian crisis with the steady increase of violence in a country that had already been considered one of the poorest in the world.<sup>384</sup> 40% of the population were estimated to be living below the poverty line, and the country was experiencing severe shortages in fuel supplies, food and clean water.<sup>385</sup> As early as 2011, the ICRC and Human Rights Watch indeed noted that normal people in Yemen were the ones bearing the cost of conflict.<sup>386</sup> Amnesty International further described the years 2011 and 2012 “a human rights catastrophe,” as the organisation accused the Yemeni government of failing to protect civilians in conflict zones.<sup>387</sup> Other humanitarian organisations such as Oxfam and UNICEF further warned in 2012 of a serious

---

<sup>384</sup> *Mareb Press*, 08/06/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=34476](https://marebpress.net/news_details.php?lng=arabic&sid=34476), (accessed 13/02/2021).

<sup>385</sup> *Mareb Press*, 08/06/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=34476](https://marebpress.net/news_details.php?lng=arabic&sid=34476), (accessed 13/02/2021).

<sup>386</sup> *Mareb Press*, 08/06/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=34494](https://marebpress.net/news_details.php?lng=arabic&sid=34494), and *Mareb Press*, 09/07/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=35204](https://marebpress.net/news_details.php?lng=arabic&sid=35204), (accessed 13/02/2021).

<sup>387</sup> *Mareb Press*, 04/12/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=49610](https://marebpress.net/news_details.php?sid=49610), (accessed 13/02/2021).

humanitarian crisis taking shape in Yemen, including famine for over ten million Yemenis suffering from various forms of malnourishment.<sup>388</sup>

With the insistence of Saleh to remain in power in the early months of the Uprising, more than 300 Yemenis were killed, and thousands of others were injured by the end of June 2011 alone.<sup>389</sup> According to other reports, a total of 2,195 Yemenis were killed between February and August 2011, including a minimum of 109 children.<sup>390</sup> In addition, as Southern Yemeni cities and Governorates were being liberated from Al Qaeda between 2011-2013, this NSAG launched a series of suicide bombings and other types of explosions that aggravated human suffering. Those attacks especially intensified as the various rounds of Yemen's National Dialogue Conference were taking place. At least 86 Yemeni soldiers were killed in one of those horrific suicide bombings at Al Sabeen Square on 21 May 2012, and an official report of the Yemeni army indicated that a total of 225 members of the Yemeni Armed Forces were killed in the first half of 2013.<sup>391</sup> Additionally, at least 50 soldiers were killed in a series of coordinated attacks in Shibwa on 20 September 2013, and on 5 December 2013 a horrific car explosion targeted a hospital in Sanaa and led to the death of 52 soldiers and hospital staff and the injury of 167 others.<sup>392</sup>

Furthermore, 722 Yemenis were killed and 1,834 others were injured as a result of Houthi-tribal clashes that took place in Amran between 2013-2014, amongst other areas of Houthi-tribal fighting.<sup>393</sup> It is also believed that at least 3,000 Yemenis were killed in various battles that took place between early 2014, or following the end of

---

<sup>388</sup> *Mareb Press*, 09/07/2012, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=45415](https://marebpress.net/news_details.php?lng=arabic&sid=45415), (accessed 13/02/2021).

<sup>389</sup> *Mareb Press*, 20/06/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=34754](https://marebpress.net/news_details.php?lng=arabic&sid=34754), (accessed 13/02/2021).

<sup>390</sup> *Mareb Press*, 17/09/2011, available in Arabic at [https://marebpress.net/news\\_details.php?sid=36586](https://marebpress.net/news_details.php?sid=36586), and *Mareb Press*, 22/11/2011, available in Arabic at [https://marebpress.net/news\\_details.php?sid=38035](https://marebpress.net/news_details.php?sid=38035), (accessed 13/02/2021).

<sup>391</sup> *Mareb Press*, 02/10/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=60371](https://marebpress.net/news_details.php?sid=60371), (accessed 10/02/2021); and *26 September*, 21/11/2013, available in Arabic at [https://www.26sep.net/news\\_details.php?sid=97370](https://www.26sep.net/news_details.php?sid=97370), (accessed 07/02/2020).

<sup>392</sup> *Mareb Press*, 20/09/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=59990](https://marebpress.net/news_details.php?sid=59990), and *Mareb Press*, 20/09/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=59975](https://marebpress.net/news_details.php?sid=59975), (accessed 10/02/2021). Also see *26 September*, 05/12/2013, available in Arabic at [https://www.26sep.net/news\\_details.php?sid=97849](https://www.26sep.net/news_details.php?sid=97849), (accessed 07/02/2020).

<sup>393</sup> *Mareb Press*, 01/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=102221](https://marebpress.net/news_details.php?lng=arabic&sid=102221), (accessed 13/02/2021).

the National Dialogue Conference, and August of the same year.<sup>394</sup> Towards the end of 2014, hundreds of innocent civilians were also killed by US drone strikes and airstrikes launched by the Yemeni Airforce, both of which provided aircover to the Houthis as they were making advancements against Al Qaeda in Baydaa.<sup>395</sup> The UN estimates that a total of 7,800 Yemenis were also killed, and at least 28,000 others were injured in 2015.<sup>396</sup>

Yemen's bleak reality has most notably been unkind to children. By the end of 2013, Yemen had already become classified as one of the ten worst countries in the world in terms of its use of child labour and child soldiers.<sup>397</sup> In 2014, UNICEF also warned that at least one million Yemeni children below the age of five were facing an imminent death due to severe shortages in nutrition and political instability, while a general total of 60% of Yemeni children below the age of five were suffering from different forms of malnourishment.<sup>398</sup> By mid-2015, the organisation further warned that 6.4 million Yemeni children were vulnerable to infections with various diseases due to severe shortages in medical supplies and vaccines.<sup>399</sup> And according to one Yemeni civil society organisation, at least 1,000 children were killed, and 1,400 others were injured because of armed clashes that took place between September 2014 and November 2015.<sup>400</sup>

Meanwhile, by mid-June 2012 UNHCR reported that because of the various battles against Al Qaeda the number of Yemeni IDPs reached 170,314 people in Abyan alone.<sup>401</sup> At least 100,000 other IDPs were recorded in Aden and Lahij in the

---

<sup>394</sup> *Mareb Press*, 08/08/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=101513](https://marebpress.net/news_details.php?sid=101513), (accessed 13/02/2021).

<sup>395</sup> *Mareb Press*, 26/10/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=104022](https://marebpress.net/news_details.php?lng=arabic&sid=104022), (accessed 13/02/2021).

<sup>396</sup> *Mareb Press*, 30/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?sid=113663](https://marebpress.net/news_details.php?sid=113663), and *Mareb Press*, 26/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115539](https://marebpress.net/news_details.php?lng=arabic&sid=115539), (accessed 13/02/2021).

<sup>397</sup> *Mareb Press*, 15/10/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=60744](https://marebpress.net/news_details.php?sid=60744), (accessed 13/02/2021).

<sup>398</sup> *Mareb Press*, 10/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=102516](https://marebpress.net/news_details.php?sid=102516), (accessed 13/02/2021).

<sup>399</sup> *Mareb Press*, 30/06/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=110857](https://marebpress.net/news_details.php?lng=arabic&sid=110857), (accessed 13/02/2021).

<sup>400</sup> *Mareb Press*, 25/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114483](https://marebpress.net/news_details.php?lng=arabic&sid=114483), (accessed 13/02/2021).

<sup>401</sup> *Mareb Press*, 30/06/2012, available in Arabic at [https://marebpress.com/news\\_details.php?sid=45074](https://marebpress.com/news_details.php?sid=45074), (accessed 13/02/2021).

Southern parts of the country as well.<sup>402</sup> While many of those IDPs eventually returned to areas such as those liberated from Al Qaeda in 2013,<sup>403</sup> they were soon enough forced to leave their homes again with the start of the Houthi territorial expansions into the Southern parts of the country. In North Yemen, as the Houthi-Salafist fighting was taking place in and around Dammaj in Saada, 300,000 other Yemenis also became IDPs and the residents of the area were besieged for 72 consecutive days.<sup>404</sup> In August 2014, UNHCR further reported that more than 600,000 other Yemenis fled their homes because of the fighting in Al Jawf between the Houthis and the Islah Party,<sup>405</sup> while the ICRC reported the exodus of at least 10,000 Yemenis out of Amran.<sup>406</sup> At least 1,000 families fled Majzer, Mareb in September of the same year.<sup>407</sup>

In addition, tens of thousands of other Yemenis fled Sanaa following the Houthi takeover of the city<sup>408</sup> and hundreds of Radaa's people in Baydaa turned to the caves of the Governorate's "inaccessible to relief organisations" mountainous region because of Houthi – Al Qaeda clashes in late 2014.<sup>409</sup> And with the intensification of the campaign of the Houthi-Saleh alliance to capture the city of Aden in 2015, at least 700,000 people were estimated to have left the city.<sup>410</sup> By the end of 2015, the UN estimated that a total of 2,509,068 Yemenis had fled their homes<sup>411</sup> in addition to at least 114,000 others that fled the country and became registered as refugees – 40,000

---

<sup>402</sup> *Mareb Press*, 08/11/2011, available in Arabic at [https://marebpress.com/news\\_details.php?sid=37679](https://marebpress.com/news_details.php?sid=37679), (accessed 13/02/2021).

<sup>403</sup> *Mareb Press*, 09/10/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=60599](https://marebpress.net/news_details.php?sid=60599), (accessed 13/02/2021).

<sup>404</sup> *Mareb Press*, 27/10/2013, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=61044](https://marebpress.net/news_details.php?lng=arabic&sid=61044), (accessed 13/02/2021).

<sup>405</sup> *Mareb Press*, 16/08/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=101707](https://marebpress.net/news_details.php?sid=101707), (accessed 13/02/2021).

<sup>406</sup> *Mareb Press*, 17/07/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=101092](https://marebpress.net/news_details.php?sid=101092), (accessed 13/02/2021).

<sup>407</sup> *Mareb Press*, 02/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=102253](https://marebpress.net/news_details.php?lng=arabic&sid=102253), (accessed 13/02/2021).

<sup>408</sup> *Mareb Press*, 20/08/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=101839](https://marebpress.net/news_details.php?sid=101839); and *Mareb Press*, 12/10/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=103472](https://marebpress.net/news_details.php?lng=arabic&sid=103472), (accessed 13/02/2021).

<sup>409</sup> *Mareb Press*, 12/11/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=104686](https://marebpress.net/news_details.php?lng=arabic&sid=104686), (accessed 13/02/2021).

<sup>410</sup> *Mareb Press*, 09/06/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=110372](https://marebpress.net/news_details.php?lng=arabic&sid=110372), (accessed 13/02/2021).

<sup>411</sup> *Mareb Press*, 21/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115381](https://marebpress.net/news_details.php?lng=arabic&sid=115381), (accessed 13/02/2021).

in Saudi Arabia alone.<sup>412</sup> For example, in December 2015 at least 100 out of 2,000 refugees who arrived in Greece via the Mediterranean were Yemenis.<sup>413</sup> By UN estimates, those 2.5 million Yemenis became a part of a total of 20 million Yemenis who were in need of assistance in 2015.<sup>414</sup>

The magnitude of Yemen's humanitarian crisis has only worsened with the start of the Saudi-led war against the Houthis. Just a few months after the commencement of airstrikes by the Saudi-led Coalition, an overall total of 80% of Yemen's population were believed to need assistance, and 15mn Yemenis were believed to be lacking access to health care.<sup>415</sup> Such a disastrous humanitarian outcome could even be described as one of the intended bargaining chips of the Saudi-led war of attrition, which has aimed to bring about a Houthi submission to international demands that they relinquish control of Yemeni territory. The suffocating siege that the Saudi-led coalition started to impose on Yemen in early 2015 notably contributed to a declaration by the end of that year by the World Food Programme that at least ten out of twenty-two Yemeni Governorates were facing acute levels of food insecurity.<sup>416</sup>

Similarly, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that by the end of 2015 around 82% of Yemen's population or 21.1 million Yemenis needed assistance, and 14.4 million Yemenis suffered from acute levels of food insecurity.<sup>417</sup> Oxfam further warned that at least six million Yemenis were facing an imminent threat of starvation,<sup>418</sup> and OCHA noted that the education and

---

<sup>412</sup><sup>412</sup> *Mareb Press*, 07/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113056](https://marebpress.net/news_details.php?lng=arabic&sid=113056), and *Mareb Press*, 29/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?sid=113645](https://marebpress.net/news_details.php?sid=113645), (accessed 13/02/2021).

<sup>413</sup> *Mareb Press*, 13/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115109](https://marebpress.net/news_details.php?lng=arabic&sid=115109), (accessed 13/02/2021).

<sup>414</sup> *Mareb Press*, 05/06/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=110280](https://marebpress.net/news_details.php?lng=arabic&sid=110280), (accessed 13/02/2021).

<sup>415</sup> *Mareb Press*, 08/07/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111093](https://marebpress.net/news_details.php?lng=arabic&sid=111093), and *Mareb Press*, 31/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112280](https://marebpress.net/news_details.php?lng=arabic&sid=112280), (accessed 13/02/2021).

<sup>416</sup> *Mareb Press*, 03/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113774](https://marebpress.net/news_details.php?lng=arabic&sid=113774), (accessed 13/02/2021).

<sup>417</sup> *Mareb Press*, 24/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114437](https://marebpress.net/news_details.php?lng=arabic&sid=114437), (accessed 13/02/2021).

<sup>418</sup> *Mareb Press*, 28/07/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111524](https://marebpress.net/news_details.php?lng=arabic&sid=111524), (accessed 13/02/2021).

health sectors of the country were in particular on the verge of total collapse.<sup>419</sup> Notably, in the two regions of Al Jawf and Majzer, at least 3,000 students were prevented from returning to their schools at the beginning of the 2014-2015 academic year because their schools were either destroyed or turned into shelters for IDPs.<sup>420</sup> In June-July 2015, UNICEF indeed declared its need of \$11mn to rehabilitate schools directly impacted by the ongoing conflict in Yemen.<sup>421</sup> By 2018, Yemen has become classified by UN Secretary General Antonio Guterrez as “the world’s worst humanitarian crisis, with more than 22 million people...in desperate need of aid and protection.”<sup>422</sup>

Strikingly, various Yemeni cities were declared disaster zones during the second half of 2015, such as the city of Taz by 50 humanitarian relief agencies<sup>423</sup> and by Hadi’s government itself.<sup>424</sup> The UN further considered the city and its surrounding areas the most heavily affected region by Yemen’s ongoing conflict.<sup>425</sup> According to UN estimates, at least 2,577 Yemenis were killed in Taz between March and October 2015 alone, raising the total death toll in that city since the beginning of the Uprising up to 7,655 Yemenis.<sup>426</sup> The suffocating siege that the Houthis imposed on Taz especially led to severe shortages in fresh water and medical/food supplies for more than 80% of the city’s population.<sup>427</sup> Doctors Without Borders confirmed that

---

<sup>419</sup> *Mareb Press*, 20/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114302](https://marebpress.net/news_details.php?lng=arabic&sid=114302), (accessed 13/02/2021).

<sup>420</sup> *Mareb Press*, 24/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112142](https://marebpress.net/news_details.php?lng=arabic&sid=112142); *Mareb Press*, 21/09/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112745](https://marebpress.net/news_details.php?lng=arabic&sid=112745); and *Mareb Press*, 12/10/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=103490](https://marebpress.net/news_details.php?lng=arabic&sid=103490), (accessed 13/02/2021).

<sup>421</sup> *Mareb Press*, 27/07/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111484](https://marebpress.net/news_details.php?lng=arabic&sid=111484), (accessed 13/02/2021).

<sup>422</sup> Daniel Nikbakht and Sheena McKenzie, “The Yemen War is the World’s Worst Humanitarian Crisis, UN Says.” *CNN*, 3/04/2018 <https://edition.cnn.com/2018/04/03/middleeast/yemen-worlds-worst-humanitarian-crisis-un-intl/index.html> (accessed 05/03/2020).

<sup>423</sup> *Mareb Press*, 09/06/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=110372](https://marebpress.net/news_details.php?lng=arabic&sid=110372), (accessed 13/02/2021).

<sup>424</sup> *Mareb Press*, 24/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112143](https://marebpress.net/news_details.php?lng=arabic&sid=112143), (accessed 13/02/2021).

<sup>425</sup> *Mareb Press*, 07/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113058](https://marebpress.net/news_details.php?lng=arabic&sid=113058), (accessed 13/02/2021).

<sup>426</sup> *Mareb Press*, 24/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113510](https://marebpress.net/news_details.php?lng=arabic&sid=113510), (accessed 13/02/2021).

<sup>427</sup> *Mareb Press*, 08/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111786](https://marebpress.net/news_details.php?lng=arabic&sid=111786); *Mareb Press*, 09/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113103](https://marebpress.net/news_details.php?lng=arabic&sid=113103) and [https://marebpress.net/news\\_details.php?lng=arabic&sid=113107](https://marebpress.net/news_details.php?lng=arabic&sid=113107); *Mareb Press*, 26/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114513](https://marebpress.net/news_details.php?lng=arabic&sid=114513); and *Mareb*

militants from the Houthi-Saleh alliance were even preventing its personnel from delivering medical aid to Taez.<sup>428</sup> Tens of humanitarian relief convoys were also reportedly confiscated by the Houthi-Saleh alliance on their way to the cities of the South,<sup>429</sup> which underlines that besieging cities to the point of starvation is a tactic that has been used by all warring parties in the Yemeni context, not just the Saudi-led coalition. Even more, at least 10,000 cases of ‘Dengue’ were reported in Aden and 4,510 others were reported in Taez, which caused at least 600 non-battle related deaths between April and July 2015 in Aden alone.<sup>430</sup> At least 3,000 of those cases were confirmed by the World Health Organisation (WHO) in mid-2015.<sup>431</sup>

Further, as major ground operations were intensifying during the second half of 2015, indiscriminate shelling by the Houthi-Saleh alliance on civilian homes in Taez led to at least 93 civilian deaths and more than 1,000 injuries during the month of July 2015 alone.<sup>432</sup> An additional number of 101 people in Taez were confirmed dead and 1,617 others were injured due to sniping operations and indiscriminate shelling by the forces of the Houthi-Saleh alliance in November 2015.<sup>433</sup> And following the withdrawal of Houthi militants from various parts of the country’s Eastern and Southern fronts, leftover landmines claimed the lives of hundreds of Yemenis; at

---

*Press*, 08/12/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?lng=arabic&sid=114970](https://marebpress.net/news_details.php?lng=arabic&sid=114970), (accessed 13/02/2021).

<sup>428</sup> *Mareb Press*, 23/12/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?lng=arabic&sid=115453](https://marebpress.net/news_details.php?lng=arabic&sid=115453), (accessed 13/02/2021).

<sup>429</sup> *Mareb Press*, 30/06/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?lng=arabic&sid=110860](https://marebpress.net/news_details.php?lng=arabic&sid=110860); *Mareb Press*, 04/07/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=110976](https://marebpress.net/news_details.php?lng=arabic&sid=110976); *Mareb Press*, 06/07/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?lng=arabic&sid=111035](https://marebpress.net/news_details.php?lng=arabic&sid=111035); *Mareb Press*, 06/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111758](https://marebpress.net/news_details.php?lng=arabic&sid=111758); *Mareb Press*, 08/10/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?lng=arabic&sid=113086](https://marebpress.net/news_details.php?lng=arabic&sid=113086); *Mareb Press*, 30/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?sid=113659](https://marebpress.net/news_details.php?sid=113659) and

[https://marebpress.net/news\\_details.php?sid=113677](https://marebpress.net/news_details.php?sid=113677); and *Mareb Press*, 24/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115496](https://marebpress.net/news_details.php?lng=arabic&sid=115496), (accessed 13/02/2021).

<sup>430</sup> *Mareb Press*, 07/07/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?lng=arabic&sid=111048](https://marebpress.net/news_details.php?lng=arabic&sid=111048); *Mareb Press*, 26/07/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111456](https://marebpress.net/news_details.php?lng=arabic&sid=111456); and *Mareb Press*, 04/11/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?lng=arabic&sid=113809](https://marebpress.net/news_details.php?lng=arabic&sid=113809) (accessed 13/02/2021).

<sup>431</sup> *Mareb Press*, 23/06/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?sid=110697](https://marebpress.net/news_details.php?sid=110697), (accessed 13/02/2021).

<sup>432</sup> *Mareb Press*, 07/08/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?lng=arabic&sid=111781](https://marebpress.net/news_details.php?lng=arabic&sid=111781), (accessed 13/02/2021).

<sup>433</sup> *Mareb Press*, 22/12/2015, available in Arabic at

[https://marebpress.net/news\\_details.php?lng=arabic&sid=115440](https://marebpress.net/news_details.php?lng=arabic&sid=115440), (accessed 13/02/2021).

least 100 in July 2015.<sup>434</sup> A Swedish NGO estimates that at least three Yemeni children were dying on daily basis because of various leftover objects from the war, including landmines.<sup>435</sup> The most appalling of all violations; however, was the Houthi implantation of landmines in the bodies of dead tribal, ‘popular resistance’ fighters in various parts of Yemen, which led to many more casualties in the process of picking and preparing the bodies for burial by humanitarian organisations and by the civilian Yemeni population.<sup>436</sup>

Those are the types of *jus in bello* or IHL violations that the Houthis committed against the innocent civilian population, and which the Minister of Human Rights in Hadi’s Government Ezzedin Al Asbahy described in late 2015 as crimes against humanity.<sup>437</sup> Similar *jus in bello* violations by the Saudi-led Coalition e.g., its targeting of civilians and bombing of hospitals and other non-military objects were also reported by various humanitarian organisations such as Doctors Without Borders, but the Coalition’s officials profusely denied committing them.<sup>438</sup> By the end of October 2015, the Yemeni Minister of Human Rights further highlighted that at least 6,151 Yemeni civilians died as a result of the various wars that the Houthi-Saleh alliance had waged in Yemen, in addition to 14,183 injuries and 7,047 kidnappings.<sup>439</sup>

---

<sup>434</sup> *Mareb Press*, 29/07/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111558](https://marebpress.net/news_details.php?lng=arabic&sid=111558); *Mareb Press*, 08/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111788](https://marebpress.net/news_details.php?lng=arabic&sid=111788); *Mareb Press*, 24/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112131](https://marebpress.net/news_details.php?lng=arabic&sid=112131); *Mareb Press*, 27/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112203](https://marebpress.net/news_details.php?lng=arabic&sid=112203); *Mareb Press*, 29/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112229](https://marebpress.net/news_details.php?lng=arabic&sid=112229); *Mareb Press*, 06/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113037](https://marebpress.net/news_details.php?lng=arabic&sid=113037); *Mareb Press*, 03/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113771](https://marebpress.net/news_details.php?lng=arabic&sid=113771); and *Mareb Press*, 26/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115568](https://marebpress.net/news_details.php?lng=arabic&sid=115568), (accessed 13/02/2021).

<sup>435</sup> *Mareb Press*, 05/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114804](https://marebpress.net/news_details.php?lng=arabic&sid=114804), (accessed 13/02/2021).

<sup>436</sup> *Mareb Press*, 29/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?sid=113643](https://marebpress.net/news_details.php?sid=113643), (accessed 13/02/2021).

<sup>437</sup> *Mareb Press*, 05/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114823](https://marebpress.net/news_details.php?lng=arabic&sid=114823), (accessed 13/02/2021).

<sup>438</sup> *Mareb Press*, 22/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114359](https://marebpress.net/news_details.php?lng=arabic&sid=114359), (accessed 13/02/2021).

<sup>439</sup> *Mareb Press*, 30/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114641](https://marebpress.net/news_details.php?lng=arabic&sid=114641), (accessed 13/02/2021).



Some of the most extreme cases of human rights violations were also reported within areas under the control of NSAGs. For example, 14 Yemeni soldiers were decapitated in August 2014 and at least three other people were similarly executed by Al Qaeda in Qotn and Shibam in Hadramawt in September 2014.<sup>440</sup> In Ibb, while under the control of the Houthis, at least twenty-seven civilian homes were blown up by Houthi militias by September 2015,<sup>441</sup> and an additional number of twenty-five houses were destroyed in October 2015.<sup>442</sup> Thirteen prominent journalists in Houthi – controlled territories were also kidnapped and disappeared for criticising the Houthis and their various military campaigns, nine of whom were believed by the Yemeni Journalist Association to have been tortured on a regular basis.<sup>443</sup> The international NGO Reporters Without Borders accordingly ranked the Houthis in Yemen second only to Daesh/ISIS at the global scale in the phenomenon of kidnapping and disappearing journalists.<sup>444</sup> The fall of Sanaa further resulted in at least 200 other cases of kidnapping and enforced disappearances.<sup>445</sup>

According to a report by the other NGO the Euro-Mediterranean Human Rights Monitor, the Houthi-Saleh alliance kidnapped more than 7,049 Yemenis over the 16-month timeframe of July 2014 – October 2015; and by December 2015 at least 2,478 of those kidnapped and disappeared were still missing.<sup>446</sup> The city of Zammar in the South of Sanaa was particularly believed to have been transformed into a large Houthi prison facility or into an exile destination for Houthi opponents and critiques.<sup>447</sup> More than 1,500 of those people who were forcefully disappeared by the Houthis were also believed to have been held at Al Anad Airbase in Southwest

---

<sup>440</sup> *Mareb Press*, 11/08/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=101563](https://marebpress.net/news_details.php?sid=101563); and *Mareb Press*, 01/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=102218](https://marebpress.net/news_details.php?lng=arabic&sid=102218), (accessed 13/02/2021).

<sup>441</sup> *Mareb Press*, 06/09/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112405](https://marebpress.net/news_details.php?lng=arabic&sid=112405), (accessed 13/02/2021).

<sup>442</sup> *Mareb Press*, 20/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113391](https://marebpress.net/news_details.php?lng=arabic&sid=113391), (accessed 13/02/2021).

<sup>443</sup> *Mareb Press*, 20/09/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=112717](https://marebpress.net/news_details.php?lng=arabic&sid=112717); and *Mareb Press*, 27/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115576](https://marebpress.net/news_details.php?lng=arabic&sid=115576), (accessed 13/02/2021).

<sup>444</sup> *Mareb Press*, 17/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115272](https://marebpress.net/news_details.php?lng=arabic&sid=115272), (accessed 13/02/2021).

<sup>445</sup> *Mareb Press*, 03/10/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=103278](https://marebpress.net/news_details.php?lng=arabic&sid=103278), (accessed 13/02/2021).

<sup>446</sup> *Mareb Press*, 18/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115287](https://marebpress.net/news_details.php?lng=arabic&sid=115287), (accessed 13/02/2021).

<sup>447</sup> *Mareb Press*, 26/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115540](https://marebpress.net/news_details.php?lng=arabic&sid=115540), (accessed 13/02/2021).

Yemen, and as the Coalition's ground forces were advancing towards the Airbase to reclaim it from the Houthis those prisoners were believed to have been transported to Sanaa's central prison facility.<sup>448</sup> Various cases of torture were further reported by the families of those arrested, kidnapped, and/or forcefully disappeared by the Houthis upon their release.<sup>449</sup>

The severity of the humanitarian situation in Yemen was importantly amplified by the influx of African refugees into the country, despite ongoing fighting and the land and naval blockade that was imposed on Yemen by the Saudi-led coalition from March 2015 onwards. As early as 2011, UNHCR reported that 75,651 Ethiopians, 27,350 Somalians and 153 refugees of other nationalities arrived in Yemen.<sup>450</sup> An additional number of 72,000 other African refugees from the Horn of Africa reached Yemen during the first eight months of 2012 alone.<sup>451</sup>

Yemen is believed to have only been a transit destination for African refugees that in general attempted to continue their journey northwards towards Saudi Arabia.<sup>452</sup> For example, Saudi Arabia arrested and deported 200,000 illegal immigrants in 2010 of Yemeni, African and Asian descent. In addition, the Yemeni Ministry of Passports and Immigration itself noted that 90% of 400 African migrants deported from the country in February - March 2014 had Saudi Arabia as their destination.<sup>453</sup> Saudi Arabia's Security Forces further reported that human trafficking networks were active along the Kingdom's borders with Yemen and were charging as much as \$5,000 per person to smuggle economic migrants and political refugees into the Saudi

---

<sup>448</sup> *Mareb Press*, 30/07/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111586](https://marebpress.net/news_details.php?lng=arabic&sid=111586); and *Mareb Press*, 06/08/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=111739](https://marebpress.net/news_details.php?lng=arabic&sid=111739) (accessed 13/02/2021).

<sup>449</sup> *Mareb Press*, 21/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113413](https://marebpress.net/news_details.php?lng=arabic&sid=113413); *Mareb Press*, 30/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?sid=113667](https://marebpress.net/news_details.php?sid=113667); *Mareb Press*, 05/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114833](https://marebpress.net/news_details.php?lng=arabic&sid=114833); and *Mareb Press*, 22/12/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=115417](https://marebpress.net/news_details.php?lng=arabic&sid=115417), (accessed 13/02/2021).

<sup>450</sup> *Mareb Press*, 22/07/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=45891](https://marebpress.net/news_details.php?sid=45891), (accessed 13/02/2021).

<sup>451</sup> *Mareb Press*, 09/10/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=48049](https://marebpress.net/news_details.php?sid=48049), (accessed 13/02/2021).

<sup>452</sup> *Mareb Press*, 24/04/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=33258](https://marebpress.net/news_details.php?lng=arabic&sid=33258), (accessed 13/02/2021).

<sup>453</sup> *26 September*, 08/03/2014, available in Arabic at [https://www.26sep.net/news\\_details.php?lng=arabic&sid=101027](https://www.26sep.net/news_details.php?lng=arabic&sid=101027), (accessed 27/02/2020).

Kingdom.<sup>454</sup> 210 African refugees were notably freed in 2013 by the Yemeni authorities from human traffickers in the border region of Hardd between Yemen and Saudi Arabia, and at least 46 Ethiopians were freed from the custody of human traffickers in Al-Hudaydah.<sup>455</sup>

President Hadi met with the representative of UNHCR in Yemen in June 2013 to discuss this unfortunate situation of at least two million African refugees of mostly Somalian origins in Yemen, and to also appeal for an increased level of international assistance to his country in its efforts to address this situation.<sup>456</sup> The Yemeni government similarly appealed for help with its refugee dilemma at the 103<sup>rd</sup> meeting of the International Refugee Council in Geneva, and the Third African-Arab Summit in Kuwait.<sup>457</sup> Those diplomatic efforts culminated in the signing of an agreement between UNHCR and the Yemeni Ministry of Human Rights to increase the level of protection given to refugees and migrants in Yemen.<sup>458</sup> However, the situation of African refugees in the country only continued to worsen from thereon, with the steady arrival of thousands of refugees on a monthly basis.

In March 2014, at least forty-four Ethiopian and Somalian refugees, including women and children, drowned in the Gulf of Aden, sixty others drowned in the same area three months later, and seventy other Ethiopian refugees drowned near Bab Al Mandab in December 2014.<sup>459</sup> In addition, at least 300 Eritrean refugees continued to live in the streets of Sanaa in 2014.<sup>460</sup> A report by Human Rights Watch also

---

<sup>454</sup> *Mareb Press*, 15/03/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=53215](https://marebpress.net/news_details.php?sid=53215), (accessed 13/02/2021); and *Al Tagheer*, 03/06/2014, available in Arabic at <http://al-tagheer.com.com/news68914.html>, (accessed 22/02/2020).

<sup>455</sup> *Mareb Press*, 21/04/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=54640](https://marebpress.net/news_details.php?sid=54640), (accessed 13/02/2021).

<sup>456</sup> *Mareb Press*, 12/06/2013, available in Arabic at [https://marebpress.net/news\\_details.php?sid=56596](https://marebpress.net/news_details.php?sid=56596), (accessed 13/02/2021).

<sup>457</sup> *26 September*, 13/11/2013, available in Arabic at [https://www.26sep.net/news\\_details.php?sid=97095](https://www.26sep.net/news_details.php?sid=97095); *26 September*, 14/11/2013, available in Arabic at [https://www.26sep.net/news\\_details.php?sid=97151](https://www.26sep.net/news_details.php?sid=97151); and *26 September*, 26/11/2013, available in Arabic at [https://www.26sep.net/news\\_details.php?sid=97554](https://www.26sep.net/news_details.php?sid=97554) (accessed 27/02/2020).

<sup>458</sup> *Mareb Press*, 06/09/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=102378](https://marebpress.net/news_details.php?lng=arabic&sid=102378), (accessed 13/02/2021).

<sup>459</sup> *26 September*, 12/03/2014, available in Arabic at [https://www.26sep.net/news\\_details.php?lng=arabic&sid=101158](https://www.26sep.net/news_details.php?lng=arabic&sid=101158), (accessed 27/02/2020); *Al Tagheer*, 06/06/2014, available in Arabic at <http://al-tagheer.com.com/news69019.html>, (accessed 22/02/2020); and *Mareb Press*, 08/12/2014, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=105578](https://marebpress.net/news_details.php?lng=arabic&sid=105578), (accessed 13/02/2021).

<sup>460</sup> *Al Tagheer*, 14/05/2014, available in Arabic at <http://al-tagheer.com.com/news68223.html>, (accessed 22/02/2020).

indicated that at least 500,000 refugees were facing various forms of torture and extortion at the concentration camps of human traffickers throughout Yemen.<sup>461</sup>

Meanwhile, with the intensification of the fight against Al Qaeda in 2012, the Yemeni Ministry of the Interior claimed that the Somalian Al Shabab NSAG sent at least 300 of its fighters to take part in Al Qaeda's territorial campaigns.<sup>462</sup> By March 2015, it further became clear that many Ethiopian and Somalian refugees in places such as Saada were being forced by the Houthis into working in the black-market of drugs and weapons, and as mercenaries and/or child soldiers.<sup>463</sup> Many of the prisoners taken by the Southern 'popular committees' that played a key role in recapturing various parts of the country from Houthi control were indeed of African descent.<sup>464</sup>

### **V.VII. Conclusion: International Law and the Situation in Yemen (2011-2015)**

From the perspective of TWAIL and 'postcolonialism,' there has been a near unanimous consensus amongst states under the UN System that issues of 'self-determination' for minority groups seeking to gain independence from already established states are taboo, or 'red lines' that should not be crossed. The exceptions that have been permitted to this rule are rare, and they only include Bangladesh (1971), Kosovo (2008), and South Sudan (2011). In this regard, Britain is arguably at liberty to do what it believes is needed to prevent the possibility of an independent Scotland. Russia's suppression of a similar call by Chechnya was also respected by the other Permanent Members of the UNSC, irrespective of the cost in human life and the suffering of the Chechnian people. In the absence of a clear enforcement mechanism, 'reciprocity' has indeed been one of the main avenues for enforcing already established international legal frameworks. Even in the case of 'the breakup

---

<sup>461</sup> *Mareb Press*, 17/06/2014, available in Arabic at [https://marebpress.net/news\\_details.php?sid=100212](https://marebpress.net/news_details.php?sid=100212), (accessed 13/02/2021).

<sup>462</sup> *Mareb Press*, 11/03/2012, available in Arabic at [https://marebpress.net/news\\_details.php?sid=41470](https://marebpress.net/news_details.php?sid=41470), (accessed 13/02/2021).

<sup>463</sup> *Mareb Press*, 17/03/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=107988](https://marebpress.net/news_details.php?lng=arabic&sid=107988); *Mareb Press*, 06/05/2011, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=33663](https://marebpress.net/news_details.php?lng=arabic&sid=33663); and *Mareb Press*, 28/10/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=113616](https://marebpress.net/news_details.php?lng=arabic&sid=113616) (accessed 13/02/2021).

<sup>464</sup> *Mareb Press*, 13/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114054](https://marebpress.net/news_details.php?lng=arabic&sid=114054); and *Mareb Press*, 14/11/2015, available in Arabic at [https://marebpress.net/news\\_details.php?lng=arabic&sid=114093](https://marebpress.net/news_details.php?lng=arabic&sid=114093), (accessed 13/02/2021).

of political unions' such as that of Yemen, Great Power politics have evidently carried more weight in cementing already established boundaries than any 'lip service' that is usually paid by influential players to the humanitarian situation on the ground.

Nonetheless, this international consensus on the 'holiness' of already demarcated boundaries does not prevent powerful external players from inciting divisions within states experiencing an episode of popular revolts. Looking at such other established states as the containers of instability is arguably even what drives relevant external players to export their domestic politics into them, and to use them as theatres of wars by proxy against their regional and international antagonists. This is remarkably reminiscent of the colonial era of the 1800s. For example, to what extent has Iran managed to prevent a war on its own soil like that of Iraq by involving itself in the management of post-Uprisings Yemeni and Syrian affairs? And to what extent has Russia's backing of Iran enforced Russia's own status as one of the main Great Power Managers of our contemporary international society, or even strengthened the approach of Russia's own territorial expansions in Ukraine and other parts of Eastern Europe vis-à-vis the EU or NATO? In this manner, the 'sovereignty' of a state undergoing civil war such as that of Yemen becomes suspended, and a race 'to the bottom' ensues by regional and international powers that are eager to claim sub-state territorial enclaves as '*terra nullius*' vis-à-vis their domestic and foreign opponents.

Reminiscent of colonial times, when the entire continent of Australia was declared '*terra nullius*' vis-à-vis other colonial powers, whichever party succeeds in establishing influence on the ground subsequently claims such dominions as spheres of influence for itself. Those sub-state territorial enclaves could then be facilitated in gaining autonomy e.g., North Yemen by influential players like the EU and the US when it suits their interests e.g., as a bargaining chip vis-à-vis Iran and the GCC. Even then, those enclaves could still be pushed into a status of 'legal limbo' by an international system that denies the entry of new states to the 'family of nations.' Meanwhile, North Yemen's 20 million people have suffered the consequences.

The utilisation of the lens of '*terra nullius*' therefore allows us to arrive at the observation that beyond a seemingly autonomous call for independence, the birth of any given territorial enclave under the control of a NSAG could instead be an outcome of various foreign interests that are simultaneously at play. And while such

bargains are being struck between the most influential states in the system, the populations of those territories are made to suffer the consequences in a manner that demonstrates the continuation of colonialism in MENA through the political avenues of international law and its passive or ineffective existing remedies.

The present study of international law's applicability to the territorial controls of NSAGs in Yemen is further demonstrative of two key realities. Firstly, the security concerns of the international system are more important than the particularities of any given call for secession such as that of South Yemen. Irrespective of the demands of the inhabitants of this one of the poorest countries in the world for the alleviation of their socio-economic conditions via their Uprising in 2011, the years 2011-2013 in Yemen were crucially spent on the war against Al Qaeda, effectively transforming the parts of South Yemen that came under the control of this NSAG into a '*terra nullius*.' From their subjection to various forms of extra-judicial killings by drones to their cities and villages being used as the main battleground of the 'global war on terror,' the inhabitants of South Yemen were indeed affected the most. Those same security interests were also a primary consideration behind Western efforts to empower the Houthis in 2014, as the main proxy for fighting Al Qaeda in Yemen.

Secondly, any proposals to extend the applicability of international 'standards of civilisations' such as those of human rights to the territorial controls of NSAGs without granting them independence are rather redundant. In addition, such proposals side-step the fact that those same 'standards' are but one of the main global governance tools of an international system that is built around the preservation of the post-WWII global territorial status quo. This is not to say that statehood is the only solution to such and other situation of NSAG's territorial controls; it is rather the lingering colonial legacies of 'divide and rule' and of '*terra nullius*' that must be overcome, if the objective of the international legal system is indeed to advance justice and equality, amongst other stated goals and principles. In addition, as the practice of the UN System itself is indicative of the fact that NSAGs have never been recognised as having an 'international personality' that enables them to sign and ratify such international frameworks, those proposals further enforce the conclusions of Koskenniemi et. al. (2017) that international law networks and publications have always been at the service of Empire.

That said, it would be rather unoriginal, perhaps even simplistic, to blame all the misfortunes of MENA on the continuous processes of colonialism in the region. Therefore, it is important to recognise that the preoccupation of the conservative establishments of GCC states with preventing the expansion of the 2011 Arab revolts into their own domestic spheres constituted one of the primary reasons behind the present fragmentation of Yemen under the control of various NSAGs. The highly divisive nature of the policies of the UAE and Saudi Arabia against the Muslim Brotherhood must especially be reckoned with, if the interest is indeed to call for the empowerment of 'subaltern' voices in the Middle East. Not only did those GCC policies cause further turmoil across the region, but they also led to divisions, until recently, amongst GCC states themselves.

## Chapter VI: The Situation in Libya (2011–2015) & the Feasibility of *Terra*

### *Nullius*

The preceding Chapter of this thesis provides a ‘critical’ assessment of the root causes and devastating humanitarian outcome of Yemen’s present territorial fragmentation through the lens of ‘*terra nullius*,’ which is in turned based on TWAIL and ‘postcolonialism.’ This ‘critical’ approach has underlined the dire humanitarian impact of Yemen’s situation on populations stranded at the forefront and within the territorial enclaves of NSAGs, and it has emphasised that the security interests of influential regional and international players in such situations of civil war are often prioritised above all other possible considerations.

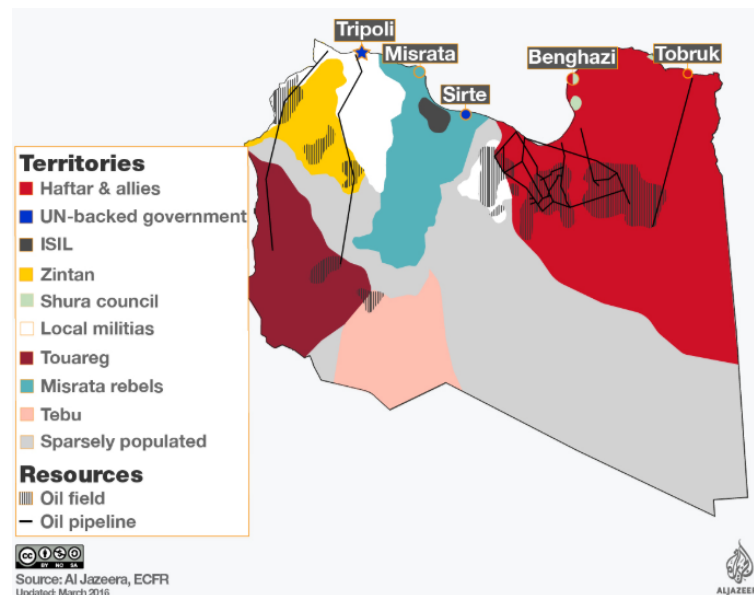
Importantly, when approached through the lens of ‘*terra nullius*,’ the territorial controls of NSAGs in Yemen (2011-2015) become demonstrative of a pattern of contestations over territory that go beyond any autonomous or ‘irredentist’ calls for secession. Indeed, Yemen’s pre-existing territorial subdivisions have evidently been exploited by regional and international players bent on upholding the classic colonial legacy of ‘divide and rule.’ In this case, either to prevent the success of the Arab Uprisings at the regional level or to maintain the ‘hegemony’ of our contemporary international order as managed by the UNSC and its Permanent Member States. Resultantly, South Yemen’s attempt at secession was obstructed, while the territorial expansions of the Houthis were facilitated in a manner that cannot be understood through readily available frameworks such as ‘self-determination,’ ‘remedial secession’ and/or ‘the breakup of political unions.’ Strikingly, this has come about with the overall effect of transforming different parts of one of the poorest countries in the world into either a key battlefield of ‘the war on terror,’ or of various forms of ‘proxy war’ amongst and in-between regional and international rivals alike.

In the present Chapter of this thesis, I seek to support this ‘critical’ assessment of the situation in Yemen based on TWAIL, ‘postcolonialism’ and the guiding lens of ‘*terra nullius*’ with a similar investigation into Libya’s own fragmentation into various enclaves under the control of NSAGs (2011-2015). In the manner that Mohamad Bouazizi’s self-immolation in Tunisia sparked Tunisia’s Uprising in late 2010 - early 2011, the arrest of the prominent Libyan human rights activist Fathy Terbil on 15 February 2011 sparked country wide protests in Libya that eventually brought down the regime of President Muammar Al Qaddafi, and caused the death of Qaddafi



himself on 20 October 2011. But if the Libyan Uprising also called for the improvement of the socio-economic conditions of the masses, why has it led instead to a devastating civil turmoil like that of Yemen, and to Libya's own disintegration into various territorial subdivisions under the control of NSAGs? And to what extent has this been an outcome of Great Power politics as opposed to being the product of a problematic, domestic Libyan political atmosphere? While the establishment of any clear-cut criteria for answering those and other relevant sub-questions is certainly beyond the scope of this thesis, it remains important to reiterate Chapter IV's emphasis on the coterminous impact of the 'domestic' and the 'international,' in this case on Libya's far-reaching humanitarian outcome at the *meso*-level, including the refugee crisis at Europe's own doorstep in the Mediterranean.

**Map 6:** The Territorial Fragmentation of Libya (as of March 2016)



Accordingly, this Chapter starts with a TWAIL and 'postcolonialism' – informed critique of the international response to the 2011 Libyan Uprising, and the NATO-led intervention in Libya. The key reactions of 'post-colonial' and western-allied GCC states are subsequently examined in a similarly 'critical' light, with specific reference to Libya's own oil resources and the rise of Islamist political parties to power positions in post-Uprising Libya. This is done by way of taking the analysis from the international, to the regional, to Libya's own domestic level, or from the *macro* to the *micro* and lastly to the *meso* level. A further subsection is notably dedicated to 'the tribe' as the classic point of entry of external parties into Libya's

domestic politics, followed by a TWAIL and ‘postcolonial’ critique using the guiding lens of ‘*terra nullius*’ of how the inter-plays between those three dependant levels of analysis have manifested themselves in the Eastern, Southern and Western parts of the country. Lastly, the overall humanitarian impact of the situation is highlighted with a special focus on the resultant refugee crisis in the Mediterranean.

### **VI.I. The 2011 Libyan Uprising and the International Response**

With the excessive use of force by the former Libyan regime against peaceful protests, which according to some reports culminated in the regime’s use of fighter jets against unarmed protesters, the international community was evidently quick to intervene. As highlighted by UN Secretary General Ban Ki Moon, at least 1,000 Libyans were killed during the first two weeks of the uprising.<sup>465</sup> The ICRC also reported that 256 deaths and at least 2,000 injuries fell in the process of liberating the city of Benghazi alone.<sup>466</sup> Consequently, on 27 February 2011 the UNSC passed Resolution 1970, which imposed sanctions against Qaddafi and his family and referred the regime’s extreme use of force to the International Criminal Court (ICC). Shortly thereafter, or on 17 March 2011, the UNSC also passed Resolution 1973 under Chapter VII of the UN Charter, which approved the establishment of a ‘no-flight zone’ over Libya and authorised the use of “all necessary measures” to protect civilians in Libya. While seemingly selfless or purely humanitarians, those international measures eventually underscored the ideological bias of the countries that worked tirelessly to ensure their passage, and of the UN System itself.

Initially, it was France, the US, and the UK that took the lead in enforcing Libya’s ‘no-flight-zone’ through a military operation that was named ‘Operation Odyssey Dawn.’ On 19 March 2011, at least twenty French fighter jets participated in halting the advance of Libyan regime forces towards Benghazi to recapture the city from the rebels,<sup>467</sup> and they were soon boosted with US and British naval and air forces. Successively, on 1 April 2011 the North Atlantic Treaty Organisation (NATO) effectively took the lead on international operations against Qaddafi’s regime, with

---

<sup>465</sup> *Libya Al Mostakbal*, 28/02/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/6504>, (accessed 22/02/2021).

<sup>466</sup> *Libya Al Mostakbal*, 28/02/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/6486>, (accessed 17/02/2021).

<sup>467</sup> *Libya Al Mostakbal*, 19/03/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/6681>, (accessed 17/02/2021).

the approval of all its 28 Member States.<sup>468</sup> NATO then renamed the international campaign against Qaddafi ‘Operation Unified Protector.’

Despite NATO’s original estimates that the intervention would only last for 90 days,<sup>469</sup> major international operations in Libya instead lasted for seven months, or until 31 October 2011, due to sharp disagreements amongst and within NATO’s Member States.<sup>470</sup> Notably, Germany and Turkey opposed sending any ground troops into Libya, while France and the UK were eager to support Libya’s rebels with military advisors. Other NATO Member States were either very late to join the military operations of their organisation in Libya, or they altogether did not participate.<sup>471</sup> For example, Italy only joined those military operations around the end of April 2011, and even then, Italy was one of the parties that persistently objected to the repeated extensions of NATO’s mandate in Libya beyond the originally approved three-month period. The US also criticised the “weakness” of Europe’s military contributions.<sup>472</sup>

The Third World Approach to International Law (TWAIL) makes it possible to firstly point out that NATO’s ‘humanitarian intervention’ in Libya has exposed the myth of the existence of an endless supply of resources at the disposal of the international community to facilitate its interventions in situations of alleged human rights violations. NATO’s operations specifically exhausted the limits of military supplies that its Member States were willing to dedicate to the defence of foreign territories and distant populations. For instance, by the end of March 2011, the US estimated that it had already spent \$550mn on ‘Operation Odyssey Dawn’ and this sparked debates and opposition at US Congress<sup>473</sup> that eventually resulted in a reduced level of US participation in NATO’s ‘Operation Unified Protector.’ And just a few weeks after NATO took the lead on international operations in Libya, *The Washington Post*

---

<sup>468</sup> *Libya Al Mostakbal*, 25/03/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/6810>, (accessed 17/02/2021).

<sup>469</sup> *Libya Al Mostakbal*, 25/03/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/6822>, (accessed 17/02/2021).

<sup>470</sup> See for instance *Libya Al Mostakbal*, 20/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7635>, (accessed 18/02/2021).

<sup>471</sup> See for instance *Libya Al Mostakbal*, 09/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/9740>, (accessed 17/02/2021).

<sup>472</sup> *Libya Al Mostakbal*, 01/07/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/10598>, (accessed 17/02/2021).

<sup>473</sup> *Libya Al Mostakbal*, 31/03/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/6979>, (accessed 17/02/2021).

reported that the Coalition's forces suffered from severe shortages in ammunition and bombs.<sup>474</sup>

Secondly, it can be noted that the success of the intervention in 'protecting civilians' in the Libyan context is questionable. According to the Chairman of Libya's National Transitional Council (NTC) Mustafa Abduljalil, by 20 April 2011 at least 10,000 people were killed, and more than 55,000 others were injured in Libya.<sup>475</sup> Most of those casualties were not reported until after the commencement of international operations against the forces of the former Libyan regime. NATO's airstrikes were remarkably ineffective in lifting the siege on Misrata, the third largest Libyan city, and in protecting the civilian residents of the city while fighting was intensifying between regime forces and the armed opposition.<sup>476</sup> According to the estimates of the US itself, at least 10-30,000 people died in Libya in just two and a half months of fighting, or by the end of April 2011.<sup>477</sup> And while US President Barak Obama was quick to assert before passing on the command of military operations in Libya to NATO that the US "achieved many of its objectives in Libya,"<sup>478</sup> he then repeatedly expressed his regrets for "not doing enough" to rebuild Libya.<sup>479</sup>

Thirdly, NATO's intervention in Libya evidenced the prominence of Great Power politics in the general enforcement of PIL, especially with respect to issues pertaining to 'humanitarian interventions' and R2P. The role played by France at the UNSC was key in bringing about international action against Qaddafi, to the extent that an Italian newspaper referred to the intervention as "Sarkozy's war."<sup>480</sup> This was indeed ironic, since the transitional process in Libya brought to light the issue of financial contributions that the 2007 electoral campaign of the French President Sarkozy himself received from Qaddafi's regime. UAE's lobbying was an additional

---

<sup>474</sup> *Libya Al Mostakbal*, 16/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7491>, (accessed 17/02/2021).

<sup>475</sup> *Libya Al Mostakbal*, 20/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7631>, (accessed 18/02/2021).

<sup>476</sup> See for instance *Libya Al Mostakbal*, 20/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7641> (accessed 18/02/2021).

<sup>477</sup> *Libya Al Mostakbal*, 28/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7895>, (accessed 18/02/2021).

<sup>478</sup> *Libya Al Mostakbal*, 29/03/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/6927>, (accessed 17/02/2021).

<sup>479</sup> See for instance *Libya Al Mostakbal*, 09/08/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/53943>, (accessed 17/02/2021).

<sup>480</sup> *Libya Al Mostakbal*, 19/04/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/33396>, (accessed 18/02/2021).

influential factor in the speedy passage of UNSC Res.1973, as stated the former British Defence Minister Liam Fox.<sup>481</sup> Meanwhile, Russia persistently objected to the military intervention that NATO carried out in Libya, and it considered taking military action against the former Libyan regime a measure that falls outside the scope of UNSC Res.1973.<sup>482</sup> In Addition, Russia repeatedly called for an investigation into the civilian deaths that resulted from NATO's airstrikes in Libya,<sup>483</sup> and together with China it prevented the passage of similar UNSC resolutions on Syria regardless of the unfolding humanitarian crisis in that country. Russia's Foreign Minister Sergei Lavrov tellingly stated in February 2013 that "Russia learnt a lesson in Libya," given how "Russia, China and India were backing UN resolutions to impose a weapon embargo on Libya, while France and Qatar were proudly supplying the Libyan rebels with arms."<sup>484</sup>

In other words, it was the direct issue that various external parties took with Qaddafi's personality, not his violation of the human rights of the Libyan people, that predominantly drove this intervention. By contrast, Russia's protection of Assad's position of power prevented a similar intervention in Syria.

Indicatively, NATO's military operations came to an end soon after the death of Qaddafi by the now empowered rebels, which made the insistence of the organisation that it did not aim for 'regime change' in Libya increasingly deceitful. Indeed, in a joint article, the three Western leaders Obama, Sarkozy and Cameron agreed that the only way out in Libya was for Qaddafi to leave,<sup>485</sup> and this vision was subsequently endorsed by other NATO Member States at the Berlin Summit of April 2011.<sup>486</sup> What is particularly intriguing is the way the territorial campaigns of the armed Libyan opposition, which started as a NSAG, were facilitated by NATO vis-à-vis the former

---

<sup>481</sup> *Libya Al Mostakbal*, 03/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7088>, (accessed 18/02/2021).

<sup>482</sup> *Libya Al Mostakbal*, 16/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7461>, (accessed 18/02/2021).

<sup>483</sup> *Libya Al Mostakbal*, 20/12/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/16572>, (accessed 18/02/2021).

<sup>484</sup> *Libya Al Mostakbal*, 11/02/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/30719>, (accessed 17/02/2021).

<sup>485</sup> *Libya Al Mostakbal*, 20/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7635>, (accessed 17/02/2021).

<sup>486</sup> *Libya Al Mostakbal*, 15/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7418>, (accessed 17/02/2021). Also see Melissa Willard-Foster, "The Post-9/11 Era: Regime Change and Rogues, Iraq 2003, Libya 2003, and Libya 2011." In *Toppling Foreign Governments: The Logic of Regime Change* (University of Pennsylvania Press, 2019), pp.175-228.

Libyan regime. The nucleus administrative body of the opposition, the NTC, gradually also received full diplomatic recognition from the international community as Libya's new official government. Libya's General National Congress (GNC) was subsequently elected on 07 July 2012 through the country's first democratic elections in decades. In other words, 'regime change' was ultimately the result of international operations in Libya, regardless of the slogan under which they were carried out. Here, a NSAG such as the Libyan opposition was not only facilitated in taking over the entire country, but its territorial campaigns were also legitimised by the international community since they fall in line with the interests of key influential states.

On the one hand, ending the rule of Qaddafi's regime was certainly the main objective of the Libyan Uprising. On the other hand, for the former regime itself Benghazi, Misrata, Tripoli and other Libyan cities were all territories that fell under the control of a NSAG, the armed opposition, and its reactions were similar in their nature to international campaigns launched elsewhere to liberate a city such as Abyan in Yemen from Al Qaeda. Indeed, as the battle of Misrata raged on, the forces of Qaddafi's regime were convinced they were merely fighting Al Qaeda in Libya,<sup>487</sup> and Qaddafi's constant remarks on this prompted an official response from NATO that there were no signs of Al Qaeda's involvement in Libya at that point in time.<sup>488</sup> In effect, the intervention was equivalent to siding with one party over the other in a situation of civil war.

Fourthly, together with 'postcolonialism,' TWAIL makes it possible to argue that when R2P was invoked by the UNSC against Qaddafi's regime in Libya, the 'sovereignty' of the Libyan state was endlessly suspended due to the regime's loss of legitimacy in the eyes of domestic and international audiences. The way a regime that stayed in power for four decades was abruptly removed from Libya's political scene created a power vacuum that both the NTC and the GNC struggled to fill. The 'sovereignty' of the new Libyan state was notably absent on the ground despite the approval of the international community of the new authorities of the state. Further, sharp divisions emerged amongst the seemingly united armed opposition itself, and the country's various militias that were once united in their fight against Qaddafi's

---

<sup>487</sup> *Libya Al Mostakbal*, 12/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7355>, (accessed 18/02/2021).

<sup>488</sup> *Libya Al Mostakbal*, 11/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7330>, (accessed 18/02/2021).

regime soon started to split up along tribal, ethnic, and/or ideological lines. By September 2012, the official Libyan Bureau of Fighters Affairs estimated that there were at least 1,700 armed groups in Libya, 240 in Zintan alone.<sup>489</sup>

In addition, once Qaddafi's regime crumbled down, the international community showed no practical interest, beyond the empty rhetoric and political theatrics of various world leaders, in supporting the process of rebuilding Libya's democratic and security institutions. It is especially questionable that out of the various summits of the so-called 'International Contact Group' on Libya that were convened at various Arab and European capitals: London, Doha, Rome, Abu Dhabi, Istanbul, Doha (again), and Paris between March 2011 and September 2011, no such mechanism was devised nor executed on the ground in Libya. Throughout the timeframe of 2011-2015, the international community preferred instead to continue approaching the situation in Libya as if the country's 'sovereignty' was in an endless state of suspension, despite the subsequent passage of Res.2016 by the UNSC in October 2011 to annule the 'no-flight zone' and the 'use of force' to protect civilians in Libya. Strikingly, a conflict emerged between the ICC and the new Libyan authorities concerning which entity amongst them had the jurisdictions to prosecute arrested and/or extradited members of the former regime such as Qaddafi's sons Saiful Islam and Al Saedy, the former Head of Government Al Baghdadi Al Mahmoodi, and the former Head of Intelligence Abdullah Al Sanusi. This conflict effectively diminished the legitimacy of the Libyan state. The repeated "orders" of the ICC that the new Libyan authorities surrender Saiful Islam to the Court<sup>490</sup> were especially harmful to the 'charisma' of the new Libyan authorities since Saiful Islam was arrested and detained by Zintan's NSAGs, not the new authorities of the state. Moreover, Tripoli's court system kept on postponing its official trial of Saiful Islam and 36 other members of the former regime, and it ultimately amended the Libyan 'penal code' to allow for its prosecution of Saiful Islam 'in absentia.'<sup>491</sup>

---

<sup>489</sup> *Libya Al Mostakbal*, 25/09/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/26423>, (accessed 18/02/2021).

<sup>490</sup> See for instance *Libya Al Mostakbal*, 31/05/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/34981>, (accessed 18/02/2021).

<sup>491</sup> *Libya Al Mostakbal*, 31/05/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/48651>, (accessed 18/02/2021).

This seemingly open-ended suspension of Libya's 'sovereignty' and right to 'self-rule' was even more clearly visible in the way the UN conducted inter-Libyan dialogue. Here, the UN seemed to have taken upon itself the role of a 'custodian,' often dictating as opposed to mediating/facilitating and effectively suppressing local aspirations as opposed to empowering them. Following a request on 14 August 2014 by Libya's House of Representative (in theory, the GNC's successor) for an internationally facilitated inter-Libyan dialogue,<sup>492</sup> the UN appointed a new Envoy to Libya, Bernardino Leon, who also acted as the Head of the UN Support Mission in Libya. However, it was Leon himself who wrote the various versions of Libya's envisioned Political Agreement, including the fourth version that was initialled by most Libyan parties in Skhirat, Morocco on 11 July 2015. In addition, the imposition by Leon in the lead up to the October 2015 expiry date of his mandate of various signing deadlines along with the terms of establishing a Government of National Accords headed by Fayiz Al Sarraj resulted instead in the total collapse of inter-Libyan talks.

From the perspective of TWAIL and/or 'postcolonialism,' the UN system is a "global imperialist state in the making."<sup>493</sup> Indeed, on this occasion, the UN itself acted the way the former colonial powers used to do. One would have thought that the Libyans themselves would categorically choose who their next Head of Government would be. Instead, the various attempts by the President of the GNC Nouri Abu Sahmain and the President of the House of Representatives Aqilah Saleh Qwaider in 2015 to find a way out of Libya's civil strife, in the absence of foreign mediators, were discouraged by the UN Mission in Libya. And when and if those two leaders held any direct meetings in Libya or abroad, their endeavours were all together condemned and side-lined.

As a result, despite the eventual signing of the Government of National Accords agreement by many members of both the GNC and the House of Representatives in December 2015, the agreement's continued rejection by the presidencies of both chambers foretold that there was not going to be any end in sight to the country's devastating internal fighting and territorial disintegration.

---

<sup>492</sup> See for instance *Libya Al Mostakbal*, 16/08/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/54284>, (accessed 16/02/2021).

<sup>493</sup> See Chimni (2004).



The international response to the 2011-Libyan Uprising largely ignored the demands of the Libyan population for a long-lasting socio-economic change. The NATO-led ‘humanitarian intervention’ in Libya was self-evidently a ‘regime change’ operation, since hardly any practical steps were taken to support the rebuilding of the new Libyan state beyond the recognition of the NTC as Libya’s new government. In effect, Libya was seemingly placed under a UN ‘mandate’ or ‘trusteeship’ system from the colonial era, and the country’s ‘sovereignty’ entered a permanent mode of suspension. Not only did this weaken the legitimacy of the new authorities of the state and empowered a plethora of NSAGs to take up arms against them, but it also encouraged the middling of other external parties in Libyan affairs and transformed Libya into a theatre of various ‘proxy wars.’

## VI.II. The GCC, Libya’s Oil Resources and the County’s Islamists

As in the case of Yemen, the present study of local news reports from Libya based on ‘critical’ international theory and a ‘critical’ research methodology has underlined the prominent role that various GCC states played in the post-2011 Uprisings regional political scene. Indeed, the regional instability and domestic state of anarchy that were brought about by the UN-authorized intervention in Libya presented themselves as a ‘window of opportunity’ for such influential regional players to claim a role in the management of post-Uprising inter-Libyan affairs. In other words, once the ‘sovereignty’ of Libya became effectively suspended, a plethora of external players became eager to declare a part of Libya’s territory a ‘*terra nullius*’ vis-à-vis their domestic, regional and/or international opponents. Put differently, the two case studies of Yemen and Libya (2011-2015) showcase the entry of new players into the ‘family of colonisers’ from the region’s own geopolitical fabric.

In the post-Arab Uprisings landscape of MENA, the foreign policies of a former colony of Britain or a ‘post-colonial’ state such as the UAE, and a current Western ally such as Saudi Arabia have become expansionist. Since 2011, those two states have been either replicating or executing the various divisive strategies of ex-colonial Western powers at the *micro* and *meso* levels of Yemen and Libya’s pre-existing territorial divisions.<sup>494</sup> If the war of attrition of those two players against the Houthis

---

<sup>494</sup> On the influence of regimes installed by the former colonial powers prior to their departure over the politics of the post-independence state, see Frantz Fanon (1963), *The Wretched of the Earth*, Translated from French by Richard Philcox (Grove Press, 2004).

in the Yemeni context is seemingly driven by their desire to contain the spread of Iran's influence in the Southwestern corner of the Arabian Peninsula, the threat that the rogue regime of Qaddafi posed to the Kingdom's security in the past has evidently made such GCC states eager to prevent the resurrection of a prosperous regime in Libya after 2011. Not only did Qaddafi allegedly lend significant financial support to various tribes in North Yemen to incite unrest against the Kingdom before the 2011 Uprisings,<sup>495</sup> but he reportedly also orchestrated an assassination attempt against the late Saudi King Abdullah himself.<sup>496</sup> This 'race to the bottom' was in the case of Libya initially driven by the GCC's interest in Libya's oil resources.

Following the death of Qaddafi on 20 October 2011, the IMF predicted that Libya could soon be leading the socio-economic development of the MENA region<sup>497</sup> and the country's oil revenues reached an accumulative total of \$30.4bn during the first seven months of 2012 alone.<sup>498</sup> According to the IMF, in 2012 the Libyan economy recorded the largest growth rate in the world (122%), following its contraction by 60% the year before.<sup>499</sup> For instance, Libya exported an overall total of 485.149mn barrels of oil in 2012, an average of 1.329mn barrels per day.<sup>500</sup> However, as Libya's level of oil production was slowly returning to its pre-Uprising benchmark of 1.6mn barrels/day, a movement backed by Saudi Arabia and the UAE declared on 1 June 2013 the historic region of Cyrenaica a 'federal region.'<sup>501</sup> In addition, in late July – early August 2013, this movement shutdown the majority of the country's oil facilities in the Central and Eastern parts of the country,<sup>502</sup> thereby bringing about the demise of the new Libyan economy. In other words, the seemingly open-ended suspension of Libya's 'sovereignty' invited such opportunistic regional players to exploit Libya's pre-existing division lines at the service of their own interests.

---

<sup>495</sup> See for instance Marieke Brandt (2017), p.208-210.

<sup>496</sup> *Libya Al Mostakbal*, 22/09/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/39082>, (accessed 15/02/2021).

<sup>497</sup> *Libya Al Mostakbal*, 25/01/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18086>, (accessed 15/02/2021).

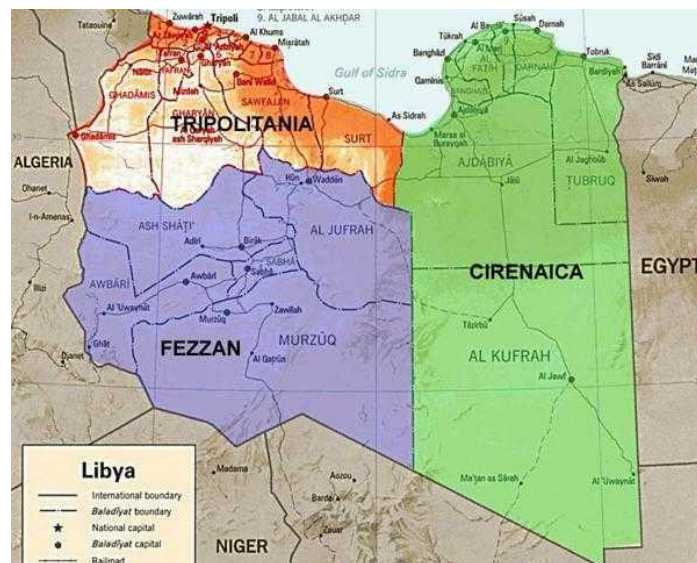
<sup>498</sup> *Libya Al Mostakbal*, 05/09/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/25867>, (accessed 15/02/2021).

<sup>499</sup> *Libya Al Mostakbal*, 25/11/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/28564>, (accessed 15/02/2021).

<sup>500</sup> *Libya Al Mostakbal*, 13/02/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/30807>, (accessed 15/02/2021).

<sup>501</sup> *Libya Al Mostakbal*, 01/06/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/35022>, (accessed 15/02/2021).

<sup>502</sup> See for instance *Libya Al Mostakbal*, 13/08/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/37582>, (accessed 16/02/2021).

**Map 7:** Libya's Historical Division Lines

As stated by the late Saudi journalist Jamal Khashoggi, the project of Ibrahim Jadran who was supposed to be the Head of the Security Apparatus of the Country's Oil Facilities but instead became the leader of the movement that closed down those same oil facilities, was "the latest attempt to prevent the success of the Arab Uprisings."<sup>503</sup> Significantly, Jadran's brother was arrested in Dubai following a request to that end that the new authorities of Libya submitted to Interpol.<sup>504</sup> While an agreement was eventually reached between the official Libyan authorities and Jadran in April 2014 to reopen Al Zwaiteniah, Hraiqah, Al Sidrah and Ras La Nouf amongst other oil facilities, major fluctuations in the country's oil output continued. After just nine months of continued closure at the main oil facilities of the state, or by April 2014, the Chairman of Libya's GNC Nouri Abu Sahmain reported that the country's total losses in oil revenues reached \$18bn,<sup>505</sup> and by July of the same year Libya's production dropped to less than 200,000 barrels/day. Libya's Central Bank further reported a monthly loss of \$3.5bn in oil revenues and an overall budget deficit of \$40bn in 2014.<sup>506</sup>

<sup>503</sup> *Libya Al Mostakbal*, 15/01/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/43379>, (accessed 17/02/2021).

<sup>504</sup> *Libya Al Mostakbal*, 12/02/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/44919>, (accessed 17/02/2021).

<sup>505</sup> *Libya Al Mostakbal*, 05/04/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/47613>, (accessed 15/02/2021).

<sup>506</sup> *Libya Al Mostakbal*, 07/07/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/52420>, (accessed 15/02/2021).

Saudi Arabia and the UAE indeed “had the most to gain” from the sudden decline in Libya’s oil production, as this made the two countries increase their own oil exports in order to make up for OPEC’s overall losses in oil supplies from Libya.<sup>507</sup> In August 2013, Saudi Arabia even recorded the highest, daily level of oil production in the Kingdom’s history (9.95mn barrels/day), while Libya’s own production fell from its March 2013 level of 1.4mn barrels/day to 575,000 barrels/day.<sup>508</sup> In April 2020, Saudi Arabia’s level of oil production eventually reached the all-time-high level of 12mn barrels/day, while the Kingdom was struggling to fund its ongoing war in Yemen. In other words, like the European powers of the 1800s, those latecomers to the ‘family of colonisers’ have externalised their domestic problems and engaged in additional colonial ‘wars of position’ to sustain their already expansionist foreign policies into the domestic affairs of other ‘dominions’ such as Yemen. However, it remains to be seen if their bid for ‘Great Power’ will ever see the light, as they could eventually join instead the fate of Egypt under Jamal Abdel Nasser and Iraq under Saddam Hussain.<sup>509</sup>

Strikingly, a North Korea-registered oil tanker named ‘Morning Glory’ attempted in March 2014 to sell \$36mn worth of Libyan oil from oil ports under the control of those seeking ‘self-autonomy’ in East Libya, but the tanker was seized by US Navy and it was then re-routed back to Libya with the help of Cyprus.<sup>510</sup> The Egyptian company that was providing ‘technical management’ to this ship then reported on 13 March 2014 that the North Korean ‘flag representative’ had informed it of the transfer of the tanker’s ownership from Saudi Arabia to another “entity.”<sup>511</sup>

As is the case with Yemen in 2014, this key turning point along the path of the transitional process in post-Qaddafi Libya also stemmed from the serious regional and international ramifications of the Egyptian Army’s crackdown on the Muslim Brotherhood in Egypt in August 2013, and the support that that Army received from

---

<sup>507</sup> *Libya Al Mostakbal*, 10/11/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/39955>, (accessed 15/02/2021).

<sup>508</sup> *Libya Al Mostakbal*, 10/11/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/39955>, (accessed 15/02/2021).

<sup>509</sup> For a discussion, see in particular Ian Lustick, “The Absence of Middle Eastern Great Powers: Political ‘Backwardness’ in Historical Perspective,” *International Organisation*, 51:4 (1997), pp.653-683.

<sup>510</sup> *Libya Al Mostakbal*, 17/03/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/46713>, (accessed 15/02/2021).

<sup>511</sup> *Libya Al Mostakbal*, 13/03/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/46487>, (accessed 15/02/2021).

Saudi Arabia and the UAE against Western objections. Indeed, the advocates of ‘federalism’ in East Libya launched their disruptive campaigns of strikes and protests at Libya’s oil facilities around that same juncture of August 2013, the month of Saudi Arabia’s then highest level of daily production of oil. Libya’s Justice and Construction Party, the Politburo of Libya’s branch of the Muslim Brotherhood subsequently also withdrew from the government of Libya’s Prime Minister Ali Zeidan in protest to Zeidan’s support of the new Egyptian regime, and his respective meetings with El-Sisi in Cairo in September 2013 and with the Crown Prince of Saudi Arabia Salman Ben Abdelaziz in Riyadh in January 2014.<sup>512</sup> The liberal camp at the GNC, which was led by Mahmoud Jibril’s Coalition of National Forces similarly accused Zeidan of being “an advocate of federalism.”<sup>513</sup> Sworn in at the GNC on 14 November 2012 to replace the NTC’s government of Abdulrahim El-Keib, Zeidan’s government ultimately received a vote of ‘no confidence’ from the GNC on 11 March 2014 and it was subsequently replaced by a government led by Abdullah Al Thani.

In the aftermath of the 2011 Arab Uprisings, a new regional alliance was effectively solidified between Sisi’s Egypt and the two GCC states of Saudi Arabia and the UAE along predominantly ideological lines that this ‘critical’ account of the Uprisings will now explore in more details. This ideological alliance has led the region’s ‘counterrevolution’ by cracking down on the Muslim Brotherhood, the organisation that rose to power positions through ensuing democratic elections in various countries across the region such as Egypt, Yemen, Libya, and Tunisia.

In Libya, the Justice and Construction Party became the main influential camp at the GNC on 4 February 2014, the day when the Coalition of National Forces suspended its participation in the political process of the country,<sup>514</sup> but the Islamists lost the 25 June 2014 elections of the GNC’s successor, the House of Representatives. Although the results of those other elections were announced on 22 July 2014, the official transfer of power from the GNC to the House of Representatives was never carried

---

<sup>512</sup> *Libya Al Mostakbal*, 05/09/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/38414>; *Libya Al Mostakbal*, 17/01/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/43511>; *Libya Al Mostakbal*, 21/01/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/43738>, (accessed 16/02/2021).

<sup>513</sup> *Libya Al Mostakbal*, 07/12/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/41750>, (accessed 16/02/2021).

<sup>514</sup> *Libya Al Mostakbal*, 04/02/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/44451>, (accessed 16/02/2021).

out. Importantly, if the Uprising's 'Constitutional Declaration' stipulated for Benghazi to be the base of the House of Representatives, Benghazi's deteriorating security situation resulted in Tobruk, which is located near the border with Egypt, being used instead as the new base of Parliament. This was seen by the GNC and the Justice and Construction Party as "unconstitutional," which was a view that was subsequently endorsed by a ruling from Libya's Supreme Court in early November 2014. Ultimately, Al Thani's government moved to the city of Al Baydaa, which is also in the East, and the GNC formed its own 'National Rescue Government' in Tripoli under the leadership of Omar Al Hasi.

Therefore, Libya became ruled by an Islamist-leaning government in Tripoli in the West, and a liberal, internationally recognised government of the House of Representatives in Al Baydaa in the East. The Islamists became based in the territory of the historical region of Tripolitania, and the liberals made of the region of Cyrenaica that is adjacent to Egypt their new base. Egypt and its GCC allies supported the liberal camp in the East.

For example, following the February 2014 sudden televised appearance of the retired Libyan General Khalifa Haftar, during which he called for the suspension of the GNC, Zeidan's government, and the 'Constitutional Declaration,'<sup>515</sup> the Islamist Rebels Operation Room published a document detailing the involvement of the UAE in Haftar's attempted "coup." This document further detailed the UAE's establishment of a PR cell in Jordan to facilitate Haftar's rise to power in Libya.<sup>516</sup> Haftar indeed visited Jordan and then the UAE in April 2015,<sup>517</sup> and most of the early media coverage that the various activities of this retired General received was also given by either the Saudi TV station *Al Arabiya* or the UAE's *Sky News*, amongst other GCC-based and/or funded news outlets. In addition, in late August 2014 Egypt and the UAE carried out airstrikes against Islamist factions in Tripoli.<sup>518</sup> The

---

<sup>515</sup> See for example the reaction of Zeidan at *Libya Al Mostakbal*, 14/02/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/45009>; and of the GNC at *Libya Al Mostakbal*, 14/02/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/45015> (accessed 15/02/2021).

<sup>516</sup> *Libya Al Mostakbal*, 16/02/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/45118>, (accessed 16/02/2021).

<sup>517</sup> *Libya Al Mostakbal*, 16/04/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/67756> & at <http://archive2.libya-al-mostakbal.org/news/clicked/67791>, (accessed 16/02/2021).

<sup>518</sup> *Libya Al Mostakbal*, 27/08/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/54726>, (accessed 15/02/2021).

spokespersons of the US Defence and State Departments rushed to confirm those airstrikes despite the denial of both Egypt and the UAE that they ever carried them out, and the EU publicly condemned “foreign interventions in Libya.”<sup>519</sup> One of those airstrikes was crucially listed in late 2015 by a joint report of the UN Support Mission in Libya and the UN Office of the High Commissioner for Human Rights as an IHL violation possibly amounting to ‘war crime.’<sup>520</sup>

Furthermore, as the UN Special Envoy Bernardino Leon was mediating inter-Libyan talks for the majority of 2015, *The Guardian* and *New York Times* revealed a conflict of interest in the way Leon negotiated the terms of his salary for a new job at the Academy of Diplomacy in the UAE, while also attempting to mediate between Libyan parties.<sup>521</sup> Respectively, on 31 October 2015, the UNSC approved the appointment of Martin Kobler in the positions previously occupied by Leon in Libya.<sup>522</sup>

Meanwhile, Qatar was the only GCC state that supported the rise of the Muslim Brotherhood to power positions in Libya and the wider MENA region in the wake of the 2011 Arab Uprising, arguably to safeguard its own domestic sphere against the spread of the Arab Uprisings. Together with Egypt, Jordan, Saudi Arabia, and the UAE, Qatar participated in the March – October 2011 international military campaign against Qaddafi’s regime in Libya. On 28 March 2011, it additionally became the first Arab country to recognise Libya’s NTC, second only to France at the international level.<sup>523</sup>

Like France, Qatar also supplied the Libyan armed opposition with weapons and technical support during its fight against the forces of the former Libyan regime,<sup>524</sup>

---

<sup>519</sup> *Libya Al Mostakbal*, 26/08/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/54690>; and *Libya Al Mostakbal*, 26/08/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/54714>; (accessed 15/02/2021).

<sup>520</sup> *Libya Al Mostakbal*, 17/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/84385>, (accessed 16/02/2021).

<sup>521</sup> *Libya Al Mostakbal*, 08/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/83666>; and *Libya Al Mostakbal*, 12/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/84032>, (accessed 16/02/2021).

<sup>522</sup> *Libya Al Mostakbal*, 31/10/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/83035>, (accessed 16/02/2021).

<sup>523</sup> *Libya Al Mostakbal*, 28/03/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/6907>, (accessed 17/02/2021).

<sup>524</sup> See for instance the *CNN* interview with the Emir of Qatar at *Libya Al Mostakbal*, 28/03/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7428>. Also see *Libya Al Mostakbal*, 15/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7428>.

and it was amongst the first contributors to the ‘Temporary Funding Mechanism’ that the ‘International Contact Group’ on Libya established to fund the NTC, principally through unfreezing the assets of the former regime.<sup>525</sup> In August 2012, the Chairman of the NTC Mustafa Abduljalil still stated that Qatar spent over \$2bn of its own funds on the Libyan Uprising, and that the plan to capture Libya’s capital Tripoli from the former regime was put together in Doha.<sup>526</sup> Once NATO’s mission in Libya came to an end on 31 October 2011, Qatar thereafter took the lead of a spinoff international coalition to follow up on the situation in Libya with respect to weapon supplies, the disarmament of militias and the provision of military training to the new official armed forces of the state.<sup>527</sup> Indicatively, a Qatari and/or a Turkish unmanned aircraft (drone) was identified above Benghazi in August 2012, as part of Qatar’s security strategy for post-Qaddafi Libya.<sup>528</sup>

The NTC’s Chairman Abduljalil confirmed Qatar’s support of Libya’s Islamist groups, stressing that Qatar had a “vision to create an Arab regional establishment governed by Islam.”<sup>529</sup> But during the infamous month of August 2013, Libya’s Muslim Brotherhood issued a statement distancing itself from both, Egypt’s Muslim Brotherhood as well as Qatar.<sup>530</sup> Qatar itself also denied taking the side of Islamist groups in the Libyan conflict. Its official denial was issued after remarks that were attributed to its Ambassador in Libya criticised the June 2014 ruling of the Libyan Supreme Court, on the unconstitutionality of the election of Ahmad Mueytiq as a possible replacement of Al Thani by the Muslim Brotherhood-dominated GNC.<sup>531</sup>

---

mostakbal.org/news/clicked/8496, and *Libya Al Mostakbal*, 07/08/2011, available in <http://archive2.libya-al-mostakbal.org/news/clicked/11898>, (accessed 17/02/2021).

<sup>525</sup> *Libya Al Mostakbal*, 06/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/8179>, (accessed 17/02/2021); also see *Libya Al Mostakbal*, 26/08/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/12568>, (accessed 23/02/2021).

<sup>526</sup> *Libya Al Mostakbal*, 02/08/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/14792>, (accessed 17/02/2021).

<sup>527</sup> *Libya Al Mostakbal*, 26/10/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/14792>, (accessed 17/02/2021).

<sup>528</sup> *Libya Al Mostakbal*, 04/08/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/25216>, (accessed 17/02/2021).

<sup>529</sup> *Libya Al Mostakbal*, 02/08/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/14792>, (accessed 17/02/2021).

<sup>530</sup> *Libya Al Mostakbal*, 08/08/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/37460>, (accessed 17/02/2021).

<sup>531</sup> *Libya Al Mostakbal*, 15/06/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/51348>, (accessed 17/02/2021).



On 15 February 2015, Qatar even recalled its Ambassador to Egypt citing false accusations of “sponsoring terrorism” and Egyptian airstrikes in Libya.<sup>532</sup>

Nonetheless, the Director of Italy’s Immigration and Border Police Giovanni Pinto warned of the continued support of Qatar of “extremist Libyan groups fighting moderate tribes in Libya,” and of the severe implications of this on the situation of refugees in the Mediterranean.<sup>533</sup> And when Hafter launched ‘Operation Dignity’ against Islamists in Benghazi in May 2014, the Spokesman of Hafter’s forces extended a 48-hour notice to Qatari and Turkish nationals to leave the Eastern part of Libya.<sup>534</sup> Further, Al Thani himself accused Qatar in September 2014 of sending a shipment of weapons to Tripoli’s Airport while it was under the control of Islamist militias, and he threatened to sever Libya’s ties with Qatar.<sup>535</sup> The Sudanese President Omar Al Bashir similarly informed the Egyptian President El-Sisi that Qatar used Sudanese commercial aeroplanes to send weapons to Libya’s Islamist militias without the pre-knowledge nor the approval of the Sudanese authorities.<sup>536</sup>

In other words, while Egypt, Saudi Arabia, and the UAE were effectively declaring the historic region of Cyrenaica in East Libya a ‘*terra nullius*’ in their ‘race to the Libyan bottom’ against regional and international opponents, Qatar and its Turkish ally were arguably doing the same within the historic region of Tripolitania in the country’s North-western region. Indeed, as the remainder of this Chapter will seek to demonstrate on the backdrop of TWAIL and ‘postcolonialism,’ divisive strategies from the colonial era such as ‘*terra nullius*’ have evidently been employed by those various states of MENA after 2011. While their respective chances at acquiring a ‘Great Power’ status are certainly beyond the scope of this thesis, which does not concern itself with who wins and who loses amongst them (see Chapter IV on the Analytical Framework); Lustick (1997) can only serve as a reminder that the ‘Great Power’ club has long ago closed its doors for membership.

---

<sup>532</sup> *Libya Al Mostakbal*, 19/02/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/63810>, (accessed 17/02/2021).

<sup>533</sup> *Libya Al Mostakbal*, 30/04/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/48837>, (accessed 17/02/2021).

<sup>534</sup> *Libya Al Mostakbal*, 21/06/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/51675>, (accessed 17/02/2021).

<sup>535</sup> *Libya Al Mostakbal*, 14/09/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/55464>, (accessed 17/02/2021).

<sup>536</sup> *Libya Al Mostakbal*, 29/10/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/57126>, (accessed 17/02/2021).

Meanwhile, it is important to keep in mind how unlikely it is that all the organisations that the Saudi-led Coalition grouped under the category of ‘the Brotherhood’ in the aftermath of the 2011 Uprising identified with one another e.g., the Libyan vis-à-vis the Yemeni Muslim Brotherhood, and it is similarly questionable that they all considered themselves to be related to the ‘mother’ Muslim Brotherhood organisation of Egypt in the first place. In other words, Yemen’s Islah Party, Tunisia’s Al Nahda Party, Libya’s Justice and Construction Party, and the Turkish AKP Party do not share any common ideological grounds other than being moderate, Sunni political parties. However, given their potential diversion from the Wahhabi interpretation of Sunni Islam that is propagated by Saudi Arabia, grouping them under ‘the Brotherhood’ and subsequently labelling ‘the Brotherhood’ a ‘terrorist organisation’ was a measure of political defamation. In essence, this ‘witch-hunt’ aimed at preventing other Sunni Islamist organisations from potentially taking away the ideological ‘hegemony’ of Saudi Arabia within the world of Suni Islam.

Ultimately, the dilemma of the UN’s ‘custodian’ approach to the situation in Libya revolved around the way it invited other international and regional players to approach the situation in that country in a similar, ‘caretaker’ capacity. Under such a divisive regional atmosphere, hardly any considerations were given to the repercussions of external parties’ greed on Libya’s own population, or to the humanitarian situation on the ground. The resultant, far reaching immigration crisis could have itself been instigated as another measure of ruthless Power Politics by the GCC vis-à-vis the EU.

### **VI.III. Libya’s Tribal Politics and Cyrenaica’s Call for Federalism**

Since Italy conquered Cyrenaica in 1911, and then the rest of Ottoman Libya, the Allied Forces invaded Cyrenaica during WWII and in February 1943 they succeeded in forcing the last Italian and German soldiers out of Libya. Subsequently, Libya was placed under an Allied Military Administration, whereby Britain ruled Cyrenaica and Tripolitania, and France administered Fezzan. Cyrenaica then became the eighth Arab region to regain its independence and under the rule of King Idris Al Sanusi a constitution was written in 1951 to unite the three different regions of contemporary Libya under a ‘federal’ system of governance.<sup>537</sup> In 1963, King Idris annulled this

---

<sup>537</sup> On ‘federalism’ as a political governance system, see O’Leary (2001), pp.50-53.

federal arrangement and replaced it with a ‘unitary system’ to prevent any potential secession of Libya’s three pre-existing regions. This new system remained in place until the young Colonel Muammar Al Qaddafi led a coup d’état in 1969 to replace the country’s kingship system with a republic, or a Jamahiriya.

Meanwhile, just like in Yemen, the main point of entry of external players into Libya’s domestic sphere of politics has always been through ‘the tribe.’ Tellingly, Italy invited 200-300 tribal leaders from all parts of Libya to a meeting in Rome in the midst of the 2011 Libyan Uprising, in recognition of the central role that ‘the tribe’ has always played on Libya’s political scene.<sup>538</sup> As stated in subsection III of Chapter III on IR theory, the *millet* or *yilayet* governance system that the Ottomans themselves administered in Libya for nearly 500 years before the Italian invasion of 1911 was indeed a system of granting each ethnic entity or tribe jurisdiction over its own legal, social and cultural affairs, thereby guaranteeing local control over local affairs.<sup>539</sup> And once Middle Eastern states gained their independence, different arrangements were put into place to ensure the continued movement of tribesmen across the newly recognised boundaries of those states e.g., the way the Taef Agreement (1934) guaranteed the mobility of Yemeni and Saudi tribes across their countries’ borders.

Tribes located on both sides of Libya’s borders continued to be organised in this way, and in the years that followed the death of Qaddafi there were various incidents of Chadian Toubou tribes crossing into Libya and attacking with the help of Libya’s own Toubou tribesmen various state institutions in Kofra.<sup>540</sup> This is the Southern Libyan city where a tribal rebellion backed by Sudan was violently putdown by Qaddafi’s regime in 2009, but it was now Qaddafi’s Son Al Saedy who was believed to be instigating tribal and other types of violence in the South. Like Saleh in the Yemeni context, such former regime officials sought to avenge their loss of power in Libya, even if this meant turning Libya’s South into a ‘*terra nullius*’ of lawlessness and disorder. Meanwhile, due to the activities of an Arab tribal conglomerate that is

---

<sup>538</sup> *Libya Al Mostakbal*, 16/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/10051>, (accessed 20/02/2021).

<sup>539</sup> On the millet System, see Philip A. Schrodt and Deborah J. Gerner, “Middle Eastern Politics,” Ch.4 in *Understanding the Contemporary Middle East* 4<sup>th</sup> ed., Jillian Schwedler (ed.) (Lynne Rienner Publishers, 2013), pp.89-138, 99.

<sup>540</sup> See for instance *Libya Al Mostakbal*, 13/02/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18948>, (accessed 20/02/2021).

located across the Egyptian-Libyan borders, the Arab League agreed in May 2011 to mediate between ‘Qaddafi’s Brigades’ and the armed opposition.<sup>541</sup> Nineteen prominent Libyan tribal leaders also visited Cairo on 8 July 2011 to hold talks with representatives of the armed opposition.<sup>542</sup>

Unlike in Yemen, where a tribal ‘death warrant’ was issued against Saleh, the loyalty of ‘the tribe’ to Qaddafi’s regime was difficult for the armed opposition and the new authorities of the state to overcome. As late as September 2011 in the Libyan Uprising, Saiful Islam Al Qaddafi was reportedly travelling around Tripoli and meeting with clan and tribal leaders to launch a counteroffensive and take back Tripoli.<sup>543</sup> Then, following the death of Qaddafi on 20 October 2011, the tribe of Qaddafi, Al Qathathfa, demanded to be delivered the body of the former President and his deceased sons in order to give them a proper burial within the tribe’s strongholds in the city of Sirte.<sup>544</sup> This tribe, which makes up 1.5% of the Libyan population, further complained that its members were being marginalised and that ‘ethnic cleansing’ was being committed against them in Sirte and Sabha in 2013.<sup>545</sup>

A feud between the tribes of Misrata and Tawergha was similarly instigated by Tawergha’s support of the former regime in its crackdown on Misrata. Importantly, this feud was one of the main obstacles along the path of the transitional process, especially in relation to the problematic case of Tawergha’s more than 42,000 IDPs.<sup>546</sup> In February 2012, Tawergha extended an apology to the people of Misrata, but this was still considered ‘too little too late’ giving the systematic acts of rape that Tawergha’s militia committed against Misratan women during the Uprising.<sup>547</sup>

---

<sup>541</sup> *Libya Al Mostakbal*, 25/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/9011>, (accessed 20/02/2021).

<sup>542</sup> *Libya Al Mostakbal*, 08/07/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/10854>, (accessed 20/02/2021).

<sup>543</sup> *Libya Al Mostakbal*, 04/09/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/12858>, (accessed 20/02/2021).

<sup>544</sup> *Libya Al Mostakbal*, 22/10/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/14612>, (accessed 22/02/2021).

<sup>545</sup> *Libya Al Mostakbal*, 26/03/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/32457>, and *Libya Al Mostakbal*, 27/03/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/32501>, (accessed 27/02/2021).

<sup>546</sup> See for instance *Libya Al Mostakbal*, 07/11/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/15129>, (accessed 26/02/2021). Also see *Libya Al Mostakbal*, 07/12/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/29040>, and *Libya Al Mostakbal*, 15/05/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/34424>, (accessed 27/02/2021).

<sup>547</sup> *Libya Al Mostakbal*, 25/02/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/19476>, (accessed 20/02/2021).

Tribal affiliations were also one of the main reasons behind the emergence of more than 1,700 armed militias in Libya after the 2011 Uprising. For example, an extensive military campaign was authorised by the GNC in Bani Waleed in October 2012, one year after Libya was declared fully liberated from the former regime, to purge the city of Qaddafi-allied tribal militias and other former regime loyalists. By January 2012, it was estimated that 125,000-200,000 militants were active on the Libyan scene and were believed to be representing various cities, towns, clans, and tribal conglomerates. Around 16,000 of them were prisoners held on criminal charges that the former regime released at the beginning of the Uprising by way of revenge.<sup>548</sup> The majority of those militants were believed to be loyal first to their leader and/or their tribe before being loyal to the state.<sup>549</sup>

Importantly, as the tribal militias of the armed opposition captured the various cities of Libya from the former regime, they brought their own tribal affiliations into the cities where they became stationed, and they remained loyal to their tribes.<sup>550</sup> Therefore, in October 2012, a Libyan army official warned that then-government efforts to offer those militants training at 'regional camps' in order to facilitate their recruitment into the official Security and Armed Forces could backfire and instead strengthen tribal and/or regional affiliations over national ones.<sup>551</sup> Zeidan's failure to effectively merge the former rebels under a functional new security apparatus for those and other reasons was one of the main reasons behind his dismissal by the GNC, as well as that of the Chief of Staff of the Armed Forces Mustafa Al Manqoush.<sup>552</sup>

The co-optation of Libya's tribes and their affiliated militias ultimately became the main strategy of domestic, regional, and international players bent on securing a role for themselves in the management of the geopolitical landscape of post-Qaddafi

---

<sup>548</sup> *Libya Al Mostakbal*, 25/01/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18088>, (accessed 20/02/2021).

<sup>549</sup> *Libya Al Mostakbal*, 09/01/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/17270>; *Libya Al Mostakbal*, 31/01/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18337>; and *Libya Al Mostakbal*, 25/01/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18114>, (accessed 20/02/2021).

<sup>550</sup> *Libya Al Mostakbal*, 08/02/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18718>, (accessed 20/02/2021).

<sup>551</sup> *Libya Al Mostakbal*, 11/10/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/26857>, (accessed 20/02/2021).

<sup>552</sup> On Al Manqoush, see for instance *Libya Al Mostakbal*, 23/04/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/33507>, (accessed 20/02/2021).

Libya. From the ‘critically’ compatible perspective of Gramsci, the ‘counterrevolution’ of the anti-Muslim Brotherhood alliance required precisely this type of ‘wars of position’ to take place.<sup>553</sup> In addition, Libya’s division in 2015 into an Islamist camp in the Northwest and a more secular camp in the East reflected this tribal reorganisation of the state. If each militia identified with its tribe, each tribe then joined either side of the emerging, two main regional blocks that were split along such religious or heavily ideological lines.

Notably, while inter-Libyan talks were underway in 2015, Egypt hosted a tribal summit attended by over 500 sheikhs and clan leaders, mostly from East Libya. Delegates from Libya’s tribes in the Southern and Western parts of the country reportedly withdrew from that summit on 26 May 2015.<sup>554</sup> A member of the summit’s Preparatory Committee also accused Qatar and Turkey of destabilizing Libya, and the Muslim Brotherhood of running the operations of various “Islamist extremist militias” in the country.<sup>555</sup>

Under such a divided regional atmosphere, where Turkey even established and fortified a military base in Qatar, the various calls to reinstate the 1951 Libyan Constitution and the different declarations of a ‘federal region’ in East Libya were in essence declarations by tribal leaders that were, at first, thought to be implementing the agenda of vindictive former regime loyalists, but soon enough became also seen as the main driving force behind foreign meddling in inter-Libyan affairs. For example, as a Libyan army official warned in October 2012, the newly trained Security Forces of Libya’s Oil Facilities remained loyal to their region, the Eastern part of the country, and accordingly they led the movement of late 2013 that demanded ‘self-administration’ in Cyrenaica and that region’s management of its own oil resources. In turn, this was exploited, or possibly even instigated, by the Saudi-led ideological alliance (also see Chapter V on Yemen, sub-sections I-II).

A tribal conference calling for the reinstatement of a ‘federal union’ in Libya was first convened in Benghazi in July 2011, and this conference was widely attended by representatives from the Toubou and the Touareq tribes of Fezzan/South Libya as

---

<sup>553</sup> For a discussion on the relevant applications of Gramsci, see Lustick (1995).

<sup>554</sup> *Libya Al Mostakbal*, 26/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/70910>, (accessed 20/02/2021).

<sup>555</sup> *Libya Al Mostakbal*, 30/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/71252>, (accessed 20/02/2021).

well.<sup>556</sup> Another tribal conference that was held in Cyrenaica in October 2011 further raised concerns over the dangers of a possible partitioning of Libya, despite carrying the slogan of ‘Libya’s unity.’<sup>557</sup> An even larger gathering of 3,000 politicians and tribal leaders met in Benghazi on 3-6 March 2012 and declared Cyrenaica a ‘federal region’ on the basis of the country’s 1951 Constitution.<sup>558</sup> In addition, this last tribal gathering elected Shaikh Ahmed Al Zubair Al Sharif Al Sanusi the Chairman of a region-specific ‘Supreme Council.’<sup>559</sup> Until then, former regime loyalists and incomprehensible, suspicious agenda were domestically blamed for all attempts to divide the country.<sup>560</sup> However, as the ‘counterrevolution’ in neighbouring Egypt was launched in August 2013 in close parallel to the fall of Libya’s oil facilities under the control of Libya’s ‘federalists,’ it subsequently became clear that the situation in Libya was developing in accordance with the agenda of external players such as those of GCC states.

Ultimately, an opportunity through the classic window of ‘the tribe’ presented itself to those and other influential regional and international players, and this ‘window of opportunity’ was most certainly taken advantage of. Indeed, based on TWAIL and ‘postcolonialism,’ it can be argued that this was carried out through the execution by those external parties of divisive policies from the colonial era such as ‘divide and rule’ and ‘*terra nullius*.’

#### VI.IV. East Libya’s War on Terrorism

Since the fiasco of the advocates of ‘federalism’ and their attempt to take over the country’s oil facilities was winding down in March – April 2014, primarily due to the failure of the North Korea-registered oil tanker to sell East Libya’s oil, what can be referred to as ‘Plan B’ to divide Libya was simultaneously being executed. The easily dismissed and widely belittled televised call by the Libyan renegade General Khalifa Hafter in February 2014 to suspend the GNC, Zeidan’s government, and the

---

<sup>556</sup> *Libya Al Mostakbal*, 08/07/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/11350>, (accessed 20/02/2021).

<sup>557</sup> *Libya Al Mostakbal*, 04/10/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/13792>, (accessed 20/02/2021).

<sup>558</sup> *Libya Al Mostakbal*, 03/03/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/19670>, (accessed 20/02/2021).

<sup>559</sup> *Libya Al Mostakbal*, 06/03/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/19817>, (accessed 20/02/2021).

<sup>560</sup> *Libya Al Mostakbal*, 06/03/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/19814>, (accessed 20/02/2021).

uprising's 'Constitutional Declaration'<sup>561</sup> was crucially what ushered in the country's present territorial division. Since neither domestic nor foreign audiences seemed to have taken the retired General's message seriously, it was apparently time to launch the western-appeasing strategy of fighting the 'terrorists' and other demonised 'monsters' in the Libyan context. By that time, the global 'war on terror' certainly continued wreaking havoc in Yemen and elsewhere. Therefore, operation 'Al Karama' or 'Dignity' was launched on 16 May 2014 against Ansar Al Sharia and affiliated NSAGs in Benghazi, while other, indiscriminately demonised Islamist militias launched with the help of Misrata the counteroperation of 'Fajr Libya' or 'Libya's Dawn' within the historic regions of Tripolitania and Northern Fezzan.

As one of the different militias and armed groups that emerged in the aftermath of the 2011 Uprising, Ansar Al Sharia convened its first military parade on 8 June 2012 and marched from Misrata to Ajdabiya to Kirsra and then to Derna and Benghazi, calling for the implementation of Sharia Law.<sup>562</sup> However, the group's militants were confronted with a large number of protesters and civil society organisations that dispersed their gatherings at Benghazi's Tahrir Square.<sup>563</sup> Earlier in April 2012, the Chairman of the NTC Abduljalil said he was well connected to such Islamist extremist groups in Libya, but he clarified that the expertise that the militants of those groups gained from fighting in Afghanistan and elsewhere placed them at the forefront of all battles against Qaddafi's regime. Abduljalil insisted that the objective of those militants in Libya was limited to taking down Qaddafi's regime.<sup>564</sup> However, in the lead up to the GNC's elections in July 2012 those groups evidently became eager to play a more active role in the management of the country's political affairs, as they rejected the principle of democratic elections and continued to see them as the avenue of heretics and disbelievers.<sup>565</sup> Here, it is still worth bearing in mind that unlike Yemen's Ansar Al Sharia, various domestic and foreign officials repeatedly

---

<sup>561</sup> See for example the reaction of Zeidan at *Libya Al Mostakbal*, 14/02/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/45009>; and of the GNC at *Libya Al Mostakbal*, 14/02/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/45015> (accessed 15/02/2021).

<sup>562</sup> *Libya Al Mostakbal*, 08/06/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/23432>, (accessed 21/02/2021).

<sup>563</sup> *Libya Al Mostakbal*, 08/06/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/23435>, (accessed 21/02/2021).

<sup>564</sup> *Libya Al Mostakbal*, 14/04/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/21378>, (accessed 21/02/2021).

<sup>565</sup> See for instance *Libya Al Mostakbal*, 28/04/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/48795>, (accessed 21/02/2021).



stated that there were not any connections between Libya's Ansar Al Sharia and Al Qaeda.<sup>566</sup>

At the same time, following the attack on the US Consulate in Benghazi on 11 September 2012, when the US Ambassador to Libya Chris Stevens and three other US citizens were killed, Ansar Al Sharia came to be viewed as the main suspect. This attack notably took place during angry protests that were organised in rejection of insulting depictions of the Prophet Mohammad (peace be upon him) in US media. However, in early 2014 the US State Department dismissed the possibility of either Al Qaeda or Ansar Al Sharia's involvement in this attack, while still keeping Ansar Al Sharia of Libya on its list of 'terrorist organisations.'<sup>567</sup> Even those simultaneous protests were followed by public anger in Libya towards extremism and extremist groups that were believed to be hijacking the Libyan revolution. On 22 September 2012, thousands of Libyans marched in Benghazi and Derna in a public denunciation of extremism. They additionally called for the disarming and dismantling of all extrajudicial armed groups, demanding the speedy activation of the official Security and Armed Forces of the state. And following the death of 11 protesters and the injury of at least 70 others during those anti-extremism protests, Ansar Al Sharia declared the evacuation of its bases in Benghazi allegedly to "safeguard public security."<sup>568</sup> However, by the end of February 2013, the militants of this NSAG started to return to their military camps and training grounds in Benghazi.<sup>569</sup>

Ansar Al Sharia's influence and base of support was steadily on the rise from there on, especially through its provision of social services in the absence of official state institutions.<sup>570</sup> Furthermore, the subsequent closure of Libya's oil facilities in the East gave this group the space to grow in influence and membership. In other words, the threat of Ansar Al Sharia was not only a result of the inability of the state to

---

<sup>566</sup> *Libya Al Mostakbal*, 19/09/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/26263>, (accessed 21/02/2021).

<sup>567</sup> *Libya Al Mostakbal*, 01/01/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/42673> & *Libya Al Mostakbal*, 10/01/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/43117>, (accessed 21/02/2021).

<sup>568</sup> *Libya Al Mostakbal*, 22/09/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/26341>, <http://archive2.libya-al-mostakbal.org/news/clicked/26361> & <http://archive2.libya-al-mostakbal.org/news/clicked/26366> (accessed 21/02/2021).

<sup>569</sup> *Libya Al Mostakbal*, 28/02/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/31315>, (accessed 21/02/2021).

<sup>570</sup> *Libya Al Mostakbal*, 14/08/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/37628>, (accessed 21/02/2021).

enforce its authority on the ground, but it was also a direct outcome of a call for ‘federalism’ that invited such other NSAGs to also challenge the authority of the state. By this point, the attempts of external players such as Saudi Arabia and the UAE to destabilise Libya had evidently succeeded in submerging the country into a fully-fledged civil war. In late 2013, various clashes were notably recorded between Ansar Al Sharia on the one hand and the rebels of Benghazi/the Special Forces of the Joint Ministry of Defence & Ministry of the Interior’s Security Committee on the other. Nine people were killed, including three soldiers, and 49 others were injured in one of those clashes on 25 November 2013 alone.<sup>571</sup>

In such a manner, Libya’s domestic atmosphere was ripened for a major military operation such as that of Hafter’s ‘Operation Dignity,’ as a precursor to claiming Cyrenaica a ‘*terra nullius*’ vis-à-vis Qatar and Turkey and their locally allied Libyan parties. The US itself only put on the show of sending a squadron of its Special Forces into Libya after the attack on its Consulate in Benghazi, which kidnapped and detained the fugitive Al Qaeda leader Nazeih Al Raqaey, a.k.a Abu Anas El Leibi.<sup>572</sup> On 20 May 2014, US officials even publicly denied making any contact with Hafter, stressing that the US “neither supports nor overlooks the recent developments in Libya.”<sup>573</sup> But this initial US reaction leaves one wondering if it was merely a coincidence that Hafter spent more than two decades before the Libyan Uprising in exile in Langley, Virginia, USA, where he also became a US citizen. Indeed it is worth recalling Obama’s remarks from October 2014, when he stated that the US backing of the Houthis against Al Qaeda should be used as a model for international operations against other terrorist organisations such as Daesh/ISIS.<sup>574</sup> In other words, not only has Hafter been executing the agenda of MENA’s ‘counterrevolution’ against Islamist groups, but he has arguably also been fighting the war of the US against domestic Libyan forces that were believed to be responsible for killing the US Ambassador in Libya and three other US citizens.

---

<sup>571</sup> *Libya Al Mostakbal*, 25/11/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/41476> & <http://archive2.libya-al-mostakbal.org/news/clicked/41492>, (accessed 21/02/2021).

<sup>572</sup> *Libya Al Mostakbal*, 06/10/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/39743>, (accessed 21/02/2021).

<sup>573</sup> *Libya Al Mostakbal*, 20/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49944>, (accessed 06/03/2021).

<sup>574</sup> *Libya Al Mostakbal*, 18/10/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/56760>, (accessed 12/02/2021).

Indeed, the history of Hafter's ties to the US and the CIA dates all the way back to the Cold War and the 'proxy war' of 1987 between the US and the Soviet Union over the disputed Aouzou region between Chad and Libya. The 2019 documentary of the Qatari news outlet *Aljazeera*, "The General of Coups," even narrates the story of how Israel and the US unsuccessfully trained a squadron of soldiers led by Hafter in Chad and Cameroon in 1989-1991 known as the 'Libyan Contras,' with funds from Saudi Arabia channelled via Cameroon in order to takedown the socialist regime of Qaddafi.<sup>575</sup> More recently, *Aljazeera* has also reported that Erik Prince, a close associate of US President Donald Trump, was found guilty by a UN-led investigation of violating Libya's arms embargo by "deploying a force of foreign mercenaries and weapons" to Hafter through an \$80mn operation executed by the Private Military Contractor 'Blackwater.'<sup>576</sup> As we saw in the preceding Chapter on Yemen, this particular PMC also maintains strong ties with the UAE, one of Hafter's main allies. At the same time, the main dilemma with Hafter's ties to the US and his military campaign in Benghazi concerns the way that Hafter declared a war on all Islamist groups in Libya, and how he did not distinguish between an extremist group such as Ansar Al Sharia and more moderate Sunni organisations such as the Muslim Brotherhood. The latter is notably the organisation that the US and its European allies also sought to empower on the backdrop of GCC antipathies, but Hafter labelled the Muslim Brotherhood and all other Islamist groups in Libya 'terrorist' organisations. The Spokesman of Hafter's forces Mohammed Hijazi even called the leader of the Muslim Brotherhood in Libya Bashir El-Kepty himself a "terrorist," and he considered his organisation a "banned organisation."<sup>577</sup> While rejecting such a label, El-Kepty responded by further considering Hafter's military campaign a replica of the eventful month of August 2013 in Egypt.<sup>578</sup>

However, as in the case of the eventual US support of the Saudi-led war against the Houthis despite its initial empowerment of them, it is possible to argue that, at the

---

<sup>575</sup> For more information, see *Aljazeera's* documentary, "The General of Coups," 18/11/2019, available in Arabic at <https://www.youtube.com/watch?v=-9ebmzsuIV8>, (accessed 21/02/2021).

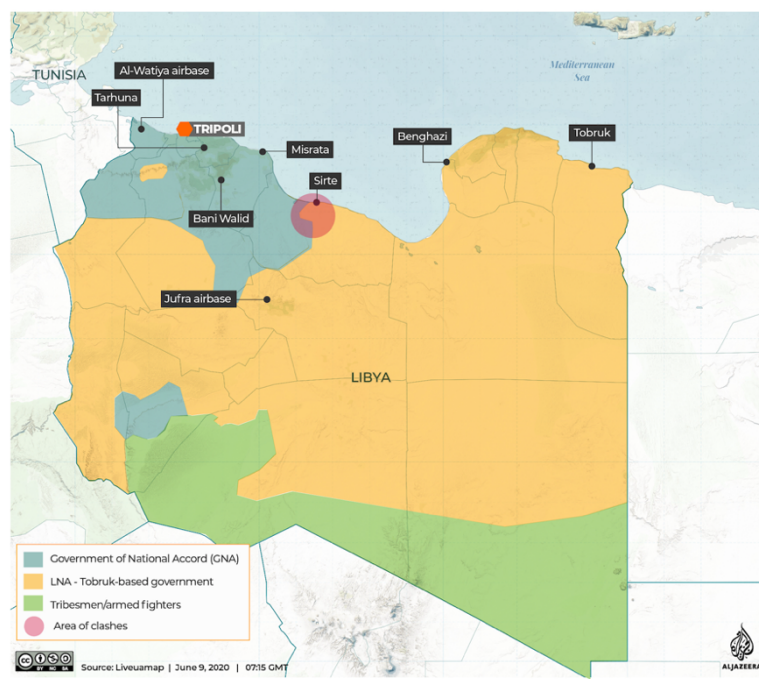
<sup>576</sup> *Aljazeera*, 20/02/2021, available in English via <https://www.aljazeera.com/news/2021/2/20/trump-ally-erik-prince-violated-libya-arms-embargo-un-report>, (accessed 21/02/2021).

<sup>577</sup> *Libya Al Mostakbal*, 21/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49970>, (accessed 21/02/2021).

<sup>578</sup> *Libya Al Mostakbal*, 20/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49910>, (accessed 21/02/2021).

minimum, the interests of the US and those of Egypt and its GCC allies were due to converge in Libya. At least, that certainly was the message of a key meeting between Obama and El-Sisi on the side-lines of the Annual Meeting of the UNGA in New York in September 2014.<sup>579</sup> This eventual convergence of interest was further aided by the subsequent rise of the Islamophobic, warmongering Donald Trump to the presidency of the US in 2016.

**Map 8:** Libya's Current Territorial Division Lines (as of June 2020)



Haftar himself repeatedly expressed his wishes to meet with El-Sisi from the outset of ‘Operation Dignity,’<sup>580</sup> and he accused Qatar and Turkey of funding Islamist militias in Libya.<sup>581</sup> However, as ‘Operation Dignity’ was launched outside the scope of Libya’s official authorities, initially making it itself a campaign of a NSAG led by a warlord under the slogan of ‘Libya’s National Army,’ official communication channels between Egypt and Haftar were not publicly established until after 2015. El-Sisi even threatened in June 2020 to intervene military in Libya if the forces of the Turkish-backed and UN-installed Government of National Accords in West

<sup>579</sup> *Libya Al Mostakbal*, 26/09/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/55946>, (accessed 21/02/2021).

<sup>580</sup> *Libya Al Mostakbal*, 21/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/50016>, (accessed 21/02/2021).

<sup>581</sup> *Libya Al Mostakbal*, 24/04/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/68451>, (accessed 21/02/2021).

Libya continued to march eastwards towards Sirte in their counteroffensive against a failed attempt by Hafter to capture Tripoli.<sup>582</sup> That failed further attempt by Hafter, which he launched in 2019, was additionally backed by France and the UAE.

From the ‘critical’ perspective of TWAIL and ‘postcolonialism’ that is followed by this thesis, it is the demands of Libya’s own people for change that should have instead been respected by all such external parties. Not only were the root causes of the post-2011 civil war in Libya as thus far identified using the guiding lens of ‘*terra nullius*’ never truly been addressed, but the international community also became mainly concerned with the secondary impact of the situation such as the refugee crisis in the Mediterranean and terrorist attacks in France and elsewhere in Europe. This level of counterproductivity can thus be overcome by the present call for abolishing the lingering colonial legacies of ‘divide and rule’ and of ‘*terra nullius*,’ in a population-centric manner that instead accords the fate of Libyan people trapped in the territorial dominions of NSAGs a higher degree of importance.

Meanwhile, despite their initial condemnation of Hafter’s military campaign in Benghazi, the official political and security establishment in East Libya were effectively co-opted as they subsequently either publicly backtracked or abruptly reinforced Hafter’s forces in Benghazi with troops of their own. In January 2015 the House of Representatives even re-enlisted 129 former Libyan Army Officers, including Hafter, and by March 2015 Hafter became the Commander of the Official Armed Forces of Al Thani’s government.<sup>583</sup> This was the internationally recognised government of Libya until late 2015, when the UN imposed its own Government of National Accord in Tripoli, effectively turning East Libya into a ‘rebellious region.’ Meanwhile, Hafter’s ‘baptism’ into those temporarily recognised authorities of the Libyan state further pushed East Libya into the arms of Egypt.

As a result, the historical region of Cyrenaica was sliced out of the territory of Libya and claimed by Egypt and its allies as ‘*terra nullius*’ vis-à-vis their domestic and international opponents in a colonial manner, irrespective of the fate of the region’s

---

<sup>582</sup> See for instance, Heba Saleh, “Egypt Threatens Military Action in Libya if Turkish-backed Forces Seize Sirte,” *The Financial Times*, 21/06/2020, available at <https://www.ft.com/content/e6aa87b0-5e0b-477f-9b89-693f31c63919>, (accessed 22 February 2021).

<sup>583</sup> *Libya Al Mostakbal*, 05/01/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/61256>, and *Libya Al Mostakbal*, 19/03/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/65615>, (accessed 22/02/2021).

population and the long-lasting instabilities that were brought about. And from a ‘postcolonial’ perspective such as that of Fanon (1963), all such processes of colonialism and post-colonialism have always been aided by domestic forces driven by a personal greed for power and acting as a vehicle of external interests.<sup>584</sup>

Importantly, Hafter’s ‘Operation Dignity’ can be underscored as a key outcome of co-optation at the *meso*-level of ‘the tribe’ in inter-Libyan affairs, since it was only after Hafter gained the endorsement of powerful tribes and militias in Cyrenaica that he became officially recognised by the East Libyan authorities. For instance, according to the UAE’s *Sky News* network, by 3 June 2014 most of Cyrenaica’s tribes were supportive of Hafter’s campaign, and so were the Special Forces and Tobruk’s and Banina’s Airbases in East Libya.<sup>585</sup> Other reports indicate that the influential tribe of Al Baraesa in East Libya supported Hafter from the outset of his campaign,<sup>586</sup> which similarly gained the support of key tribes within the historic regions of Tripolitania and Fezzan. Those include the tribes of Zintan and their influential militias of Al Qaaqaa and Al Sawaeq, as well as some tribal militias from the Toubou and the Touareq people who gave Hafter access to the Libyan-Algerian borders via Fezzan.<sup>587</sup>

This level of support that Hafter received from Libya’s influential tribes further increased after what the Saudi newspaper *Erem* reported in May 2014 as a significant meeting of at least 2,000 tribal leaders at the invitation of Worshofana, the largest Libyan tribe. It was then that the following four conditions were additionally outlined as the basis of ‘the tribes’ continued support of Hafter: 1) rewarding Libya’s tribes for their loyalty by giving them their share of oil revenues through a decentralised system of governance; 2) moving beyond previously ineffective calls for ‘federalism’ and achieving national reconciliation through the reinstatement of the ‘unitary system of governance’ that existed in Libya between 1963-1969; 3) facilitating the return of more than two million Libyan refugees from abroad, as well as the return of the country’s IDPs to their homes; and 4) determining the whereabouts of more than

---

<sup>584</sup> See Fanon (1963).

<sup>585</sup> *Libya Al Mostakbal*, 03/06/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/50755>, (accessed 22/02/2021).

<sup>586</sup> *Libya Al Mostakbal*, 20/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49947>, (accessed 06/03/2021).

<sup>587</sup> *Libya Al Mostakbal*, 03/06/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/50755>, (accessed 22/02/2021).

7,000 prisoners believed to be detained in at least 250 prison facilities in different parts of the country.<sup>588</sup>

While those conditions further laid out the groundwork for Hafter's ultimate bid to take over the entire country in 2019, Turkey and Qatar took a similar advantage of the seemingly open-ended suspension of the 'sovereignty' of the Libyan state.<sup>589</sup> This opposing regional camp gradually, and implicitly declared the region that became in late 2015 under the control of the UN-installed Government of National Accords in Tripolitania a '*terra nullius*' vis-à-vis Hafter and his own allies. Not only did Turkey send armoured vehicles and electronic weapon systems to the GNA in late 2019-early 2020, but it also deployed its own troops to defend Tripoli against incoming Hafter forces at that point in time.<sup>590</sup>

#### **VI.V. Colonial Legacies and Libya's other Pre-existing Regions: Fezzan and Tripolitania**

From the historical perspective of TWAIL and 'postcolonialism,' it can be argued that the international intervention in Libya subjected that country to a system of custodianship that is reminiscent of the League of Nations' 'mandate system,' which was in 1947 replaced with the UN's own 'trusteeship system.' Under such systems of foreign role, the former colonial powers justified their presence on foreign land using the oxymoronic mantra of helping the territories that were previously controlled by defeated adversaries like Nazi Germany and Ottoman Turkey to regain their independence. However, those systems of governance were not entirely different in their inception from the 1835 proclamation of Australia by the British Governor Bourke a '*terra nullius*.' This other term was indeed similarly used as an instrument of 'power politics' vis-à-vis other colonial powers, as Australia was only proclaimed '*terra nullius*' to the extent that Britain was the most influential foreign party in Australia at that time, and to the exclusion of all other colonial parties. In other words, the 'mandate' and/or 'trusteeship' systems were mere reformulations of such colonial practices in harmony with the emerging notion of a global governance

---

<sup>588</sup> *Libya Al Mostakbal*, 25/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/50260>, (accessed 28/02/2021).

<sup>589</sup> Also see Dominik Zaum, *The Sovereignty Paradox* (Oxford University Press, 2007).

<sup>590</sup> See for instance Borzou Daragahi, "Turkey Approves Deployment of Troops to Libya in High-Stakes Battle Across Mediterranean," *The Independent*, 02/01/2020, available via <https://www.independent.co.uk/news/world/middle-east/turkey-libya-troops-parliament-vote-erdogan-a9267716.html>, (accessed 05/03/2021).

system that many academics, including this author, still view as a neo-colonial project. However, unlike those various systems of colonial rule, the authorisation for the use of “all necessary measures” against Qaddafi’s regime by UNSC Res.1973 was more chaotic in its outcome. R2P crucially suspended Libya’s ‘sovereignty’ without stating which foreign entities could or could not intervene in Libya.

In other words, if Libya was effectively turned into a ‘*terra nullius*’ once its ‘sovereignty’ was suspended, it was not clear vis-à-vis whom, exactly, was such an implicit categorisation of the country established. Based on a colonial agreement known as Sykes-Picot, which was signed between France and Britain in 1916, the League of Nations granted France a ‘mandate’ over Greater Syria and Britain was similarly authorised to rule over Palestine and Transjordan. Those ‘mandate powers’ in effect declared these territories ‘*terra nullius*’ vis-à-vis the crumbling Ottoman Empire. Put differently, the Ottomans’ loss of those territories in WWI turned them into a ‘*terra nullius*,’ which was used as a justification for their continued subjection to foreign rule by France and the UK. In Libya, Cyrenaica and Tripolitania were placed under British then UN rule from 1943 until 1951, while Fezzan was simultaneously administered by France. Those other arrangements in the Libyan context were similarly the outcome of the defeat of Italy and Germany in WWII. The fall of Qaddafi’s regime therefore equalled in its political outcome the fall of the Ottomans in WWI or Germany and Italy in WWII, but the contrastingly unrestricted foreign intervention in Libya in 2011 opened a ‘pandora box’ of extraterritorial claims to Libya’s territory by regional and international players. It was ultimately vis-à-vis Qaddafi’s regime that Libya was practically declared ‘*terra nullius*’ by UNSC Res.1973, thereby giving all parties the ‘right’ to establish presence in that country except the loyalists and allies of the annulled regime.

Accordingly, intervening states exploited Libya’s historical subdivisions to a remarkable degree by upholding the classic colonial legacy of ‘divide and rule’ and denying any domestic entity the right to “successfully claim monopoly over the legitimate use of violence.”<sup>591</sup> The dangers posed by a potentially democratic, prosperous Libya were for the intervening states clear, giving the rogue nature of Libya’s former regime. This was coupled for GCC states with a desire to prevent the

---

<sup>591</sup> This is the often-quoted definition of the state that has been established by the prominent German sociologist Max Weber in 1918.



wave of the Arab revolts from reaching their own shores and/or to empower their ideological nemesis organisation of the Muslim Brotherhood. What is ironic, is that the intervention in Libya was executed on the pretence of protecting the Libyan people from human rights violations, accentuating instead metanarratives of Great Power politics that never consider the outcome of their extraterritorial greed at the *meso* level of distant populations.

As the power vacuum that resulted from the destabilizing intervention in Libya made Cyrenaica ‘claimed’ by Egypt, Saudi Arabia, and the UAE through the forces of Hafter on the ground; the Islamists of Tripolitania were slowly establishing their own ‘self-autonomy’ with the support of Qatar and Turkey. Within this context, the UN itself became a third party to a situation of civil war since the government of Fayeza Al Sarraj in Tripoli, which the UN imposed on the Libyan people in November-December 2015, became the target of various military campaigns by Hafter and the main obstacle to his complete possession of the state. If US foreign policy typically changes with a change of who sits in the White House, the UN’s own organisational strategies tend to be more path-dependent and harder to annule. Meanwhile, the outer boundaries of the remaining historical region of Fezzan in the Southwest were being re-adjusted in a manner that is reflective of the new tribal reorganisation of the state along predominantly ethnic and ideological lines.

During the two years immediately following the 2011 Uprising, Libya’s domestic setting was plagued with various incidents of fighting between the Toubou, the Touareq, and Al Zewya tribes in Sabha and Kofra in the Southern parts of the country. As stated earlier, this is the region that the vindictive son of the former President, Al Saedy Al Qaddafi, implicitly declared a ‘*terra nullius*’ vis-à-vis the Libyan people themselves. Those instabilities in the South most notably resulted in the cancellation of Al Saedy’s refugee status in neighbouring Niger, and his ultimate extradition in early 2014 to the new authorities of the Libyan state.<sup>592</sup>

Around 100 people were killed in just ten days of fighting between the Toubou and Al Zewya in Kofra in February 2012 alone,<sup>593</sup> before fighting was once again

---

<sup>592</sup> See for instance *Libya Al Mostakbal*, 07/03/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/46141>, (accessed 06/03/2021).

<sup>593</sup> *Libya Al Mostakbal*, 23/02/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/19384>, (accessed 26/02/2021).

renewed in that city between the forces of Libya's Shield in the Libyan Army, the Toubou, and Al Zewya tribes resulting in at least 47 deaths in just three days of fighting.<sup>594</sup> Being one of the three main minority groups of Libya (the Toubou, the Touareq, and the Amazigh), the Toubou repeatedly warned that "ethnic cleansing" was being systematically carried out against them by various Arab tribes in Kofra and Sabha in the South.<sup>595</sup> 163 deaths and more than 400 injuries were reported in just six days of fighting.<sup>596</sup> Resultantly, a large squadron of Misrata's rebels was sent to Sabha at the orders of the Ministry of Defence of El-Keib's government by the end of March 2012, and a ceasefire agreement was subsequently reached though this truce only lasted temporarily.

Various incidents of tribal fighting then erupted in May 2012 with the Touareq of Ghadamis near the Libyan-Algerian borders, which led to the mass exodus of members of this other tribe either towards nearby Daraj or towards the Algerian borders and into Algeria.<sup>597</sup> Similar clashes in Daraj itself occurred between the two tribes of Germanah and Zinatah, which resulted in the exodus of at least 200 Libyans towards the Algerian province of Eyleizy across the borders with Libya.<sup>598</sup>

Moving further Northwest of Fezzan and towards Tripolitania, other incidents of inter-tribal fighting were recorded amongst and in-between the tribes of Qontrar, Al Mashashia, Worshofana, Mozda, and Al Zawiya. For instance, 184 members of Al Mashashia tribe in Al Shaqaiqa area were killed by the rebels of Zintan between 14-16 June 2012, in what was described by the Arab Human Rights Organisations as a "heinous crime" that involved the use of short-range missiles and nerve gas.<sup>599</sup> Armed clashes additionally took place towards the end of 2012 amongst Libya's Amazigh (Berber) in Kabu and Tiji near the borders with Tunisia. Around 3,000

---

<sup>594</sup> *Libya Al Mostakbal*, 23/04/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/21772>, and *Libya Al Mostakbal*, 01/07/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/24136>, (accessed 27/02/2021).

<sup>595</sup> *Libya Al Mostakbal*, 29/03/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/20677>, (accessed 26/02/2021).

<sup>596</sup> *Libya Al Mostakbal*, 30/03/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/20728>, and *Libya Al Mostakbal*, 01/04/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/20821>, (accessed 26/02/2021).

<sup>597</sup> *Libya Al Mostakbal*, 21/05/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/22798>, (accessed 26/02/2021).

<sup>598</sup> *Libya Al Mostakbal*, 13/09/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/38749>, and *Libya Al Mostakbal*, 14/09/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/38788>, (accessed 28/02/2021).

<sup>599</sup> *Libya Al Mostakbal*, 20/06/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/23862>, (accessed 26/02/2021).

Libyans became IDPs because of fighting in Mozda and other parts of Mount Nafousa area in March 2013 alone.<sup>600</sup>

Those incidents of inter-tribal fighting have arguably reconfigured the historical division lines of the country, thereby making the South stand out by itself as a lawless region expanding from Kofra in the Southeast to Sabha in the Southwest (see map 8 on the following page). In January 2013, a new ‘federal conglomerate’ in Fezzan gave the Libyan government merely 72-hours’ notice to achieve peace and security and to dismantle extrajudicial NSAGs, or else, threatened the group, Fezzan would declare itself an autonomous ‘federal region.’<sup>601</sup> Subsequently, in September 2013 a group of tribal leaders in Libya’s Southwestern corner declared Fezzan a ‘federal region’ and formed a Supreme Council for the management of the region’s tribal affairs.<sup>602</sup> However, the magnitude of inter-tribal fighting that took place in this region throughout the transitional period of Libya ensured that such and all other calls for ‘self-autonomy’ would not see the light. In addition, like with the case of Cyrenaica’s tribes, not all the tribes of Fezzan agreed on the ‘federal’ option, and those that did were likely co-opted by vindictive internal and/or external players; in this case, Qaddafi’s son Al Saedy. For example, the Spokesman of Sabha’s dignitaries and clan leaders Hassan Al Raqeq considered those who declared Fezzan a federal region “criminals, wanted for justice,” while stressing that the Southern region indeed became a haven of vigilantes escaping other parts of the country.<sup>603</sup>

The remaining parts of the historical Southwestern region of Fezzan were ultimately divided into those that supported the authorities of the East and those that remained loyal to Tripoli. For example, the participants of a large gathering of tribes from Fezzan, Zintan (in Tripolitania) and Cyrenaica e.g., the influential tribe of Al Maghariba, which took place in March 2015 declared their support of Tobruk’s House of Representatives.<sup>604</sup> As mentioned earlier, Hafter clearly gained the support

---

<sup>600</sup> *Libya Al Mostakbal*, 08/03/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/31604>, (accessed 27/02/2021).

<sup>601</sup> *Libya Al Mostakbal*, 23/01/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/30276>, (accessed 05/03/2021).

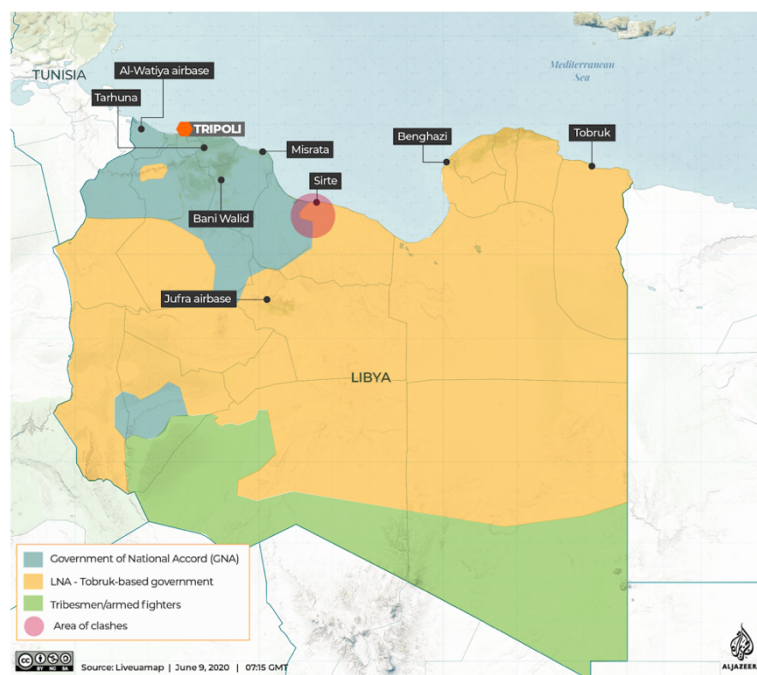
<sup>602</sup> *Libya Al Mostakbal*, 27/09/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/39310>, (accessed 05/03/2021).

<sup>603</sup> *Libya Al Mostakbal*, 29/09/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/39378>, (accessed 05/03/2021).

<sup>604</sup> *Libya Al Mostakbal*, 21/03/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/65685>, (accessed 05/03/2021).

of some tribal conglomerates from the Toubou and the Touareq,<sup>605</sup> which gave him access to the Libyan-Algerian borders in the West via Fezzan. Other factions from the Toubou and the Touareq remained loyal to the Tripoli-based authorities of the state, as is evident from an inter-Touareq-Toubou reconciliation agreement that was signed in Doha, Qatar on 23 November 2015.<sup>606</sup> The Touareq of Awbary in the South announced on 21 December 2015 their commitment to the terms of this Doha Agreement, while other Toubou and Touareq factions were quick to distance themselves from it.<sup>607</sup> And while this Agreement was similarly denounced by Al Thani as an “unwarranted interference” in Libya’s domestic affairs,<sup>608</sup> it still explains the continued existence of a GNA-loyal enclave in the Sabha-Awbary part of the Southwestern corner of Libya.

**Map 8:** Libya’s Current Territorial Division Lines (as of June 2020)



Within the historic region of Tripolitania in the North-western part of the country that is adjacent to Tunisia, the two powerful tribal militias of Zintan, Al Qaaqaa and Al Sawaeq extended on 18 February 2014 a five-hour notice to members of the GNC

<sup>605</sup> *Libya Al Mostakbal*, 03/06/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/50755>, (accessed 22/02/2021).

<sup>606</sup> *Libya Al Mostakbal*, 23/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/84901>, (accessed 05/03/2021).

<sup>607</sup> *Libya Al Mostakbal*, 21/12/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/87088>, (accessed 05/03/2021).

<sup>608</sup> *Libya Al Mostakbal*, 15/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/85013>, (accessed 05/03/2021).

to resign.<sup>609</sup> This came about in the context of mounting public anger towards a GNC-approved extension of its own mandate beyond the period that the Uprising's 'Constitutional Declaration' stipulated for, and it was most notably endorsed by the Head of the Politburo of the so-called Supreme Council of Cyrenaica's federal region, Ibrahim Jadran.<sup>610</sup> And if the ensuing siege of the GNC and sporadic fighting in Tripoli only ended when an agreement was reached with those two influential militias stipulating for the expedition of the country's preparations for the next parliamentary elections, the Spokesman of Hafter's Army insisted on 18 May 2014 that the activities of Al QaaQaa and Al Sawaeq were instigated in support of 'Operation Dignity.'<sup>611</sup>

Subsequently, a coalition of Islamist militias in Tripoli launched the counteroperation of 'Libya's Dawn' on 12 July 2014 by issuing a notice to Hafter's-allied forces to leave Tripoli.<sup>612</sup> Hafter's allies were crucially forced out of Al Yarmouk camp in Tripoli by the Central and Western divisions of Libya's Shield forces, which initially insisted they were not playing any role in 'Libya's Dawn' and the then ongoing fighting with Zintan's militias at Tripoli's Airport.<sup>613</sup> Other Misratan militias as well as the Rebels Operation Room formed the backbone of 'Libya's Dawn,' until they were joined by the Third Division of Libya's Shield at Tripoli's Airport on 22 July 2014.<sup>614</sup> This latter division of Libya's Shield, which was also known as the Central Command of those forces, was previously effective at ending some of the inter-tribal fighting with the Toubou in the South. Meanwhile, at least four members of 'Libya's Dawn' were killed in airstrikes carried out by foreign fighter jets around Tripoli's airport on 18 August 2014.<sup>615</sup> Similar airstrikes hit the Central Operation Room of 'Libya's Dawn' in Tripoli on 23 August 2014, the day when Tripoli's Airport was

---

<sup>609</sup> *Libya Al Mostakbal*, 18/02/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/45261>, (accessed 06/03/2021).

<sup>610</sup> *Libya Al Mostakbal*, 18/02/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/45278>, (accessed 06/03/2021).

<sup>611</sup> *Libya Al Mostakbal*, 18/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49804>, (accessed 06/03/2021).

<sup>612</sup> *Libya Al Mostakbal*, 12/07/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/52639>, (accessed 06/03/2021).

<sup>613</sup> *Libya Al Mostakbal*, 13/07/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/52725>, (accessed 06/03/2021).

<sup>614</sup> *Libya Al Mostakbal*, 22/07/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/53158>, (accessed 06/03/2021).

<sup>615</sup> *Libya Al Mostakbal*, 18/08/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/54352>, (accessed 06/03/2021).

fully captured by ‘Libya’s Dawn’ forces from Zintan’s rebels, and were blamed by ‘Libya’s Dawn’ on Egypt and the UAE.<sup>616</sup>

Following their capture of Tripoli’s Airport, in September 2014 Worshofana became the next target of ‘Libya’s Dawn’ forces and the Military Council of Ghrayan also joined the fight against Hafter-allied forces in Tripolitania. At the May 2014 tribal summit that laid out the conditions of the tribe’s support of Hafter, a ‘Tribal Army’ was additionally formed, and this is the army that was evidently leading Hafter’s operations in the Western parts of Libya<sup>617</sup> including Kikla, Al Zawiya, Ras Jdeir, and Sibrata in late 2014. Interestingly, once Hafter was ‘baptised’ into Al Thani’s government, the fighting of his forces with ‘Libya’s’ Dawn’ in West Libya became covered by relevant media reports as part of a campaign that was officially sanctioned by the ‘Official Armed Forces’ of the state.

Armed clashes also took place between ‘Libya’s Dawn’ forces and the Security Apparatus of the Country’s Oil Infrastructure in the Red Valley area from mid-December 2014 onwards, as part of an unsuccessful bid by ‘Libya’s Dawn’ to capture vital facilities in the ‘oil crescent region.’ This latest bid for oil facilities was named ‘Libya’s Sunrise’ (a.k.a. Al Shorouq) Operation, which seems to have been a campaign by Misrata and nearby areas<sup>618</sup> that was not ended until intensive airstrikes were launched by Hafter’s forces against vital facilities in Misrata in response to its bombing of Al Sidra oil port in late December 2014. In mid-January 2015, ‘Libya’s Dawn’ and ‘Libya’s Sunrise’ forces jointly agreed to a ceasefire,<sup>619</sup> and a prisoner exchange was subsequently carried out between them and the Security Forces of the Oil Infrastructure that were led by Jadran.<sup>620</sup> At the same time, fighting continued in 2015 between ‘Libya’s Dawn’ and Hafter’s forces in various parts of Tripoli and West Libya, on the backdrop of inter-Libyan talks.

---

<sup>616</sup> *Libya Al Mostakbal*, 23/08/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/54575>, (accessed 06/03/2021).

<sup>617</sup> *Libya Al Mostakbal*, 23/09/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/55830>, (accessed 06/03/2021).

<sup>618</sup> *Libya Al Mostakbal*, 23/12/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/60471>, (accessed 06/03/2021).

<sup>619</sup> *Libya Al Mostakbal*, 16/01/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/61934>, (accessed 06/03/2021).

<sup>620</sup> *Libya Al Mostakbal*, 23/01/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/62332>, (accessed 06/03/2021).

With those various skirmishes in mind, nothing was more revealing of the sharp ideological differences amongst the groups that were labelled by Hafter and his allies as ‘terrorist organisations’ than the campaign of ‘Libya’s Dawn’ against ISIS (Daesh in the Libyan context) in Sirte in March-May 2015. Indeed, it was Brigade 166 of ‘Libya’s Dawn’ forces, supported by Misratan militias,<sup>621</sup> that led the fight against Daesh in Qaddafi’s home city of Sirte when fighters belonging to this terrorist organisation flocked into Libya after their defeats in Iraq and Syria. According to *Wall Street Journal*, the number of Daesh fighters in Libya increased from 200 in 2014 up to around 5,000 by the end of November 2015.<sup>622</sup> Sirte was crucially declared the new capital of ISIS, following the Russian intervention against it in Iraq and Syria.<sup>623</sup>

Similar inter-Islamist group fighting took place between Daesh and the Shura Council of Derna’s Mujahideen, which was an offshoot of Al Qaeda, and it eventually led to the defeat of Daesh in its second main stronghold of Derna in East Libya. Remarkably, a Yemeni national was leading the Sharia court system of Daesh in Derna.<sup>624</sup> The forces of Al Thani’s government also carried out various airstrikes against Daesh in both Sirte and Derna in 2015, and some of those airstrikes were reportedly launched by Egypt at the request of Al Thani.<sup>625</sup> Many militants from Daesh were lastly involved in the fight against Hafter’s forces in Benghazi, as part of a coalition of extremist organisations called the Shura Council of Benghazi’s Rebels that further included remnants of Libya’s Shield forces in the Eastern parts of the country.

## VI.VI. The Humanitarian Impact of the Libyan Uprising & its

### Aftermath

This ‘critical’ account of the situation in post-2011 Libya has used a historical, ‘diachronic’ and ‘contextual’ approach that is informed by TWAIL and

---

<sup>621</sup> See for instance *Libya Al Mostakbal*, 14/03/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/65248> & <http://archive2.libya-al-mostakbal.org/news/clicked/65257>, (accessed 07/03/2021).

<sup>622</sup> *Libya Al Mostakbal*, 30/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/85404>, (accessed 07/03/2021).

<sup>623</sup> *Libya Al Mostakbal*, 30/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/85434>, (accessed 07/03/2021).

<sup>624</sup> *Libya Al Mostakbal*, 03/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/69177>, (accessed 07/03/2021).

<sup>625</sup> *Libya Al Mostakbal*, 01/12/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/85529>, (accessed 07/03/2021).

‘postcolonialism.’ The proposed lens of ‘*terra nullius*’ has crucially been applied with the overall objective of underscoring the continued existence of such colonial legacies in our contemporary international system and their devastating outcomes. Indeed, the humanitarian impact of the situation presented by this Chapter of the thesis has been catastrophic, which has left its mark on more than just the lives of Libya’s own people. Unlike Yemen, which is one of the poorest countries, Libya is amongst the top ten oil-rich countries of the world, and it is populated by less than seven million people in comparison to Yemen’s twenty-nine million people. The 2011 Libyan Uprising and its aftermath crucially affected the lives of hundreds of thousands of foreign workers from various countries around the world who were already present in Libya when the Uprising started. Meanwhile, Libya’s instability was paradoxically transforming it into a famous transit route for new refugees and economic migrants, many of whom considered the EU their ultimate destination.

During the 2011 Libyan Uprising, the situation in Misrata, the third largest Libyan city, was notably described by various humanitarian aid organisations as disastrous. This was due to weeks of blockade and indiscriminate shelling by regime forces that resulted in tens of casualties and severe shortages in medical and food supplies.<sup>626</sup> The Office of the UN Secretary General estimated that hundreds of the city’s 300,000 people were either killed or injured,<sup>627</sup> and Human Rights Watch recorded at least 250 of those deaths in just one month of fighting.<sup>628</sup> And once fighting in that city deescalated by mid-June 2011, the official Spokesman of Misrata’s Medical Committee reported that an overall number of 7,000 people were killed and 7,000 others were injured.<sup>629</sup> Amnesty International further warned of anti-person landmines that the regime planted in different parts of Misrata,<sup>630</sup> and it accused the forces of the former regime of directly targeting civilians.<sup>631</sup> With the fall of Sabha

---

<sup>626</sup> *Libya Al Mostakbal*, 08/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7244>; also see *Libya Al Mostakbal*, 13/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/8439>; (accessed 23/02/2021).

<sup>627</sup> *Libya Al Mostakbal*, 09/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7252>, (accessed 23/02/2021).

<sup>628</sup> *Libya Al Mostakbal*, 11/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7332>, (accessed 23/02/2021).

<sup>629</sup> *Libya Al Mostakbal*, 21/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/10234>, (accessed 23/02/2021).

<sup>630</sup> *Libya Al Mostakbal*, 26/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/9086>, (accessed 23/02/2021).

<sup>631</sup> *Libya Al Mostakbal*, 24/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/10348>, (accessed 23/02/2021).



and Jofra under the control of the armed opposition in September 2011, it was similarly estimated that about 400,000 Libyans in the Southern parts of the country were experiencing catastrophic humanitarian conditions.<sup>632</sup>

Human Rights Watch explicitly accused Qaddafi's regime of committing war crimes,<sup>633</sup> including its summary execution of detainees as the armed opposition was making its advancements towards Tripoli.<sup>634</sup> This NGO also accused the armed opposition itself of committing various human rights violations against the civilian population while marching towards Tripoli in July 2011.<sup>635</sup> The Libyan Consortium for Human Rights similarly reported various violations of IHL and the Additional Protocols of the Geneva Conventions by Qaddafi's regime that according to some estimates resulted in at least 60,000 deaths by early April 2011.<sup>636</sup> And in mid-May 2011, the ICC officially opened an investigation into the systematic use of 'rape' by Qaddafi's forces as a weapon of war against the armed opposition.<sup>637</sup>

Meanwhile, the former Libyan regime itself accused NATO of killing at least 1,100 civilians in its airstrikes against Libyan cities, which the organisation formally denied in a press statement in mid-July 2011.<sup>638</sup> Siding with NATO, Ban Ki Moon concurred that the Alliance was "taking all necessary measures" to avoid the fall of civilian casualties from its airstrikes in Libya.<sup>639</sup> Similarly, Libya's representative at the UN Ibrahim Dabashi said "there was no need to investigate the inescapable few civilian deaths that resulted from NATO's airstrikes."<sup>640</sup> Nonetheless, Human Rights Watch

---

<sup>632</sup> *Libya Al Mostakbal*, 23/09/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/13454>, (accessed 26/02/2021).

<sup>633</sup> *Libya Al Mostakbal*, 11/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7332>, (accessed 23/02/2021).

<sup>634</sup> *Libya Al Mostakbal*, 29/08/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/12705> & *Libya Al Mostakbal*, 30/08/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/12712>, (accessed 23/02/2021).

<sup>635</sup> *Libya Al Mostakbal*, 13/07/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/11049>, (accessed 23/02/2021).

<sup>636</sup> *Libya Al Mostakbal*, 11/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7318>, (accessed 23/02/2021).

<sup>637</sup> *Libya Al Mostakbal*, 18/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/8646>, and *Libya Al Mostakbal*, 01/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/9355>, (accessed 23/02/2021).

<sup>638</sup> *Libya Al Mostakbal*, 15/07/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/11117>, (accessed 24/02/2021).

<sup>639</sup> *Libya Al Mostakbal*, 13/08/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/12103>, (accessed 24/02/2021).

<sup>640</sup> *Libya Al Mostakbal*, 20/12/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/16572>, (accessed 26/02/2021).

called on NATO to launch a proper investigation into those allegations,<sup>641</sup> and it also called for an investigation into the death of Qaddafi himself and the subsequent execution of at least 66 members of Qaddafi's family in Sirte following its liberation by the armed opposition.<sup>642</sup>

The February – October 2011 Uprising also resulted in a shocking overall death toll. The official UN Human Rights Inquiry that was sent to Tripoli and areas under the control of the armed opposition crucially concluded that by the end of April 2011 around 15-20,000 people from both sides of the conflict had been killed.<sup>643</sup> According to French diplomatic sources, at least 10,000 Libyans were killed in Tripoli alone during the first three months of the Uprising.<sup>644</sup> By the end of August 2011, the NTC estimated that a total of 50,000 people were killed in Libya, 15-17,000 of whom were believed to have fallen in Misrata and Zlaitin.<sup>645</sup>

Throughout the subsequent transitional period of Libya, tens of mass graveyards were additionally discovered in different parts of the country, and many were believed to have been dug in the 1990s. On 22 June 2011, the first of these was discovered in Derna, containing the bodies of around 500 people that were killed during the former regime's crackdown on Libya's Islamist groups in the 1990s.<sup>646</sup> Most shocking was the September 2011 discovery of a mass grave of around 1,700 Islamist activists outside Abu Saleem prison facility in Tripoli, who were summarily executed by the former regime during the prominent massacre of 1996 at that prison facility.<sup>647</sup> The icon of the Libyan Uprising, Fathy Terbil was notably the human rights lawyer who represented the families of the victims of this case. Around forty

---

<sup>641</sup> *Libya Al Mostakbal*, 17/12/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/16455>, (accessed 26/02/2021).

<sup>642</sup> *Libya Al Mostakbal*, 17/10/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/27060>, (accessed 27/02/2021).

<sup>643</sup> *Libya Al Mostakbal*, 01/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/9778>, (accessed 23/02/2021).

<sup>644</sup> *Libya Al Mostakbal*, 01/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/9388>, (accessed 23/02/2021).

<sup>645</sup> *Libya Al Mostakbal*, 30/08/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/12722>, (accessed 23/02/2021).

<sup>646</sup> *Libya Al Mostakbal*, 24/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/10253> & *Libya Al Mostakbal*, 10/09/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/13040>, (accessed 26/02/2021).

<sup>647</sup> *Libya Al Mostakbal*, 25/09/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/13522>, (accessed 26/02/2021). Also see *Libya Al Mostakbal*, 26/09/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/13529>, (accessed 26/02/2021).

fighters from the armed opposition were also believed to have been killed and buried in a mass grave located outside of Tripoli, which was in turn discovered in March 2012.<sup>648</sup>

Libya's transitional period further underlined the persistence of several patterns of human rights violations in that country. Importantly, as the NTC was capturing Bani Waleed and Sirte in October 2011, the two last-standing former regime strongholds, the UN expressed its concerns about the conditions of around 7,000 detainees and prisoners of war held at various judicial and extrajudicial facilities in different parts of the country. In April 2012, the rebels of Misrata notably passed on the management of three extrajudicial prison facilities to the Libyan Ministry of Justice, along with the more than 1,150 prisoners from the former regime that continued to be detained in them.<sup>649</sup> Such prisoners were in many cases believed to have been subjected to torture and detained without trial.<sup>650</sup> For example, in May 2012 a civilian was tortured to death at a detention facility managed by the rebels of Zintan.<sup>651</sup> Another one was similarly killed in the following month at Tripoli's Council of Ministers building.<sup>652</sup> Against this background, Amnesty International criticised what it described as "severe human rights violations ranging from kidnapping to torture and executions," and the NGO urgently called on the new Libyan authorities to take immediate measures to address them.<sup>653</sup>

Most prominently, during the research timeframe of this thesis Chapter on Libya, 2011-2015, the situation of Libya's refugees and IDPs was devastating. According to the UN, nearly 243,000 Libyans became IDPs by June 2011,<sup>654</sup> and by October of the same year the World Food Programme reported that an additional number of at

---

<sup>648</sup> *Libya Al Mostakbal*, 19/03/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/20298>, (accessed 26/02/2021).

<sup>649</sup> *Libya Al Mostakbal*, 19/04/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/21594>, (accessed 26/02/2021).

<sup>650</sup> *Libya Al Mostakbal*, 15/10/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/14288>, (accessed 26/02/2021).

<sup>651</sup> *Libya Al Mostakbal*, 31/05/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/23132>, (accessed 26/02/2021).

<sup>652</sup> *Libya Al Mostakbal*, 30/06/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/24119>, (accessed 26/02/2021).

<sup>653</sup> *Libya Al Mostakbal*, 26/09/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/26459>, (accessed 27/02/2021).

<sup>654</sup> *Libya Al Mostakbal*, 27/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/8306>, (accessed 23/02/2021).

least 47,000 people left Bani Waleed and Sirte to nearby areas.<sup>655</sup> Around 4,000 Libyan families remained internally displaced in various parts of the country by January 2012,<sup>656</sup> but the number once again increased up to 70,000 IDPs by June of this second year due to intensifying fighting in different parts of the country.<sup>657</sup> For the fourth and in some cases even the fifth time, UNHCR reported that a total of 400,000 people from all Libyan cities became displaced by January 2015 as civil strife intensified in Benghazi and Tripoli.<sup>658</sup> And as Daesh/ISIS captured Sirte in the second half of 2015, at least 1,200 families fled the city in just one month of fighting in August 2015.<sup>659</sup>

Meanwhile, by mid-2013, a total of two million Libyans were believed to have also fled and remained outside of their country, 600,000 of whom reportedly fled to Tunisia.<sup>660</sup> A total of 30,000 Libyans also remained in Egypt.<sup>661</sup> By September 2014, an additional number of at least 250,000 Libyans became either refugees or IDPs.<sup>662</sup> At least 4,000 Libyans fled to Algeria during the second half of 2014, and in just one day in January 2015 nearly 6,000 Libyans fled to Tunisia.<sup>663</sup>

This situation has additionally left its impact on refugees and foreign workers that were already present in Libya at the start of the Libyan Uprising. By the end of May 2011, it was reported that a total of 415,000 people from more than 40 different nationalities escaped to neighbouring Tunisia.<sup>664</sup> Around 57,000 refugees similarly

---

<sup>655</sup> *Libya Al Mostakbal*, 06/10/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/13869>, (accessed 26/02/2021).

<sup>656</sup> *Libya Al Mostakbal*, 27/01/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18176>, (accessed 26/02/2021).

<sup>657</sup> *Libya Al Mostakbal*, 06/06/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/23396>, (accessed 26/02/2021).

<sup>658</sup> *Libya Al Mostakbal*, 17/01/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/61972>, (accessed 01/03/2021).

<sup>659</sup> *Libya Al Mostakbal*, 29/08/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/78502>, (accessed 01/03/2021).

<sup>660</sup> *Libya Al Mostakbal*, 19/06/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/35669>, (accessed 28/02/2021).

<sup>661</sup> *Libya Al Mostakbal*, 08/06/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/35254>, (accessed 23/02/2021).

<sup>662</sup> *Libya Al Mostakbal*, 04/09/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/55085>, (accessed 01/03/2021).

<sup>663</sup> *Libya Al Mostakbal*, 27/01/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/62538>, <http://archive2.libya-al-mostakbal.org/news/clicked/62550>, (accessed 01/03/2021).

<sup>664</sup> *Libya Al Mostakbal*, 29/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/9220>, (accessed 23/02/2021).

fled from Libya to Niger.<sup>665</sup> The figures of the International Organisation for Migration (IOM) generally indicate that a total of 1.5-2.5 million African refugees lived in Libya prior to the Uprising, and that 625,000 of them left the country in the first five months of the Uprising.<sup>666</sup> Some African refugees were also believed to have been forced by Qaddafi's regime to fight its war against the Libyan population, and some of these were subsequently imprisoned by the armed opposition when they testified that they were made to believe they were merely fighting Al Qaeda in Libya.<sup>667</sup> Libyans of African origins such as the residents of Tawergha along with African workers present in the country thereafter became viewed with a great degree of hostility by the Libyan public, which considered them mercenaries that led the former regime's crackdown on the Libyan Uprising.<sup>668</sup>

#### VI.VII. The Situation in Libya and the Refugee Crisis in the Mediterranean

Responding to the volatility of the situation in Libya between 2011-2015, hundreds of thousands of refugees rushed into this war-torn country and a large percentage of them subsequently attempted to continue their way to the northern bank of the Mediterranean. This 'spill-over effect' thereafter became the main focus of regional players such as the EU, as opposed to the root causes of the situation as identified using the guiding lens of '*terra nullius*' on the background of TWAIL and 'postcolonialism.' According to UNHCR's data, in 2011 alone more than 58,000 refugees made their way into Europe via the Mediterranean and 56,000 of those refugees started their journey out of Libya and Tunisia. Other reports indicated that a total of 110,000 Syrian refugees escaped the intensifying civil war in their own country and reached Libya by May 2013, and many of them continued their journey into Europe after reaching Libya.<sup>669</sup> Meanwhile, as many of the vessels that trafficked refugees across the sea were overcrowded and generally unsafe for long journeys, EU policymakers were additionally presented with a shocking death toll that left

---

<sup>665</sup> *Libya Al Mostakbal*, 27/04/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/7871>, (accessed 23/02/2021).

<sup>666</sup> *Libya Al Mostakbal*, 16/07/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/11169>, (accessed 24/02/2021).

<sup>667</sup> *Libya Al Mostakbal*, 26/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/9077>, (accessed 23/02/2021).

<sup>668</sup> *Libya Al Mostakbal*, 22/01/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/30270>, (accessed 27/02/2021).

<sup>669</sup> *Libya Al Mostakbal*, 26/05/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/34825>, (accessed 28/02/2021).

them struggling to balance political considerations with basic moral obligations to rescue those stranded at sea.

Importantly, the NTC accused Qaddafi's regime of forcing African refugees to board unsafe vessels and make their way into Europe by way of retaliating against NATO and the EU.<sup>670</sup> For example, between 25 March and the end of April 2011 around 800 African refugees reportedly drowned in the Mediterranean, and in May of the same year a boat carrying between 500-600 refugees also sank off the coast of Libya, killing most of those onboard.<sup>671</sup> In August 2011, the Italian authorities announced that around 100 out of 300 refugees they rescued off the coast of Libya died of either thirst or hunger during the 36-hr trip back to Lampedusa, Italy.<sup>672</sup> UNCHR reports that an overall total of 1,500 refugees from fifteen, mostly African nationalities drowned in the Mediterranean in 2011.<sup>673</sup>

This situation culminated in a formal request that Italy submitted to NATO to broaden the scope of its operations in Libya to include rescuing distressed refugee vessels in the Mediterranean.<sup>674</sup> In February 2012, many members of the Italian Parliament also made an appeal to the Italian authorities that they grant official residence permits to 25,000 refugees who fled from Libya.<sup>675</sup> In addition, as early as June 2011 Italy and the NTC signed an agreement to manage the influx of refugees to Italy. An earlier agreement signed between Italy and Libya in 2008 remarkably reduced the influx of refugees to Italy by 94%,<sup>676</sup> and it seems like strengthening border security and the arrest and deportation of refugees back to their home countries were essential components of that as well as this new agreement. Strikingly, those terms constituted a possible violation of the principle of 'non-refoulement' in

---

<sup>670</sup> *Libya Al Mostakbal*, 15/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/8497>, (accessed 23/02/2021).

<sup>671</sup> *Libya Al Mostakbal*, 10/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/8331>, and *Libya Al Mostakbal*, 11/05/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/8395>, (accessed 23/02/2021).

<sup>672</sup> *Libya Al Mostakbal*, 05/08/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/11851>, (accessed 24/02/2021).

<sup>673</sup> *Libya Al Mostakbal*, 01/02/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18412>, (accessed 26/02/2021).

<sup>674</sup> *Libya Al Mostakbal*, 06/08/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/11874>, (accessed 26/02/2021).

<sup>675</sup> *Libya Al Mostakbal*, 16/02/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/19109>, (accessed 26/02/2021).

<sup>676</sup> *Libya Al Mostakbal*, 18/06/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/10106>, (accessed 23/02/2021).

international refugee law, or the prohibition under PIL against sending refugees back to a place where there is a clear indication their lives could come under threat.

By the end of 2011, the new Libyan authorities announced that they had prevented more than 400 refugees from reaching Italy.<sup>677</sup> Similarly, NTC-affiliated militias in the Libyan desert prevented 3,000 Asian and African refugees from entering Libya via the city of Kofra.<sup>678</sup> However, just when it was thought that the collapse of the former Libyan regime ended the situation of human trafficking across the Mediterranean Sea, by February 2012 the arrival of refugees into Libya was “resumed” and the new authorities of the state called on the EU for help.<sup>679</sup> Thousands of refugees making their way into Libya also continued to be deported out of the country, while thousands of others remained detained at various facilities across the state.<sup>680</sup> By April 2012, around 1,217 refugees were reportedly detained in Benghazi alone.<sup>681</sup>

Meanwhile, Italy and Libya signed a new agreement to form a Joint Security Committee and to cooperate on issues pertaining to the detention and deportation of refugees back to their countries of origin.<sup>682</sup> The Italian authorities also welcomed the decision of the Foreign Affairs Council of the EU in July 2012 to cooperate with Libya on all issues pertaining to immigration, and to unify the anti-illegal immigration strategies of all Member States of the EU.<sup>683</sup>

Those developments only led to a continuation in the detention and deportation of refugees by the Italian authorities and their Libyan counterparts. For example, Libya’s Shield forces in Kofra arrested and deported an accumulative total of 1,320

---

<sup>677</sup> *Libya Al Mostakbal*, 06/12/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/16121>, (accessed 26/02/2021).

<sup>678</sup> *Libya Al Mostakbal*, 19/12/2011, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/16530>, (accessed 26/02/2021).

<sup>679</sup> *Libya Al Mostakbal*, 20/01/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/17883>, (accessed 26/02/2021). Also see *Libya Al Mostakbal*, 09/02/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/18765>, and *Libya Al Mostakbal*, 12/03/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/20074>, (accessed 26/02/2021).

<sup>680</sup> *Libya Al Mostakbal*, 29/02/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/19586>, (accessed 26/02/2021).

<sup>681</sup> *Libya Al Mostakbal*, 18/04/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/21530>, (accessed 26/02/2021).

<sup>682</sup> *Libya Al Mostakbal*, 04/04/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/20993>, (accessed 26/02/2021).

<sup>683</sup> *Libya Al Mostakbal*, 25/07/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/24948>, (accessed 26/02/2021).

Sudanese and Chadian refugees from that city by June 2012.<sup>684</sup> Some 680 refugees were also arrested in Tobruk between April – June 2012,<sup>685</sup> and 171 others were arrested in Sirte in July-August of the same year.<sup>686</sup> An additional number of 419 refugees were arrested while crossing into Libya through its Southern frontiers,<sup>687</sup> and more than 700 Chadian refugees were deported from the Southern city of Sabha in mid-2012.<sup>688</sup> By March 2013, around 3,000 refugees from Niger were detained in Libya.<sup>689</sup>

At the same time, in 2012 the European Court of Human Rights found Italy guilty of “refoulement;” and it accused it of violating refugees’ “right to claim asylum and not to be returned to an unsafe port.”<sup>690</sup> In addition, the Libyan authorities admitted that they remained unable to cope with the continued influx of an average of 1,000 refugees into Libya on a daily basis<sup>691</sup> due to the activities of Libyan trafficking networks that were present along the Eastern and Southern Libyan frontiers.<sup>692</sup> Hence, the EU sanctioned an official Border Security Mission in March 2013 that it tasked with the assistance of the new Libyan authorities in securing their country’s extensive borders. This mission started executing its mandate by June of the same year.<sup>693</sup> In addition, in September 2013 an agreement was signed between Libya and the EU at large to confront the situation of illegal immigration in the

---

<sup>684</sup> *Libya Al Mostakbal*, 04/06/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/23290>, (accessed 26/02/2021).

<sup>685</sup> *Libya Al Mostakbal*, 27/06/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/24062>, (accessed 26/02/2021).

<sup>686</sup> *Libya Al Mostakbal*, 16/07/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/24692>, *Libya Al Mostakbal*, 13/08/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/25518>, *Libya Al Mostakbal*, 12/08/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/25475>, and *Libya Al Mostakbal*, 31/08/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/25731>, (accessed 27/02/2021).

<sup>687</sup> *Libya Al Mostakbal*, 28/05/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/23022>, (accessed 26/02/2021).

<sup>688</sup> *Libya Al Mostakbal*, 04/07/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/24263>, (accessed 27/02/2021).

<sup>689</sup> *Libya Al Mostakbal*, 28/03/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/32547>, (accessed 27/02/2021).

<sup>690</sup> See for instance Daniel Howden, Apostolis Fotiadis, and Zack Campbel, “Revealed: The Great European Refugee Scandal,” *The Guardian*, 13/03/2020, available via <https://www.theguardian.com/world/2020/mar/12/revealed-the-great-european-refugee-scandal>, (accessed 02/03/2021).

<sup>691</sup> *Libya Al Mostakbal*, 28/04/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/22004>, (accessed 26/02/2021).

<sup>692</sup> *Libya Al Mostakbal*, 13/11/2012, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/28026>, (accessed 27/02/2021).

<sup>693</sup> *Libya Al Mostakbal*, 23/03/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/32279>, (accessed 27/02/2021).



Mediterranean.<sup>694</sup> And following the intervention of the European Court of Human Rights, Malta was forced to end its own practice of returning refugees arriving on its territory back to Libya.<sup>695</sup>

However, Libya's immigration situation continued to escalate in a manner that corresponded with the intensity of various battles that were being fought in different parts of the country, regional instabilities brought about by the French intervention in Mali, and the escalating situation in neighbouring Egypt. Libya's 4,000km-long land boundaries, which it shares with six neighbouring countries, and its 1,700km-long coastal stretch simply remained difficult to secure.<sup>696</sup> In its October 2013 report, the UN noted that between March - August 2013 at least 30,000 African refugees entered Libya via the country's borders with Niger, at a rate of 5,000 refugees per month.<sup>697</sup> The report further indicated that around 60,000 refugees (mostly males) were being deported from Libya on an annual basis.<sup>698</sup> Other reports indicated that 5,000 refugees remained held at various detention facilities in Libya by the end of 2013,<sup>699</sup> and that out of 40,000 refugees who entered Libya in 2013 at least 30,000 were detained and deported.<sup>700</sup>

Concurrently, the Italian government reported that around 43,000 refugees reached Italy in 2013 in comparison to 13,000 in 2012. Libya was considered the country of passage of 27,100 of those refugees, followed by Egypt's 9,200 refugees. A total of 11,300 of them were Syrians, 9,830 others were Eritreans and 3,260 were Somalis.<sup>701</sup> Overall, at least 140,000 refugees reached Europe in 2013 and the number was expected to increase up to 350,000 in 2014.<sup>702</sup> Meanwhile, a total of 1,871 refugees

---

<sup>694</sup> *Libya Al Mostakbal*, 20/09/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/38818>, (accessed 28/02/2021).

<sup>695</sup> *Libya Al Mostakbal*, 11/07/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/36464>, (accessed 28/02/2021).

<sup>696</sup> See for instance *Libya Al Mostakbal*, 05/10/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/39652>, (accessed 28/02/2021).

<sup>697</sup> *Libya Al Mostakbal*, 23/10/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/40307>, (accessed 28/02/2021).

<sup>698</sup> *Libya Al Mostakbal*, 06/11/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/40784>, (accessed 28/02/2021).

<sup>699</sup> *Libya Al Mostakbal*, 27/11/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/41529>, (accessed 28/02/2021).

<sup>700</sup> *Libya Al Mostakbal*, 04/01/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/42848>, (accessed 28/02/2021).

<sup>701</sup> *Libya Al Mostakbal*, 22/12/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/42296>, (accessed 28/02/2021).

<sup>702</sup> *Libya Al Mostakbal*, 15/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49641>, (accessed 28/02/2021).

died at Europe's frontiers in 2012-2013.<sup>703</sup> For example, in early October 2013, at least 400 refugees drowned off the coast of Lampedusa, Italy and this particular incident prompted the Italian authorities to deploy battleships close to the territorial waters of Libya and Tunisia amidst reports of gunshots being fired at boats carrying refugees.<sup>704</sup> Then Libya's Prime Minister Zeidan also reported that new technologies were being installed with the help of the Italian authorities for the purposes of monitoring Libya's Southern and Western frontiers.<sup>705</sup> In addition, the Libyan authorities formed a new security apparatus in partnership with the EU to rescue distressed refugees in Libya's own territorial waters.<sup>706</sup>

Nonetheless, it remained difficult for the authorities to cope with the paradoxically increasing number of refugees attempting to reach Europe via Libya. Over the duration of just four days in mid-March 2014, the Italian authorities reported that they rescued more than 4,000 refugees and a total of 15,000 refugees since the beginning of that year.<sup>707</sup> And from January - July 2014, at least 70,000 refugees from Syria, Eretria, and Mali, amongst other nationalities reached Italy via the Mediterranean.<sup>708</sup> It was further estimated that at least 300,000 other refugees were awaiting in Libya their turn to cross over to the EU.<sup>709</sup> Overwhelmed, and lacking sufficient resources to confront a crisis of this magnitude, the Italian authorities repeatedly requested the help of the EU and the UN.<sup>710</sup>

---

<sup>703</sup> *United Against Refugee Deaths*, "The List of Deaths," available via <http://unitedagainstreugeedeaths.eu/about-the-campaign/about-the-united-list-of-deaths/> (accessed 02/03/2021).

<sup>704</sup> *Libya Al Mostakbal*, 14/10/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/40066>, and *Libya Al Mostakbal*, 28/10/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/40475>, (accessed 28/02/2021).

<sup>705</sup> *Libya Al Mostakbal*, 31/10/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/40598>, (accessed 28/02/2021). Also see *Libya Al Mostakbal*, 04/10/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/39606>, (accessed 28/02/2021).

<sup>706</sup> *Libya Al Mostakbal*, 28/10/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/40496>, (accessed 28/02/2021).

<sup>707</sup> *Libya Al Mostakbal*, 21/03/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/46928>, and *Libya Al Mostakbal*, 09/04/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/47811>, (accessed 28/02/2021).

<sup>708</sup> *Libya Al Mostakbal*, 06/07/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/52346>, and *Libya Al Mostakbal*, 21/07/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/53110>, (accessed 28/02/2021).

<sup>709</sup> *Libya Al Mostakbal*, 31/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/50576>, (accessed 28/02/2021).

<sup>710</sup> *Libya Al Mostakbal*, 14/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49552>, (accessed 28/02/2021).

The lack of effective measures in tackling this situation crucially suggested that counterefforts were systematically at play. For example, the security forces of the Libyan city of Jalo revealed in July 2014 that remnants of the former Libyan regime were working to disrupt the life of the normal Libyan citizen, particularly through facilitating illegal immigration to and from Libya.<sup>711</sup> The Minister of the Interior in Al Thani's government Saleh Mazeq himself threatened in April 2014 that his country would facilitate the arrival of refugees into Europe if the EU does not lend it the necessary resources to deal with the situation.<sup>712</sup> Similarly, on 3 November 2015, the GNC threatened to "flood Europe with refugees" if the EU does not recognise its government in Tripoli.<sup>713</sup> It would indeed not be a far-fetched argument, if one considers the issue of immigration or human trafficking as either instigated or exploited by domestic and possibly even external sources of influence.

In parallel, the distressing number of casualties in the Mediterranean continued to increase. For example, forty refugees drowned near the coasts of Libya on 11 May 2014 and 340 others were rescued.<sup>714</sup> And on 21 July 2014 the Italian navy reported that it had rescued 1,800 refugees in less than one week, while at least 150 bodies of dead refugees washed off along the coast of the Libyan city of Khoms on 28 July 2014.<sup>715</sup> Around the end of August 2014, at least 170 bodies were similarly picked up along Libya's coast, and an additional number of 100 refugees drowned when their inflatable boat capsized near Tripoli.<sup>716</sup> 250 other refugees were believed to have drowned on 15 September 2014 when their boat capsized near the coast of Libya, and at least 200 refugees drowned on 07 October 2014.<sup>717</sup> During the first four

---

<sup>711</sup> *Libya Al Mostakbal*, 30/07/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/53525>, (accessed 28/02/2021).

<sup>712</sup> *Libya Al Mostakbal*, 10/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49349>, (accessed 28/02/2021).

<sup>713</sup> *Libya Al Mostakbal*, 03/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/83324>, (accessed 02/03/2021).

<sup>714</sup> *Libya Al Mostakbal*, 11/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49395>, and *Libya Al Mostakbal*, 12/05/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/49442>, (accessed 28/02/2021).

<sup>715</sup> *Libya Al Mostakbal*, 21/07/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/53110>, and *Libya Al Mostakbal*, 28/07/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/53439>, (accessed 28/02/2021).

<sup>716</sup> *Libya Al Mostakbal*, 29/08/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/54841>, and *Libya Al Mostakbal*, 31/08/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/54908>, (accessed 01/03/2021).

<sup>717</sup> *Libya Al Mostakbal*, 15/09/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/55475>, and *Libya Al Mostakbal*, 07/10/2014, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/56378>, (accessed 01/03/2021).

months of 2015 alone, a shocking additional number of 1,829 people died crossing the Mediterranean, on the backdrop of public pronouncements by the official Libyan authorities accusing domestic and foreign human traffickers of exploiting the political instabilities of Libya.<sup>718</sup>

On the one hand, Italy's Foreign Minister Paolo Gentiloni stated on 7 July 2015 that 90% of all illegal immigrants in Europe started their journey from Libya.<sup>719</sup> On the other hand, a Libyan official stressed that only 20% of all refugees continued their journey into Europe, and that the rest remained in Libya.<sup>720</sup> The Libyan official further noted that around 150,000 refugees were entering Libya on monthly basis, or at a daily average of 4,000-5,000 refugees who were 36% Syrian, 12% Eritrean, 11% Afghani, 5% Nigerian, and 4% Somalian. By mid-2015, 137,000 refugees had made their way into Europe, which represents according to the UN an 83% increase in comparison to the first half of 2014.<sup>721</sup> And by the end of September 2015, in just three additional months, the number increased up to nearly 0.5 million people. 310,000 reached Greece, 121,000 others reached Italy, and 2,800 others were believed to have died along the way.<sup>722</sup> In October 2015 alone UNHCR reports that 218,000 refugees crossed the Mediterranean into the EU,<sup>723</sup> and by the end of that month the 2015 death toll in the Mediterranean reached 3,175.<sup>724</sup>

In contrast to those catastrophic humanitarian realities, the EU's security consideration towards Libya's situation became increasingly pronounced with the steady escalation of international operations against ISIS in Iraq and Syria. But this directed the attention of policymakers towards the second main 'spill-over' effect of Libya's situation (terrorism) as opposed to the previously identified root causes of

---

<sup>718</sup> *Libya Al Mostakbal*, 23/04/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/68291>, and *Libya Al Mostakbal*, 08/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/69579>, (accessed 01/03/2021).

<sup>719</sup> *Libya Al Mostakbal*, 07/07/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/74555>, (accessed 01/03/2021).

<sup>720</sup> *Libya Al Mostakbal*, 09/08/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/77016>, (accessed 02/03/2021).

<sup>721</sup> *Libya Al Mostakbal*, 14/07/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/75201>, and *Libya Al Mostakbal*, 28/07/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/76092>, (accessed 01/03/2021).

<sup>722</sup> *Libya Al Mostakbal*, 28/09/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/80564>, (accessed 02/03/2021).

<sup>723</sup> *Libya Al Mostakbal*, 04/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/83414>, (accessed 02/03/2021).

<sup>724</sup> *Libya Al Mostakbal*, 27/10/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/82752>, (accessed 02/03/2021).

conflict that emanated from NATO's 'regime change' operation and the subsequent politics of 'terra nullius.' In November 2013, the former Italian Foreign Minister Emma Bonino notably expressed her country's suspicions that Al Qaeda-affiliated terrorists and other jihadists were making their way into the EU amongst incoming refugees from Libya.<sup>725</sup> Other EU officials expressed their anxieties about the potential infiltration of ISIS or Daesh militants into Europe aboard of refugee boats coming from Libya.<sup>726</sup> Hafter's 'war on terrorism' evidently started to resonate with Western audiences when similar "concerns" were also expressed by NATO itself in May 2015.<sup>727</sup> Ultimately, the November 2015 terrorist attacks in Paris, which Daesh celebrated in the streets of Sirte,<sup>728</sup> cemented France's support of Hafter and of giving him an important role in the management of post-Qaddafi Libya.

Arguably due to those same potential security ramifications of the situation in the Mediterranean, the UK announced its own plans to deploy unmanned aircrafts (drones) and 200 navy officers to monitor the boats of human traffickers in the Mediterranean, and as part of a unified European "search and rescue operation."<sup>729</sup> With the help of European countries such as France and the UK, Italy rescued at least 14,000 refugees between April to May 2015. This crucially came about after another major incident was declared when a boat carrying 700 refugees sank and most of its passengers were killed.<sup>730</sup> An emergency EU summit was resultantly called in, during which European leaders further deliberated seeking the approval of the UN of their possible use of force against human trafficking networks that were active along

---

<sup>725</sup> *Libya Al Mostakbal*, 20/11/2013, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/41286>, (accessed 28/02/2021).

<sup>726</sup> *Libya Al Mostakbal*, 07/07/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/74535>, (accessed 01/03/2021).

<sup>727</sup> *Libya Al Mostakbal*, 22/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/70645>, (accessed 01/03/2021).

<sup>728</sup> *Libya Al Mostakbal*, 15/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/84262>, (accessed 07/03/2021).

<sup>729</sup> *Libya Al Mostakbal*, 27/04/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/68704>, and *Libya Al Mostakbal*, 18/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/70321>, (accessed 01/03/2021).

<sup>730</sup> *Libya Al Mostakbal*, 11/04/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/67338>, *Libya Al Mostakbal*, 02/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/69129>, *Libya Al Mostakbal*, 03/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/69166>, *Libya Al Mostakbal*, 15/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/70082>, *Libya Al Mostakbal*, 21/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/70586>, *Libya Al Mostakbal*, 30/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/71248>, and *Libya Al Mostakbal*, 19/04/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/67991>, (accessed 01/03/2021).

Southern European frontiers.<sup>731</sup> Meanwhile, both Libyan governments in Baydaa and Tripoli continued to approach the situation with a great degree of ambivalence. Al Thani's government repeatedly warned its European counterpart(s) not to enter Libya's territorial waters without its pre-approval,<sup>732</sup> and on 26 June 2015 it presented a counter proposal to the EU's planned naval operations.<sup>733</sup> In late September 2015, the leader of one of the largest human trafficking networks in Tripoli Salah Al Maskhout was crucially assassinated in what the head of the GNC in Tripoli, Abu Sahmain criticised as an unauthorised Italian military operation.<sup>734</sup> However, the Libyan authorities in Tripoli themselves launched a security mission in mid-May 2015 against human trafficking networks in Libya.<sup>735</sup> In addition, following a series of UN-led meetings with the Libyan authorities in Al Baydaa on issues pertaining to illegal immigration in the Mediterranean,<sup>736</sup> Al Thani's government expressed its readiness to support the EU's planned operations against human trafficking networks on the condition that those rescued along the way are not returned to Libya.<sup>737</sup>

Against this background, a series of European and international 'action plans' were simultaneously being put into motion. In May 2015, EU Member States agreed to exchange information on human trafficking networks that are active in the Mediterranean,<sup>738</sup> and in early June 2015 the number of European countries contributing ships to rescue stranded refugees in the Mediterranean increased to twelve.<sup>739</sup> For instance, Italian ships helped by German and Irish vessels rescued on

---

<sup>731</sup> *Libya Al Mostakbal*, 20/04/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/68076>, *Libya Al Mostakbal*, 23/04/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/68299>, and *Libya Al Mostakbal*, 27/04/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/68677>, (accessed 01/03/2021).

<sup>732</sup> *Libya Al Mostakbal*, 23/06/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/73364>, (accessed 01/03/2021).

<sup>733</sup> *Libya Al Mostakbal*, 26/06/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/73626>, (accessed 01/03/2021).

<sup>734</sup> *Libya Al Mostakbal*, 27/09/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/80526>, (accessed 02/03/2021).

<sup>735</sup> *Libya Al Mostakbal*, 17/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/70250>, (accessed 01/03/2021).

<sup>736</sup> *Libya Al Mostakbal*, 21/08/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/77936>, (accessed 01/03/2021).

<sup>737</sup> *Libya Al Mostakbal*, 10/09/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/79396>, (accessed 02/03/2021).

<sup>738</sup> *Libya Al Mostakbal*, 11/05/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/69829>, (accessed 01/03/2021).

<sup>739</sup> *Libya Al Mostakbal*, 08/06/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/72144>, (accessed 01/03/2021).

6 June 2015 a total of 2,000 refugees near the Libyan waters.<sup>740</sup> A European naval operation limited in its scope to gathering intelligence on human traffickers in the Mediterranean was also launched on 19 June 2015.<sup>741</sup> By the end of June 2015, at least 700 refugees were rescued by the Italian and the Irish navies, bringing the total of those rescued and brought to Italy through international search and rescue operations up to 60,000 refugees.<sup>742</sup> In addition, on 30 June 2015, Italy launched an operation to recover the bodies of around 800 refugees who were believed to have drowned in the Mediterranean three months earlier.<sup>743</sup> The first of those bodies was recovered on 1 July 2015 from a boat that was found at a depth of 370 meters below sea-level.<sup>744</sup>

Importantly, on 14 September 2015 the EU announced its plans to deploy a naval fleet into the international waters of the Mediterranean to combat human trafficking networks.<sup>745</sup> Furthermore, on 16 September 2015, the British representative at the UNSC distributed a draft UNSC resolution authorising the possible seizure of boats used for human trafficking in accordance with international law of the sea.<sup>746</sup> This latest phase in European operations was officially sanctioned on 9 October 2015, when the UNSC passed Resolution 2240 under Chapter VII of the UN Charter. That last UNSC resolution on Libya also authorised the use of force to combat human trafficking networks that were active along Libya's shores and within the country's own territorial waters, and it was passed with the support of the official Libyan authorities. In accordance with this resolution, European battleships were given the greenlight to intercept, search, seize and/or destroy boats and vessels used to smuggle refugees from Libya.<sup>747</sup> On 21 October 2015, NATO further launched its first

---

<sup>740</sup> *Libya Al Mostakbal*, 06/06/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/72144>, (accessed 01/03/2021).

<sup>741</sup> *Libya Al Mostakbal*, 19/06/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/73024>, (accessed 01/03/2021).

<sup>742</sup> *Libya Al Mostakbal*, 29/06/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/73851>, (accessed 01/03/2021).

<sup>743</sup> *Libya Al Mostakbal*, 30/06/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/73927>, (accessed 01/03/2021).

<sup>744</sup> *Libya Al Mostakbal*, 01/07/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/74006>, (accessed 01/03/2021).

<sup>745</sup> *Libya Al Mostakbal*, 14/09/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/79691>, (accessed 02/03/2021).

<sup>746</sup> *Libya Al Mostakbal*, 16/09/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/79841>, (accessed 02/03/2021).

<sup>747</sup> *Libya Al Mostakbal*, 09/10/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/81383>, (accessed 02/03/2021).

military exercise in the Mediterranean in fourteen years as a joint training operation against “terrorism, piracy and illegal immigration.”<sup>748</sup> By year’s end, the Italian coastguard reported that it had rescued 949 refugees off the coast of Libya, in collaboration with the NGO MSF and military ships from the UK, Slovenia, and Belgium working under the umbrella of the EU’s ‘Operation Sofia.’<sup>749</sup> Similarly, the Spanish battleship ‘Canary’ and the British destroyer ‘Richmond’ rescued 517 refugees.<sup>750</sup>

#### VI.VIII. Conclusion: The Situation in Libya (2011-2015)

The late 2015 UNSC authorisation of the use of force, UNSC Res 2240, against human trafficking networks operating within Libya’s territorial waters and along Libyan shores was clearly demonstrative of the then ongoing suspension of the ‘sovereignty’ of the Libyan state. It is especially intriguing that this authorisation came about hand in hand with the UN imposition of its own terms for the formation of a Government of National Accords in Tripoli Headed by Sarraj, which rather indicates that the UN continued to approach the situation in that country through the lens of one form of a custodianship or the other.

Before the establishment of the League of Nations and subsequently the UN System, the colonial powers used to ‘draw a line in the sand’ and/or to justify their presence in a territory where they became the first foreign entity to establish presence by proclaiming said territory a ‘*terra nullius*.’ An entire continent such as Australia was accordingly proclaimed a ‘*terra nullius*’ in 1835, despite the continued presence of its natives on their land. And if such practices became subsequently remodelled into a ‘mandate’ and/or a ‘trusteeship’ system under the League of Nations and the UN, respectively, those latter systems remained mere embodiments of Great Power politics to the extent that they served the interest of legitimising foreign rule over distant populations. For instance, through a post-WWI colonial treaty like Sykes-Picot (1916), France and the Britain made claims to different parts of the Levant region that were then legitimised through an official ‘mandate’ of the League of

---

<sup>748</sup> *Libya Al Mostakbal*, 21/10/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/82333>, (accessed 02/03/2021).

<sup>749</sup> *Libya Al Mostakbal*, 06/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/83541>, (accessed 02/03/2021).

<sup>750</sup> *Libya Al Mostakbal*, 05/11/2015, available in Arabic at <http://archive2.libya-al-mostakbal.org/news/clicked/83474>, (accessed 02/03/2021).



Nations under the pretext of “preparing” those regions for independence. Similarly, once Italy and Germany lost control of Libya in WWII, Cyrenaica and Tripolitania became administered by the UK and the UN, while Fezzan was administered by France. All those systems of ‘foreign occupation’ prioritised the interests of relevant external players over those of the local populations, irrespective of the slogan under which they were established; the ‘civilising mission,’ or otherwise.

In contrast, the seemingly open-ended suspension of the ‘sovereignty’ of the Libyan state in the wake of the 2011 Uprising was more chaotic in its outcome, as it did not place any restrictions on which external party could or could not intervene in Libya. Approaching the situation through the lens of TWAIL and ‘postcolonialism,’ it becomes remarkably clear that throughout the 2011-2015 research timeframe of this Chapter, Libya was effectively treated as a ‘*terra nullius*’ of the modern international system vis-à-vis Qaddafi’s regime. This was the equivalent of granting all states access to Libya’s political scene and permitting them to take advantage of the ensuing power vacuum so long as they were not an ally of the former regime nor acting on its behalf.

In effect, the territorial conquests of the armed opposition, which started as an alliance of various NSAGs, were not only facilitated by the Member States of NATO and their Arab allies, but they were subsequently also granted international recognition and the armed opposition’s administrative body of the NTC soon became legitimised as the new authority of the state. Regime change became clearly seen as the ultimate objective of NATO’s intervention when this organisation and its Member States showed no practical interest in rebuilding Libya after Qaddafi himself was killed on 20 October 2011. Submerged in the extrajudicial violence of the more than 1,700 NSAGs that thereafter became active on the Libyan scene, the historical subdivision lines of the Libyan state were further exploited by influential regional players that either claimed Cyrenaica a dominion or a ‘*terra nullius*’ (Saudi Arabia, Egypt, and the UAE), or similarly utilised Tripolitania to advance their own interests (Qatar and Turkey).

Libya indeed became a theatre of ‘proxy wars’ between those two main ideological camps that emerged in MENA in the wake of the 2011 Arab revolts, and which gained access to the country’s domestic affairs through the classic entry point of ‘the tribe.’ Given the loyalty of the various militias that made up the once united armed

opposition to their tribes first and for most, the country became reorganised along the lines of those two main opposing ideological camps as each tribe declared allegiance either to the Islamist Libyan authorities in the Northwest or to the more Liberal authorities in the East. Meanwhile, the country's South was implicitly declared a '*terra nullius*' by Qaddafi's son Al Saedy against Libya's own people, thereby turning it into a place of lawlessness and disorder. The resultant humanitarian crisis reached catastrophic levels, most notably through a refugee crisis that left the EU unable to take effective measures to secure its own frontiers.

It is recalled that I started the process of researching and writing this thesis Chapter on Libya with a central research question pertaining to how PIL does or does not apply to the *meso* level of the territorial controls of NSAGs in Libya. The short answer is that it does not. To be clear, IHL's provisions on the general conduct of hostilities in situations of 'non-international armed conflict' as enshrined by Common Article 3 and Additional Protocol II to the Four Geneva Conventions do apply to the situation in Libya. However, hardly any governance related IHL provisions apply to the management of the general affairs of the civilian population within the territories of NSAGs, beyond the mere call for the provisions of humanitarian assistance under IHL. The different proposals to otherwise extend the applicability of human rights law to NSAG's territorial enclaves largely ignore the real-time dynamics on the ground and the general weight of Great Power politics in all such situations of civil war.

In addition, while the historical subdivision lines of Libya have evidently been exploited by various regional and international players, the various calls for 'self-autonomy' within those different regions of Libya were not 'secessionist' in their nature (unlike South Yemen), and they do not fit under the rather problematic framework of 'self-determination.' Ultimately, the proposed application of the lens of '*terra nullius*' based on TWAIL and 'postcolonial' IR has herein been made for the purpose of overcoming the paucity of relevant PIL frameworks. It has additionally aimed to advance the conceptualisation of a pattern of contestations over territory in our present international system that goes beyond a simple call for secession based on 'self-determination.' Libya's situation is indeed a case in point.

**[End of Part II – Case Studies]**

## **Chapter VII: Reflections and General Concluding Remarks**

This thesis has been built around the following central research question: *How does international law apply to the territorial controls of NSAGs in post-Uprising Yemen and Libya, and how can the nature of its applicability be studied through IR theory?*

Those questions of pertinence to the governance and overall status of the territorial enclaves of NSAGs are evidently important ones to ask, especially when thinking of the humanitarian situation of affected populations. Indeed, ‘territoriality’ has always been understood as governance defined in terms of ‘territory,’ and for Elden (2013), the concept of ‘territory’ itself was “born” in Roman legal doctrine as the “very definition” of jurisdiction.<sup>751</sup> Therefore, by outlining and criticising different shortcomings in applicable international norms to the territorial enclaves of NSAGs, this thesis has aimed, primarily, to place the fate of affected populations centre stage of the analysis.

In subsection I.I on the State of Research, key relevant contributions from the various sub-disciplinary fields of Politics and International Studies were identified, and subsequently referenced in Part I, while emphasising that this thesis is grounded more specifically within the two subfields of (critical) IR theory and public international law. Those two main bodies of literature and/or international legal doctrine were then reviewed by Chapters II-III of thesis.

Chapter II started by offering a ‘diachronic’ account of how our modern international legal system was established, one that is importantly informed by TWAIL. It has been noted that after the Thirty-Years War in Europe, the above understandings of ‘territory’ and ‘territoriality’ led to the codification of ‘sovereignty’ as governance in the absence of foreign interference. And after the Peace of Westphalia in 1648, European revolts from the French Revolution (1789) onwards led to our modern understanding of governance in the form of ‘republican democracy’ and the rule of a people by the people themselves. Therefore, German legal doctrine from the 19<sup>th</sup> Century onwards established that “the concept of people...identified itself with the state,”<sup>752</sup> and one could add if a people’s territory is in flux, the consequences for the humanitarian aspects of their situation are bound to be severe.

---

<sup>751</sup> Elden (2013), p.232.

<sup>752</sup> Nuzzo in Koskenniemi et. al. (2017), p.263.

Paradoxically, it has been stressed, this understanding of ‘territoriality,’ ‘sovereignty,’ and implicatively ‘statehood’ was being formulated in Europe while Britain was declaring distant territories like Australia a ‘*terra nullius*.’ This other legal concept was also prominent in subsequent international debates that led to the division of Africa amongst the newly independent, ‘democratic’ European powers at the Berlin Conference of 1884-1885. In other words, unless it pertained to the European people themselves, the concept of a ‘people’ was remarkably deemed inapplicable to distant populations even as they were being subjected to various forms of European colonialism. A ‘*terra nullius*’ was so declared irrespective of the presence of its local inhabitants on their land, and the British Governor Bourke of Australia used the term by way of demarking British overseas influence vis-à-vis other colonial powers only.

Once the newly independent, democratic European states (including Britain) were established, their colonial expeditions became justified on such oppressive, morally superior mantras as the ‘civilising mission.’ This is strikingly similar to the way that the US more recently invaded Iraq under the slogan of giving ‘democracy’ to the Iraqi people. In effect, distant populations and faraway places were denied the right to undergo the same processes of autonomous social organisation that the Western powers themselves went through, and they were instead forced to accept Western conceptions of ‘sovereignty,’ ‘territoriality,’ and ‘statehood,’ amongst other forms of modern international institutions.<sup>753</sup> In the German ‘South West Africa’ colony (modern day Namibia) alone, the forces of the German Empire committed the Herero and Namaqua Massacres of 1904-1907, when more than 100,000 ‘rebellious’ tribesmen were killed.

According to the English school in IR theory, this was the coercive, ‘vanguardist’ manner through which a Eurocentric ‘international society’ spread from Europe to the rest of the world. At the same time, Chapter III on IR theory has emphasised that if the ‘international society’ framework does take into account the ‘liberal’ form of ‘nationalism’ as born during the French Revolution, it does little to account for the ‘anticolonial’ form of ‘nationalism’ that emerged both under colonial rule and more prominently during the era of decolonisation (1950s-1980s).<sup>754</sup> Neither does it

---

<sup>753</sup> Also see Del Sarto et. al. (2017).

<sup>754</sup> See Heywood (2013) on ‘nationalism.’

provide an assessment of ‘postcolonial nationalism,’ or of the rise of ethnic minorities within the newly established, ‘postcolonial’ states against colonial legacies such as ‘boundaries.’ As Epp (1998) puts it, “even where English school texts are critical of Western policy and sympathetic to the post-colonial ‘revolt’...they typically also evince a more conservative concern for order in international society.”<sup>755</sup> This has additionally been blamed by Seth (2013) on the very Eurocentric nature of the account provided by the ‘international society’ framework, as it tends to exclude how forces outside of Europe have contributed to the making of our present international system.

Therefore, we have alternatively advocated the ‘postcolonial’ critique of international relations. This critique is to IR theory what TWAIL is to international legal doctrine, although ‘postcolonialism’ is critical “of all ‘essentialism,’ that is, of all approaches which take national and ethnic identities for granted by assuming them to be ‘fixed,’ ‘natural’ or ‘primordial’...[including]...Third Worldism.”<sup>756</sup> Based on those two critical approaches (TWAIL and ‘postcolonial’ IR), I have crucially pointed out that under the UN System our international society became primarily oriented around the need to preserve the post-WWII status quo, and the victor status of the allied powers – the Permanent Members of the UN. In this regard, the institution of ‘boundaries’ could be considered a colonial legacy that is being enforced by the UN System in a manner that evidences the continuation of colonialism in a region such as MENA to our present day.

Most notably, *uti possidetis juris* under PIL stipulates that any boundary demarcations drawn by the former colonial European powers must have remained in place when non-European states gained their independence, irrespective of any possible aspirations by relevant subethnic groups to redraw the map of those new states. As a result of this, many of the contemporary border demarcations of MENA, of other parts of Africa (e.g., Nigeria, the two Sudans, and Somalia), and vast swaths of Central Asia (e.g., Pakistan, Kashmir, and Afghanistan) have become highly unstable as they do not reflect the ‘self-autonomy’ aspirations of many subethnic groups. Furthermore, since the concept of ‘territoriality’ has always been intertwined with ‘statehood,’ it remains difficult to explain the governance structures of

---

<sup>755</sup> Epp (1998), p.58.

<sup>756</sup> Seth (2013), p.2.

autonomous, sub-state territorial enclaves that have emerged within regions such as the Iraqi and Syrian parts of historical Kurdistan.<sup>757</sup>

This thesis has therefore offered a critical assessment of the fate of populations living within such enclaves from the perspective of TWAIL and ‘postcolonialism.’ It has crucially underlined that not all territorial enclaves that are controlled by NSAGs are seeking secession from already established states, and that those dominions typically come into existence through various processes of co-optation that are directed at local agents. Some NSAGs such as the Houthis and Hafter’s forces in the Yemeni and Libyan contexts of the post-2011 Uprisings have even been eager to take over the rest of their respective countries once their control over a certain sub-state region has been consolidated.

To better account for relevant shortcomings under PIL, the prominence of Great Power politics in all such situations of civil war, and most importantly, the largely ignored humanitarian outcomes, this thesis has ultimately proposed that we study the territorial controls of NSAGs as the ‘*terra nullius*’ of our present international society. Part II of the thesis (Chapter IV-VI) on the empirical study of the situation in Yemen and Libya (2011-2015) has thereafter illustrated how this application could be carried out, namely using a ‘critical’ analytical framework that is derived from TWAIL and ‘postcolonialism,’ and a compatible research methodology that is historical, ‘diachronic,’ and ‘contextual’ of the *meso*, *micro* and *macro* levels of dynamics. This use of ‘*terra nullius*’ has importantly been carried out with the overall objective of illustrating *the continued existence* of one of the most divisive colonial legacies in a region such as MENA until our present day, and not to, under any circumstances, endorse such an implicit categorisation of those territorial enclaves by competing foreign interested parties.

This seventh and last Chapter of the thesis firstly outlines its main normative and theoretical findings, along with its critical assessment of PIL’s applicability to the governance and overall status of the territorial controls of NSAGs. The main findings of my empirical study of the situation in Yemen and Libya (2011-2015) are then also summarised. Subsequently, the Chapter offers an account on the feasibility of applying ‘*terra nullius*’ in the study of such situations of civil war, while also making

---

<sup>757</sup> For background discussions, see Del Sarto et. al. (2017), Haklai et. al. (2015), O’Loughlin et. al. (2014) and O’Leary et. al. (2001).

reflections on some of the possible limitations of this approach. Lastly some reflections are additionally made on the possible methodological limitations of this thesis, within the broader context of the ‘decolonisation of research.’

### VII.I. The International Status of the Territorial Enclaves of NSAGs

In its examination of *macro*-level PIL in relation to questions of ‘territory’ and ‘territoriality,’ Chapter II of this thesis has noted that the Charter of the UN obliges states to respect each other’s ‘territorial integrity.’ At the same time, it has been stated that in situations of civil war or ‘non-international armed conflict,’ the territorial controls of NSAGs are addressed by *macro*-level PIL frameworks such as the UN Charter in a highly ambivalent manner, one that obscures the fate of impacted populations. For example, while under the UN Charter the ‘territorial integrity’ of the state must always be respected, the principle of ‘self-determination’ under the same Charter could, for some, suggest that the external boundaries of states must be redrawn in order to accommodate the aspirations of ethnic minorities and subjugated groups in society, which would in turn violate the ‘territorial integrity’ of the relevant states.<sup>758</sup> However, a close reading of the UN Charter could still lead one to the conclusion that anti-colonial, national liberation movements may invoke the right to ‘self-determination’ against their foreign occupiers, but not groups seeking to secede from already established states.<sup>759</sup>

This was crucially the case with respect to Case I and Case II of state creation under the UN System based on ‘self-determination’ that I have established after a review of Crawford (2007) and based on TWAIL. Of these, Case I includes territories placed under the ‘mandate system’ of the League of Nations and subsequently the ‘trusteeship system’ of the UN, which were mere reformulations of colonial legacies such as ‘*terra nullius*.’ Those systems of global governance were simply foreign custodianship systems over territories that used to be ruled by defeated adversaries such as Germany and Ottoman Turkey, which were established under the oxymoronic mantra of “preparing” such territories towards independence. With respect to Case II, the case of ‘nonself-governing territories,’ Great Power politics have continued to prevent many of those territories from gaining their independence

---

<sup>758</sup> Brilmayer (1991), p.178. Also see UN Charter, Ch.1, Article 2 (1,4,7).

<sup>759</sup> See Browlie (2003); Crawford (2007), pp.37-93 & pp.174-193; Malanczuk (1997); Klabbers (2006), pp.186-206; and Dubois (2011).



until our present day, and irrespective of the outcomes on affected populations e.g., Western Sahara, British Gibraltar, French Polynesia, and many Caribbean Island states. The predicament of Palestine under Case I has also not been resolved due to those same political considerations and Israel's status as one of the main allies of the West in MENA.

My review of Crawford (2007) has further demonstrated that outside the colonial context of Case I-II, new states have emerged under the UN System based on 'remedial secession,' or on the grounds of severe violations of the human rights of their respective populations (Case III), but on only three occasions: Bangladesh (1971), Kosovo (2008), and South Sudan (2011). As established by the *Supreme Court of Canada* in the Quebec case (1998), the 'safeguard clause' under PIL,<sup>760</sup> and important literature such as that of Klabbers (2006), the population of any given country is normally able to exercise its right to 'self-determination' through participating in its governance system 'on equal basis,' or 'without discrimination' of any kind. Otherwise, or if the basic human rights of said population were to become systematically violated by the central government of the relevant state to the point of genocide, relevant segments of the population could become entitled to secede in their own state.

At the same time, the TWAIL-informed approach makes it possible to argue that the prominence of Great Power politics in those situations, and the selectivity of how 'remedial secession' is itself either granted or denied to any given minority group evidences the fact that the dynamics of Case III are, after all, not entirely different from the colonial context itself. For example, irrespective of how the human rights of the people of Chechnya were violated by the Russian authorities in the 1990s, the UN System did not grant Chechnya the right to 'remedial secession,' and Kosovo's own independence is still not widely recognised due to the same political considerations.

Similarly, despite the existence of an international custom relevant to Case IV of state creation under the UN System, the case of 'the breakup of political unions,' that the central government must approve of the secession of any parts of such unions; early recognition was extended to the constituent republics of Yugoslavia to safeguard

---

<sup>760</sup> See Crawford (2007), p.118.

European interest. The case of Yemen further demonstrates that *uti possidetis juris* itself is only respected when and if doing so suits the interests of the most influential regional and international players. Here, the British legacy of the 1967 border demarcations between North and South Yemen could indicate that those two parts of Yemen should remain divided, but it is the decision of the governments of those two parts of Yemen to enter into their current political union in 1990 that is instead being upheld regardless of the humanitarian consequences. One could indeed argue that it is not only the post-WWII victor status of the Permanent Members of the UNSC that is currently being enforced through the UN, but it is also the post-Cold War global territorial status quo that is being preserved by the same international system, irrespective of whether the various processes of decolonisation of the 1950s-1980s have been completed.

Arguably due to such a prominence of Great Power politics in all cases of state creation under the UN System, Crawford (2007) has further provided us with a list of unsuccessful cases of secession since the end of the Cold War, which includes Somaliland (1991), Nagorno-Karabakh (1991), and/or South Yemen (1994). In many of those cases, the failure of the secessionary attempt led to the creation of a *de facto* state that is still awaiting the recognition of the international community.<sup>761</sup> However, due to their complexity, Crawford (2007) has categorically excluded those ‘blackholes’ of legal discontinuity on the map of our contemporary world from his otherwise extensive account on *The Creation of States in International Law*.<sup>762</sup> In this regard, Kaldor (1999) has coined the term ‘New Wars’ in order to underline the predominantly ethnic nature of many intra-state conflicts that have occurred since the end of the Cold War. Sterio (2011) has borrowed the term that was first coined by the prominent public international lawyer Richard Falk in 1985 and further described such an emerging pattern of *de facto* states awaiting *de iure* international recognition a ‘*Grotian moment*’ pertaining to the fourth criteria of statehood under the Montevideo Convention (1933): ‘territory,’ ‘government,’ ‘population’ and ‘the capacity to enter into international relations.’

Chapter II of this thesis has additionally acknowledged that the development of international norms on ‘remedial secession’ has progressed in close parallel to the

---

<sup>761</sup> Also see O’Loughlin et. al. (2014).

<sup>762</sup> Crawford (2007), p.419.

development of international norms on humanitarian interventions through the ‘responsibility to protect’ (R2P). The latter has also been widely described in the literature as a ‘*Grotian moment*.’ Importantly, however, Chapter II has underlined that R2P as codified at the 2005 World Summit does not allow for the division of already established states to the advantage of any suppressed ethnic minorities, even though its enforcement in the case of Libya has resulted in that country’s seeming return to its pre-existing subdivisions of Cyrenaica in the East, Tripolitania in the West, and Fezzan in the South. In addition, it has been emphasised that since humanitarian interventions had already been authorised by the UNSC prior to 2005,<sup>763</sup> the passage of R2P has carried the overall effect of legitimising the right of the Permanent Members of the UNSC to administer the global governance system, and to authorise the suspension of the ‘sovereignty’ of other states in times of civil war.

In this regard, the Eurocentric nature of the account offered by the ‘international society’ framework in the English school circles of IR theory further overlooks the present reconfiguration of world order away from its alleged ‘unipolar’ moment of the 1990s. While Buzan (2009) particularly notes that the “cooperative roots” of the global ‘international society’ are shallow, “and could more easily (which is not to say easily) be swept away by changes in the distribution of power that reduce Western influence;”<sup>764</sup> the way that Russia and China have prevented the authorisation of a humanitarian intervention in Syria after 2011 demonstrates that the ‘Rest of the World’ is actively contributing to the making of our present international system. This is something that remains unaccounted for by what John Hobson describes as the “Eurocentric big bang theory of world politics.”<sup>765</sup>

## **VII.II. PIL and Notions of Non-State Territoriality**

We may further recall that IR theory was utilised by Chapter III of this thesis to fill-in any persistent gaps in our understanding of the nature of PIL’s applicability to the governance and overall status of the territorial enclaves of NSAGs, and to support the TWAIL-informed analysis of Chapter II with a ‘critical’ theoretical framework

---

<sup>763</sup> See Sandholtz and Sweet (2011).

<sup>764</sup> Buzan (2009), pp.40-41.

<sup>765</sup> See John Hobson, “The Other Side of the Westphalian Frontier,” in Seth (ed.) (2013), pp.32-48. Also see Hobson (2004).

from IR theory. As The Committee on Facilitating Interdisciplinary Research (2004) explains, an interdisciplinary study would typically aim to “advance fundamental understandings or to solve problems whose solutions are beyond the scope of a single discipline or area of research practice.”<sup>766</sup> However, this thesis has underlined that even in such an extensive theoretical account as that of Buzan et. al. (2009), the lack of guidance on how the ‘international society’ framework and its various institutions apply to the non-state domain of the region proves to be problematic.<sup>767</sup> And if an analytical undertaking such as the present one was to overcome those theoretical shortcomings at the *micro* and *meso*-levels of the MENA region, I have emphasised in Chapter III the need to go beyond the heavily ‘descriptive’ tone of the ‘international society’ framework itself.

Indeed, theoretical deficiencies arising from the English school’s ‘descriptive’ and/or ‘explanatory’ account of IR have resulted in its overlooking of the many ‘revisionist’ processes that are arguably taking shape in MENA, and that are challenging the same international order that is actively being enforced through the UN. Buzan et. al. (2009) have notably ignored the tribal configuration of many parts of the MENA region, which made the Ottomans implement a *millet* governance system in places such as North Yemen and Libya. They correspondingly do not account for the ‘irredentist’ dimension in the rise of many NSAGs in the region, and I have argued that the authors could have listed ‘irredentism’ as one of the ‘primary institutions’ of the Middle East in order to overcome this. However, this would have arguably still not been possible to establish given the epistemological limitations of the English school, and its overall pre-occupation with order in ‘international society.’

Following the guidance of Koskeniemi (2005) in relation to areas of uncertain applicability of PIL such as the present one, the task of the researcher is to first establish the content of the law and to then examine whether it binds all states regardless of their will, power, and/or interests. As this last Chapter of the thesis has thus far provided a summary of how *macro*-level PIL applies to the international status of the dominions of NSAGs, and as it has made an indication of the TWAIL/ ‘postcolonial’ critique of such an applicability thereof, the next step is to similarly

---

<sup>766</sup> Qtd in Roberto Carrillo & Lidia Nunez, “Interdisciplinarity: The Intersection of Different Disciplines for Understanding Common Problems,” in Morin et. al. (eds.) (2021), p.145.

<sup>767</sup> Buzan (2009), p.43.

provide a summative assessment of the paucity of international norms that are applicable to the *micro* and *meso*, administrative levels of those territories while their international status is in flux.

In this regard, we may also recall that very few IHL and IHRL frameworks presently outline how the territories of NSAGs should be administered, except for the pertinent call to provide humanitarian aid to populations stranded within those territories, which is more in line with the neoliberal, neo-colonial global governance agenda of the UN.<sup>768</sup> This is primarily because NSAGs do not have the capacities to sign or ratify international treaties.<sup>769</sup> In addition, it is up to the discretion of such NSAGs whether the various provisions of international treaties signed by the government of their former states should be enforced in their respective territories, especially at a point in time when their control of territory becomes maintained as a new fact on the ground. The territorial enclaves of NSAGs indeed tend to come into existence through a revolution against domestic legal systems, and by extension any enactments of relevance to international treaties that those domestic legal systems may or may not contain.

Accordingly, Chapter III states that the insights of Ruggie (2004) could be employed by way of activating the allegedly ‘constructivist’ epistemology of the ‘international society’ framework, and to thereby overcome some of the theoretical obstacles that Buzan et. al. (2009) admitted running into when applying this framework to the non-state domain of MENA. Arguably, based his consideration of the ‘co-constitutive’ power of norms under the ‘constructivist’ school of IR, Ruggie (2004) stresses the importance of the human rights of the individual in the general workings of the global political economy. “There is a certain moral and intellectual obtuseness,” underlines Ruggie, “to a position that considers people’s welfare to be an uninteresting concern for international relations theorizing, particularly at a time when the individual enjoys more extensive recognition in international politics and law than ever before.”<sup>770</sup>

On the one hand, my attempt to offer an assessment of how *macro*-level PIL law applies to the potential status of the territorial domains of NSAGs has resulted in the previously established, critical account of Case I-IV on the creation of states under

---

<sup>768</sup> See for example Chimni (2004).

<sup>769</sup> See Burniske et. al (2017), p.27.

<sup>770</sup> Ruggie (2004), p.519.

PIL. On the other hand, my subsequent attempt to outline presently applicable *micro*-level IHL and IHRL frameworks has emphasised their more acute levels of rarity. However, since norms are ‘co-constitutive,’ Chapter III has explained the latter dilemma as a possible outcome of an expectation placed by the population of a state undergoing civil turmoil on the international community, where the discourse of human rights is considered important, that the latter has failed to address due to its various security preoccupations. It has accordingly been stated that the situation of populations living under the control of NSAGs underlines that this relative absence of (acknowledged) norms is the result of various levels of incompatibilities between the rhetoric of humanitarianism on the one hand, and the dominant view of the territorial enclaves of NSAGs, on the other hand, as places of contagion that must be purged of “the terrorists” regardless of the potentially catastrophic humanitarian consequences.

However, Chapter III has cautioned against drawing too many parallels between Ruggie’s work and the present analysis, since NSAGs and how they govern their territories cannot simply be studied the way we study other ‘non-state actors’ such as transnational corporations and how the latter administer their sweatshops. The inability of existing literature to make such an important distinction has indeed resulted in the emergence of a growing number of proposals regarding the need to extend the scope of international human right treaties to, in turn, NSAGs and their substate territorial enclaves.<sup>771</sup> This is problematic, since the manner of how ‘territoriality’ has been addressed in Ruggie’s area of work, ‘business and human rights,’ is more in line with the sphere of private international law and the sub-disciplinary IR field of the international political economy, while the territorial enclaves of NSAGs evidently belong to the domain of public international law. If state boundaries are allegedly eroding due to the various processes of globalisation and the rise of other types of non-state actors, under public international law state boundaries are evidently being conservatively preserved.

Therefore, Chapter III of this thesis has emphasised the need to go beyond the ‘explanatory’ and/or ‘descriptive’ account of IR that ‘constructivism’ itself permits, and into the domain of ‘critical’ IR theory. The latter is indeed the domain of IR

---

<sup>771</sup> Bellal and Heffes (2018); also see Murray (2016).

theory that is understood by Cox (1981) and his contemporaries as the domain of ‘political emancipation.’ For example, why has the individual been able to ‘co-constitute’ international norms when there are various financial interests at stake, but not in relation to human suffering caused by the rise of a territorial enclave under the control of a NSAG? Such selectivity in the general workings of PIL clearly calls into question the underlying ideological basis of the international system themselves. And what about non-revisionist NSAGs, or NSAGs that do not necessarily seek to redraw the political map of the world; how else might we conceive of their situation if such individual-level considerations were to be deemed all together inapplicable?

In its efforts to re-position ‘territoriality’ within territory’s birth-right place of public international law, this thesis has taken an interdisciplinary approach that is informed by TWAIL and ‘postcolonialism’ in IR theory. This is the ‘critical’ approach that in general focuses the analysis on the various continuations of colonialism into our present day and/or on how our present world order has been transformed since the early colonial expeditions of the 15<sup>th</sup> century. Given the particularly ‘narrow gate’ of entry into the family of nations under PIL,<sup>772</sup> the growing number of proposals to extend human rights treaties to the dominions of NSAGs without granting them independence can accordingly be seen as various derivatives of the ‘civilising mission’ of the former colonial powers vis-à-vis the territories they subjected to foreign rule and/or proclaimed a ‘*terra nullius*.’ Those proposals have additionally converged with the conclusions of Koskenniemi et. al. (2017) that international law networks and empire have always been intertwined.

Importantly, Chapter III has underlined from a ‘critical’ theory perspective that the purpose served by ‘territoriality’ under PIL is conservative. This is because PIL is largely an outcome of the ‘problem solving’ branch of IR theory, or the ideological camp of politicians and statecraft that Agnew (1994) remarkably labelled ‘territorially trapped.’ While Agnew eventually revisited his ‘territorial trap’ thesis considering how ‘territoriality’ has allegedly been transformed through globalisations and other dynamics of the neoliberal international political economy,<sup>773</sup> Chapter III has stressed that this dictum remains applicable to notions of ‘territoriality’ under PIL. Such a view is especially possible to formulate based on

---

<sup>772</sup> See Osterund (1997).

<sup>773</sup> See Agnew (2015).

Cox (1981), who states that “the purpose served by problem-solving theory is conservative, since it aims to solve problems arising in various parts of a complex whole in order to smooth the functioning of the whole.”<sup>774</sup> Problem-solving theory indeed makes uncompromising value judgements about the world, in a manner that crucially does not allow for transformational change.

Importantly, this thesis has viewed the call for the provision of humanitarian assistance under IHL, which is arguably the main *micro*-level PIL provision of great pertinence to the governance of the territorial enclaves of NSAGs, through such a critical light. Chapter III has further stressed that humanitarian aid should be a temporary measure, not an end by itself, and that the impartiality of humanitarian aid agencies has been slowly eroding as they came to the aid of long-term peacebuilding projects with limited evidence of success. In addition, the securitisation of humanitarian work as part of the broader security-development nexus has contributed to the social engineering of such ‘unruly places’ in the image of the West to contain the threat they could potentially pose to hegemonic international interests. Thus, it is important to bear in mind that humanitarianism often leads to a situation of ‘conflict management’ as opposed to ‘conflict resolution,’ which further enforces the conservative purpose of global governance via the UN System to preserve the post-WWII status quo.

Lastly, we may note that the insistence of Seth et. al. (2013) to separate ‘postcolonialism’ from IR theory misses the point of ‘critical’ theory and is sort of unnecessary. It is the collective efforts of all branches of ‘critical’ theory, from ‘post-Marxism’ to ‘feminism,’ ‘poststructuralism,’ ‘critical constructivism,’ and ‘postcolonialism’ that could potentially lead to the ‘decolonisation’ of IR and the emancipation of ‘subaltern’ voices in international society. In other words, the impact of such powerful critiques of IR as an academic discipline and as a practise is stronger in their togetherness, not in isolation from one another.

From work based on the cognate critical approach of TWAIL in Koskenniemi et. al. (2017), Jose-Manuel Barreto has illustrated that the writings of Hugo Grotius (1583–1645), which are often connotated as the cornerstone of IHL, were mainly written to justify Dutch colonial expeditions in the East Indies. In addition, Manuel Jimenez

---

<sup>774</sup> Cox (1981), pp.129-130.



Fonseca has highlighted that the writings of Francisco de Vitoria (1483-1546), which are another foundational stone of the discipline, enabled Spanish political and economic colonial projects in Latin America. And as there is no doubt that the ‘critical wave’ of IR theory has reached the closely intertwined discipline of public international law, this thesis has been designed as a contribution to ongoing academic efforts to critically evaluate the contemporary implications of international law, not just its foundations, and in the interest of a more egalitarian international society.

### **VII.III. Summary of Findings: The Situation in Yemen and Libya (2011-2015)**

Part II (Chapter V-VI) of this thesis has therefore offered a ‘critical’ assessment of the situation in Yemen and Libya between and including 2011-2015. Chapter IV started with a more explicit indication of the ‘critical’ analytical framework of this empirical study and its research methodology. It can be reemphasised that this thesis employs many of the key tenants of ‘critical’ theory, most importantly a historical epistemology resting on an ‘anti-foundationalist’ ontology. In addition, in its rejection of the insistence of ‘mainstream’ theory to separate the ‘domestic’ from the ‘international,’<sup>775</sup> this thesis has consistently employed the three *macro*, *micro*, and *meso* levels of analysis in a manner that has aimed at ‘contextualising’ how all three dynamics co-dependently manifested themselves on populations living within each of the sub-state dominions that are studied by this thesis. To do this, this empirical study also followed a ‘diachronic,’ ‘process-tracing’ methodological approach that carefully selected its sources in a theory-driven manner. Nearly 44,000 local news reports giving voice to the anti-establishment agents of the Yemeni and the Libyan Uprisings have namely been analysed with the help of NVIVO.

Following the 2011 Uprisings in Yemen and Libya, those two countries have seemingly returned to their pre-existing sub-territorial divisions. At the same time, while the Saudi-led intervention in Yemen was launched after the Houthis took over North Yemen and subsequently started to target Aden and other parts of the country’s South, Libya’s own disintegration was arguably instigated by NATO’s ‘regime change’ operation and the power vacuum that it brought about in Libya. Accordingly, by 2015 five different regions controlled by NSAGs emerged on the contemporary

---

<sup>775</sup> Also see Jahn (2018).

map of MENA: North Yemen, South Yemen, Cyrenaica in East Libya, Tripolitania in Northwest Libya, and Libya's somewhat reconfigured Southern Fezzan region. Of these, it was only South Yemen that formally demanded secession after 2011, but the heavy presence of Al Qaeda in that part of Yemen led to the suppression of that region's call for independence. South Yemen was additionally transformed into a '*terra nullius*' and one of the main battlegrounds of the 'global war on terror.'

Demonstratively, the lens of '*terra nullius*' could prove to be helpful in the study of even those formal claims at secession, since it was the former Yemeni president Saleh who deliberately surrendered major parts of the country's South to Al Qaeda by way of avenging the Yemeni Uprising. Similar vindictive activities by Qaddafi's son Al Saedy also led to the emergence of the Southern part of Libya as a zone of outlaws and disorder that is mostly controlled by the Touareq and the Tobu tribes, whose ethnic make-up transcends Libya's own borders and into neighbouring Chad, Niger, Algeria, and Mali. However, no formal declarations of independence by those tribes in South Libya were recorded in 2011-2015, except for a few unsuccessful attempts at self-administration in Fezzan.

On the backdrop of TWAIL and 'postcolonialism,' this empirical study has importantly indicated that the historical subdivision lines of Yemen and Libya were exploited by external parties vis-à-vis their domestic, regional, and international opponents. This led to the practical treatment of the three remaining parts of the two countries as a '*terra nullius*,' and brought about devastating humanitarian outcomes.

The 2011 Arab Uprisings were immediately followed by the counterrevolution of the conservative establishment of GCC states, which worked tirelessly to ensure that the Uprising's call for change would not be heard. A key turning point was reached in August 2013, when GCC states other than Qatar supported the removal of the Muslim Brotherhood affiliated President Morsi from power in Egypt, and the subsequently violent crackdown of the Egyptian Army on members of the Muslim Brotherhood. That moment of bloodshed in Egypt also resulted in a series of campaigns against all political Islamist organisations that rose to power positions in MENA after 2011 through democratic elections, which the GCC arbitrarily grouped under the 'Muslim Brotherhood.' It further led to a fallout between the GCC and Qatar and Turkey at the regional level of MENA, and to a similar strain on GCC's relations with the West. Chapter V of this thesis has offered a critical assessment of the impact of such a

problematic regional and international atmosphere on Yemen, and it has concluded with an illustration of its dire humanitarian consequences for the Yemeni people.

In Yemen, the US and its allies initially sought to empower the Houthis as the main proxy for fighting Al Qaeda, and in a quid pro quo manner vis-à-vis both Iran and the GCC. Given the parallel negotiations of the infamous ‘Iran nuclear deal,’ empowering the Houthis was arguably one of the main bargaining chips at Iran’s disposal, while the Permanent Members of the UNSC and Germany were pressuring Iran to commit itself to the peaceful use of nuclear power. In turn, since most GCC states insisted that the West accepts the new Egyptian regime despite its disapproval of the Egyptian army’s crackdown on the Muslim Brotherhood, they were arguably pressured to accept such a Western-envisioned political settlement for the situation in post-Uprising Yemen.

In addition, a convergence of external interests was eventually reached in Yemen as most GCC states were hoping to see the Houthis exterminate the largest Yemeni opposition party, the Islah Party, which they labelled a member of the regional ‘Muslim Brotherhood’ organisation. However, not only did Islah and the Houthis sign a peace agreement as the Houthis entered Islah’s neighbourhood in Sanaa, but the Houthis also started expanding into South Yemen and eyeing the Saudi-Yemeni borders region. Therefore, the Saudi-led coalition commenced in late March 2015 its military campaign against the Houthis, who were arguably attempting to take over the rest of the country. In addition, given the threat that the Houthis started to pose to the stability of the Yemeni-Saudi borders, this campaign was also backed by the West, which can be labelled from the perspective of TWAIL and ‘postcolonialism’ ‘the guardian’ of the post-WWII and post-Cold War global boundary demarcations. Besides, the politics of ‘*terra nullius*’ are evidently more affective when exercised towards a territory controlled by a NSAG such as the Houthis, not towards an entire country such as Yemen potentially falling under the control of an unrecognised non-state entity e.g. Afghanistan.

Meanwhile, the internationally recognised government of President Hadi has become based in Aden, and its continued objection to the secession of the South has disqualified it for independence based on ‘the breakup of political unions.’ In addition, due to a fallout between Saudi-Arabia and its ally the UAE in April 2020 the Southern Transitional Council made a self-autonomy declaration out of Aden, by

which point the UAE had even used its fighter jets against Hadi's army. In other words, the historical subdivisions of Yemen are still being exploited by advantageous external players to this day, as platforms of 'proxy war' vis-à-vis their opponents. And by January 2021 the UN Office for the Coordination of Humanitarian Affairs stressed that Yemen remains the world's "worst humanitarian crisis," with at least 13.4 million Yemenis at the risk of "starving to death."<sup>776</sup>

As subsequently detailed by Chapter VI of this thesis, the regional divide that emanated from the return of the military establishment to power in Egypt via president Sisi has left an even more noticeable mark on Libya. Indeed, based on TWAIL and 'postcolonialism,' it has been argued that the endless suspension of the 'sovereignty' of Libya through the custodian approach of the UN towards that country invited several competing regional players to similarly claim a role for themselves in the management of the post-Qaddafi Libyan political scene. One would have particularly thought that the Libyans would be permitted to select their own head of government, but Fayiz al Sarraj was externally imposed by the UN and the EU in late 2015 as the head of a Government of National Accords based in Tripoli. By that point, Saudi Arabia, Egypt and the UAE had already empowered Haftar and Tobruk's House of Representatives in Cyrenaica in East Libya, while Qatar and Turkey were empowering the Islamists of Misrata, 'Libya's Dawn,' and the General National Congress to gain a similar 'self-autonomy' within the historic region of Tripolitania in West Libya. In other words, by 2015 each of the emerging ideological regional camps was actively declaring a respective part of Libya a '*terra nullius*' vis-à-vis regional and international opponents.

This extensive foreign meddling in Libyan affairs culminated in Egyptian and Emirati airstrikes over Tripoli in late 2014, which were immediately confirmed by the US and condemned by the EU, and in the Turkish deployment of troops to Tripoli in 2020 to defend the UN-installed Government of National Accords against incoming Haftar's forces. Under such a divided regional context, the earlier calls for the re-instatement of Libya's federal system in Cyrenaica were calls by Libyan tribes that in the aftermath of the 2011 Uprising became loyal to their region before the

---

<sup>776</sup> Turkish Anadolu Agency, "Yemen Remains 'Worst Humanitarian Crisis': UN Office," 12 January 2021. Available via <https://www.aa.com.tr/en/middle-east/yemen-remains-worst-humanitarian-crisis-un-office/2106553> (accessed 25/07/2021).

state, and were soon enough co-opted and exploited as the main entry point for external players into Libya's domestic politics. Libya's division in 2015 into an Islamist camp in the Northwest and a more liberal camp in the East reflected this tribal reorganisation of the state. If each of the more than 1,700 NSAGs that became active on the Libyan political scene identified with its tribe, each tribe then joined either side of the emerging, two main regional blocks that were split along such religious or heavily ideological lines. Indicatively, while the Egyptian army was cracking down on the Muslim Brotherhood in Egypt, a group that called for federalism in Cyrenaica started shutting down Libya's oil facilities in the country's Central and Eastern regions with the support of Saudi Arabia and the UAE. And when this fiasco of the Security Apparatus of the Oil Facilities came to an end with the seizure of the oil tanker 'Morning Glory' by US Navy as it was attempting to sell East Libya's oil, Hafter launched the western-appeasing strategy of claiming to be fighting 'the terrorists.'

At the same time, Chapter VI has underlined that the history of Hafter's ties to the US and the CIA makes his 'Operation Dignity' against Libya's Ansar Al Sharia in Benghazi a US operation. This is more so the case given how Ansar Al Sharia was thought to be responsible for the death of the US Ambassador to Libya and three other US citizens. However, it has also been noted that 'Operation Dignity' demonised all Islamist parties that were active on the Libyan scene, including Libya's branch of the Muslim Brotherhood the Justice and Construction Party, while it was the West's insistence on a continued role for the Muslim Brotherhood in post-Uprising MENA that primarily caused its fallout with GCC states. In other words, like the Houthis' war on Al Qaeda in Yemen, Hafter's war on 'the terrorist' in Libya made such conflicting external interests to eventually converge in Libya. At the same time, the Islamists that were unjustifiably labelled by Hafter as 'terrorist' soon launched a counteroperation in East Libya, operation 'Libya's Dawn,' which primarily engaged Hafter's allied forces from Zintan in various skirmishes within the historic region of Tripolitania. Irrespective of the late-2015 UN-sponsored inter-Libyan talks, such a reality on the ground meant that there was not going to be any end in sight for the Libyan conflict.

While TWAIL and 'postcolonialism' have made it possible to illustrate how divisive colonial legacies such as '*terra nullius*' continue to manifest themselves in MENA

via regional and international players alike, they have also permitted the exploration of an unfolding refugee crisis of catastrophic magnitudes in the Mediterranean. Given the ineffectiveness of all the measures that EU policymakers implemented to contain the refugee crisis in the Mediterranean, counterforces may have systematically been at play and that crisis itself could have indeed been instigated as a measure of power-politics via human trafficking networks against the EU itself.

#### **VII.IV. The Territorial Controls of NSAGs as *Terra Nullius* and Some of the Possible Limitations of this Approach**

The present utilisation of the guiding lens of '*terra nullius*' based on TWAIL and 'postcolonialism' leads one to the conclusion that the absence of *micro* or state-level PIL frameworks that are applicable to the *meso*, administrative level of the dominions of NSAGs is purposeful. It particularly facilitates the treatment of those territorial enclaves as negligible pawns that can be bid against regional and international opponents alike. With legal protection comes recognition, and with recognition new states emerge. In addition, since hardly any of the overseas territories that the former colonial powers labelled as '*terra nullius*' in the 19th Century were without local inhabitants, the 'critical' utilisation of this legal concept in the present analysis has brought the situation of human suffering at the *meso* level of those territorial enclaves central stage. It has correspondingly evidenced the continuation of different forms of colonialism in MENA to our present day.

This is not to say that 'legalism' or statehood is the only way out of the humanitarian situation of impacted populations. Rather, it is the lingering colonial legacies of 'divide and rule' and of effectively treating certain parts of already established states as '*terra nullius*' that must instead be overcome, if the interest of the international system is indeed to advance human dignity, justice and equality amongst other propagated goals and objectives. This could even be advanced by reforming already established international institutions such as 'non-intervention,' as opposed to re-inventing the wheel. Either way, the imperial reach of the Permanent Members of the UNSC must also be scrutinised.

Additionally, through this innovative theoretical bridge it becomes possible to argue that beyond a seemingly authentic call for secession based on 'irredentism' and/or 'self-determination' by any given sub-state territorial enclave, the territorial

fragmentation of already established states such as Yemen and Libya could be more of an outcome of competing regional and international interests. Such influential external players tend to exploit the pre-existing division lines of states in MENA and elsewhere to advance their expansionist interests, and this situation is arguably the main reason for why only Yemen, Libya, Iraq, and Syria have become territorially fragmented in the aftermath of the 2011 Arab Uprisings. Indeed, those four specific countries were historically made up of various territorial sub-divisions and their respective populations represent incohesive ethnic mosaics. In this regard, the shortcomings of readily available *macro*-level PIL frameworks such as ‘self-determination’ become themselves seen through the lens of ‘*terra nullius*’ as different outcomes of a selective international system that prioritises the political and security interests of the most powerful states above all other possible considerations, humanitarian or otherwise. When the territorial controls of NSAGs fall in line with such external interests, they would be accommodated; and when they do not, they would often be fought and isolated.

Beyond Yemen and Libya, the two case studies of this thesis, the Syrian regime and its Russian and Iranian allies presently control around 60% of Syria, while Kurdish forces and their US allies on the one hand, and the Syrian rebels and their own Turkish allies on the other are in control of most of the remaining parts of the country.<sup>777</sup> According to the Britain-based Syrian Observatory for Human Rights, 388,652 people have meanwhile been killed in Syria over the course of the past ten years of fighting, or since the start of that country’s Uprising.<sup>778</sup> In other words, the lens of ‘*terra nullius*’ could certainly be applied to situations of civil war other than those that I have examined in this thesis, or possibly even in the general study of any sub-state territorial enclave under the control of NSAGs.

At the same time, several theoretical limitations could be anticipated. For example, can this lens be applied to both situations of civil war, or ‘non-international armed conflict,’ as well as to situations of ‘international armed conflict’? And what about the present situation in Gaza Strip, which is both an outcome of civil strife between

---

<sup>777</sup> For a map, see *Aljazeera* “Syria: Who Controls What,” 13 March 2019. Available at <https://www.fpri.org/article/2020/03/idlib-the-most-dangerous-place-on-earth/syria-conflict-map-march-2019/> (accessed 25/07/2021).

<sup>778</sup> *French Press Agency*, “Syrian War Killed Nearly 400,000 so Far: Report,” 14 March 2021. Available via <https://www.dailysabah.com/world/syrian-crisis/syrian-war-killed-nearly-400000-so-far-report> (accessed 25/07/2021).

the two Palestinian groups Fatah and Hamas, as well as the general dynamics of the international, Israeli-Palestinian conflict? Can we still employ the lens of '*terra nullius*' in the study of Hamas' control of Gaza Strip since 2007-2008? Lastly, can this lens be applied to entire countries e.g., Libya or should its use be restricted to the dominions of NSAGs?

While an analysis of the Israeli-Palestinian conflict is certainly beyond the scope of this thesis,<sup>779</sup> it suffices to say that the situation in Gaza Strip would not have accelerated to its present status without the support that Palestinian factions in the Gaza Strip such as Hamas used to receive from Iran until they sided with the Syrian revolution against the Iran-supported Syrian regime in 2011. In addition, as part of the regional dynamics that ensued after the 2011 Uprisings, or the emerging ideological divide within the Sunni world into an Islamist camp led by Qatar and Turkey, and a more liberal camp led by Saudi Arabia, Egypt, and the UAE; the Gaza Strip was one of the enclaves that were 'claimed' by the camp of Qatar and Turkey. In other words, if such an application of '*terra nullius*' aims to emphasise the humanitarian implications of Great Power politics in issues pertaining to the rise of a sub-state territorial enclave, the same use of the term could be justified in a case such as that of the Gaza Strip. After all, this is the only place in the world that came close to being classified by the UN as "unliveable" in 2020.<sup>780</sup>

However, although some such parallels can be drawn between the present study and situations of international armed conflict such as the Israeli-Palestinian conflict, those parallels are themselves possible outcomes of civil strife between the two Palestinian factions Fatah and Hamas. This inter-Palestinian fighting emanated from Hamas' winning of the Palestinian Municipal and Parliamentary elections in Gaza Strip in 2006, and from the West's rejection of the results of those elections. By 2007, Hamas became the predominant military force in Gaza, which was subsequently placed under a suffocating Israeli siege and became the subject of periodic Israeli military campaigns against that densely populated piece of land. For the benefit of future research, it is therefore recommended that our 'critical' application of the lens

---

<sup>779</sup> For background, see Abdou (2012, 2013, and 2014). Also see Haklai and Loizides (2015), and Lustick (1995).

<sup>780</sup> See Jansen (2017).



of '*terra nullius*' to the territorial enclaves of NSAGs remains restricted to contemporary situations of 'non-international armed conflict' or civil war.

We may still recall that the predicament of Palestine is the only situation under Case I of state creation under the UN System that has not been resolved until today. Within that first category of state creation under the UN, a 'mandate system' such as that of Britain over Palestine was merely a reformulation of previous colonial practices such as Governor Bourke's Declaration of Australia a '*terra nullius*' in 1835, to justify the continued subjection of the former territories of the Ottoman and German Empires to foreign rule. Therefore, it might seem self-evident that '*terra nullius*' was originally conjured up in situations of inter as opposed to intra-state conflict. However, it is important to keep in mind that the Westphalian statehood system was only established in the 'Rest of the World' following European colonialism and the subsequent creation of the UN. In this regard, Christian Zionist literature from the 1840s famously referred to Palestine as "a land without a people for a people without a land," and the League of Nations then granted Britain a 'mandate' over Palestine based on the division of the levant region as stipulated for by Sykes-Picot (1916) and San Remo Conference (1920). Subsequently, the infamous Balfour Declaration of Britain promised in 1917 to facilitate the creation of a "homeland" for the Jewish people in Palestine.

In other words, the term '*terra nullius*' was always explicitly or implicitly invoked by already established states against territorial entities and historical regions such as Palestine within the broader international system where statehood was yet to be achieved. And whereas 'mainstream,' 'problem-solving' IR theories such as 'realism' and 'liberalism' have converged on the recognition of the IR myth of the 'anarchical' nature of the present international system; one could argue that from a 'postcolonial' perspective that the international system has not only been 'anarchical,' but it has also always been the space of colonialism. Therefore, the implicit and/or explicit categorisation of various enclaves within established states as '*terra nullius*' evidence the continuation of colonialism in a region such as MENA to our present day. In addition, those colonial legacies of '*terra nullius*' are unlikely to be addressed precisely because the current international legal framework facilitates the kind of intervention so visible in Yemen and Libya.

Consider for instance a scenario whereby a military intervention has been carried out into the territorial space of a state undergoing civil war e.g., Libya. As an immediate outcome of such an intervention, the territory of said state departs the zone of international *de iure* authority through the effective suspension of its ‘sovereignty’ by the intervening states and/or the UNSC. And once that state with an effectively suspended ‘sovereignty’ is back in such a zone of colonialism, the ‘race to the bottom’ by competing regional and international powers results in the implicit declaration of various sub-divisions within the same state a ‘*terra nullius*’ vis-à-vis their adversaries. Here, it could be possible to argue that the state becomes as a whole a ‘*terra nullius*’ of the international system e.g., Libya vis-à-vis the former Libyan regime. At the same time, it remains important to bear in mind that it was primarily through the subsequent exploitation of Libya’s historical division lines by various regional and international powers that led to its present territorial fragmentation. And although some such insights could be gained by applying ‘*terra nullius*’ to entire, modern states undergoing civil war, as opposed to a sub-state territorial enclave within them, it is more compelling for such an application to be restricted to the dominions of NSAGs.

As the situation within those territorial enclaves develops into *de facto* statehood, such sub-state territorial enclaves enter a condition of legal limbo while waiting for *de iure* international recognition. In places such as Somaliland, this kind of situation has been in place since 1991, and in the Houthi-controlled parts of North Yemen it has been in place since 2014. In both cases, North Yemen and Somaliland, the central governments of the respective, internationally recognised states have maintained their objection to any such disintegration of the land. At the same time, it is important to keep in mind that not all territorial enclaves under the control of NSAGs are seeking to secede. That is certainly not the case with respect to Gaza Strip, nor has been the case with respect to North Yemen and East Libya. Indeed, many NSAGs such as the Houthis in the Yemeni context, Haftar’s army in the Libyan context and the Taliban in the more recent example of Afghanistan have at one point or the other launched a military bid to acquire the entire territory of the state. Those possible parallels between the territorial enclaves of NSAGs and *de facto* states could still be worth exploring in future research, while preserving the lens of ‘*terra nullius*’ as a

tool for identifying colonial legacies and the root-causes of such situations, as opposed to ‘managing’ their secondary outcomes.

#### VII.V. On Methodology and the Decolonisation of Knowledge

This thesis has approached the situation in Yemen and Libya from the perspective of TWAAIL and ‘postcolonialism’ and using the guiding lens of ‘*terra nullius*,’ while making a parallel attempt to respond to the prominent call to ‘decolonise’ the curriculum and by implication the generation of knowledge itself. Accordingly, I sought a methodological approach that is epistemologically compatible with the ‘critical’ approach of my thesis, and I considered it important to first and for most establish a ‘diachronic’ and ‘contextual’ account of the key developments that took place in Yemen and Libya between 2011-2015. This research project has notably resulted in at least 655 pages of research notes that are comprised of two, lengthy events timelines covering the key developments in Yemen and Libya (2011-2015),<sup>781</sup> which I compiled in accordance with how the Yemenis and the Libyans themselves reported and my own translation of local news reports from Arabic to English. Since I download a total of 18,759 daily news reports from Yemen and 24,733 daily news reports from Libya (43,492 reports in total), I wrote those two events timelines as I manually coded and analysed all reports with the help of the Computer Assisted Qualitative Data Analysis Software of ‘NVIVO.’ More information about the methodological approach of this thesis can be found in Chapter IV.

Besides its usefulness in establishing a comprehensive account of the post-Uprising events of both countries, this theory-based ‘process-tracing’ approach has many merits as well as some possible limitations. On the one hand, it has led to an informed, ‘contextual’ analysis of the particularities of the situation at the *meso*, *micro* and *macro* levels of the domestic politics of both countries, and the broader regional and international political dynamics. In this regard, it is both the ‘diachronic’ scope of this methodological undertaking as well as the anti-establishment nature of the two main sources that it has relied on (*Mareb Press* and *Libya Al Mostakbal*) which sets it apart. In addition, my dataset can be described as ‘self-triangulated’ since 32-34%

---

<sup>781</sup> See Mahmoud M A Abdou, “Libya Events Timeline (2011-2015),” *Figshare*, 01/06/2021, available via [https://figshare.com/articles/thesis/Libya\\_Events\\_Timeline\\_2011-2015\\_/14706141](https://figshare.com/articles/thesis/Libya_Events_Timeline_2011-2015_/14706141) (accessed 21 June 2021); and Mahmoud M A Abdou, “Yemen Events Timeline (2011-2015),” *Figshare*, 01/06/2021, available via [https://figshare.com/articles/thesis/Untitled\\_Item/14706123](https://figshare.com/articles/thesis/Untitled_Item/14706123) (accessed 21 June 2021).

of all reports from Yemen and 37% of all reports from Libya were either reproduced from other local news outlets and foreign sources or translated from English into Arabic by those two main local news agencies. Importantly, I would have not been able to factor in the underestimated role that the GCC played in both Yemen and Libya through an alternative reliance on mainstream, Western news outlets such as *CNN* and *BBC*, nor through an exclusive reliance on competing regional outlets such as Qatar's *Aljazeera* and Saudi Arabia's *Al-Arabiya* for that matter.

Furthermore, my use of NVIVO has been instrumental in putting together each of the subsections of the preceding two Chapters on Yemen and Libya. For example, the category of reports on the 'humanitarian situation' represents an electronic dossier of news reports from across the different databases that I created in NVIVO (one for each year; two for the year 2011 in Yemen). While I was writing the corresponding subsections in Chapter V on Yemen and Chapter VI on Libya, I simply singled out such an extensive account of news reports for further analysis, re-ordered its Arabic reports in the manner of how they came about, and wrote each paragraph of the relevant subsections of my thesis using the techniques of academic writing (as opposed to Journalism) and this wide array of articles to cite. Looking back at Tables 5 to 10 in Chapter IV – Analytical Framework and Methodology, many of the remaining categories of reports that I established in NVIVO could also be used for the purposes of writing any other possible publications e.g., those pertaining to the transitional justice process in both countries.

On the other hand, since this was not a 'content' nor a 'discourse' analysis exercise, which in any case would have been difficult to carry out based on 'breaking news' or snippets of live news reports, there is a limit to how far I have succeeded in 'decolonising knowledge.' This is arguably a limitation of both, the present methodological undertaking as well as the sphere of 'critical' IR theory more broadly speaking. Despite its prominent call to emancipate 'subaltern' voices in society, and beyond the real-world contributions of (liberal) 'feminism,' 'critical' theory is indeed rarely 'constructive' in its critique of IR as a discipline and/or as a practice. After all, this is the camp of IR theory that is eager to set itself apart from the prescriptive, remedial approach of 'problem-solving' theory. In other words, it is quite paradoxical that the 'critical' camp of IR has called for change and yet it has offered relatively limited insights on how, exactly, such a change could be brought about. For example,

while it is possible to include the writings of authors from MENA in the ‘curriculum’ by way of ‘decolonising it,’ this rather seems to be shifting the onus of ‘decolonising’ the generation of knowledge onto those authors themselves.

But how can research itself be ‘decolonised’? Does the ‘decolonisation of knowledge’ imply that foreigners should not be allowed to write about distant parts of the world? If that was the case, which of the established international studies departments in the UK and beyond, exactly, would survive such a ‘neo-decolonisation’ process? While the question of ‘decolonising research’ is an important one to ask, surprisingly very little guidance is given by the discipline of Politics and International Studies on how this can be carried out. Even in an extensive, “A-Z guide” on *Research Methods in the Social Science* such as that of Morin et. al. (2021), hardly any relevant insights are offered. Travel restrictions to such places of civil war also prevent the employment of other research methods such as fieldwork. In this regard, the most developed ‘research decolonisation’ agenda can be accredited to anthropological research involving indigenous people, and the various attempts in auto-ethnographic research to ‘reverse the colonial gaze.’<sup>782</sup>

Importantly, while I have certainly established a historical account of the events that occurred in both Yemen and Libya between 2011-2015 based on how the Yemenis and the Libyans themselves reported and/or experienced, the present analysis remains entirely my own. Indeed, other researchers could arrive at entirely different conclusions when examining my own events timelines through a completely different theoretical starting point. Have I then succeeded in according more ‘agency’ to the Libyan and the Yemeni people in the writing of their own history, as I set out to do from the start? While I believe that the ‘generation of knowledge’ should not in any way be restricted based on nationality, it remains important to situate the researcher vis-à-vis the subject matter of their research.

Within the ‘critical’ camp of IR theory, it has crucially been established that the researcher cannot be detached from the subject matter they study, and that there is always space for subjectivity.<sup>783</sup> At the personal level, I have stated in the introduction that this research is motivated by my own experience with the failures of international law, namely to alleviate the humanitarian situation of my home city

---

<sup>782</sup> See Graugaard (2020), and Smith (2013).

<sup>783</sup> See for example Linklater (2010).

in Gaza Strip, Palestine. As is the case within all other substate territorial enclaves that are discussed in this thesis, my own family and the rest of the two million inhabitants of Gaza Strip have been collaterally punished. With respect to Gaza Strip, this has happened through a suffocating siege that Israel has imposed on it since 2008, and its endless wars with Palestinian factions in that densely populated strip of land that further aggravated human suffering. At the same time, while Palestine, Libya, and Yemen share many social, political, cultural, religious and/or linguistic realities, I still consider myself an outsider to both situations in Yemen and Libya.

Nonetheless, as this has been an entirely desk-based research project, and since all the information that have herein been analysed are publicly available information, no ethical dilemmas have arisen in the process of conducting this research. I have importantly made this extensive research undertaking in solidarity with those suffering within the dominions of NSAGs, and I offer this contribution by way of additionally advancing the presently underdeveloped, although important notion of ‘decolonising knowledge.’ This is an area of research and a methodological approach that can be further explored by future research.

This thesis can ultimately be considered a contribution to contemporary debates within peace and conflict studies that are critical of the notion of ‘human security’ and/or the limits of ‘hybrid peace.’ These call, respectively, for shifting our focus to the resulting state of human suffering as opposed to current preoccupations with the security interests of influential players, and for the incorporation of greater levels of local agency into externally imposed peacebuilding frameworks.<sup>784</sup> The findings of this thesis will further contribute to relevant debates on international legal and policy tools that address the fate of populations living under the control of NSAGs and/or ‘secessionary’ movements in other, similar situations within Eastern Europe, Sub-Saharan Africa, South Sudan, Somalia, Afghanistan, Iraq, and Syria, amongst other places.

---

<sup>784</sup> See Suthaharan Nadarajah and David Rampton, “The Limits of Hybridity and the Crisis of Liberal Peace,” *Review of International Studies*, 41:1 (2015), pp.49-72; and George Christou, “The European Union’s Human Security Discourse: Where Are We Now?” *European Security*, 23:3 (2014), pp.364-381. Also see Mahmoud Abdou “Humanitarian Assistance and Peacebuilding: Congruence as a By-product of Incompatibility,” *Peace and Conflict Monitor / Ideas for Peace*, 2014, available via <https://www.ideasforpeace.org/content/humanitarian-assistance-and-peacebuilding-congruence-as-a-by-product-of-incompatibility/>, (accessed 17/03/2021).

## Bibliography

26 September. Online, daily Yemeni news website, available via <https://www.26sep.net/> (accessed 28/03/2021).

Abdou, Mahmoud M A (2021), “Libya Events Timeline (2011-2015),” *Figshare*, available via [https://figshare.com/articles/thesis/Libya\\_Events\\_Timeline\\_2011-2015\\_/14706141](https://figshare.com/articles/thesis/Libya_Events_Timeline_2011-2015_/14706141) (accessed 27/01/2021).

Abdou, Mahmoud M A (2021), “Yemen Events Timeline (2011-2015),” *Figshare*, available via [https://figshare.com/articles/thesis/Untitled\\_Item/14706123](https://figshare.com/articles/thesis/Untitled_Item/14706123) (accessed 27/01/2021).

Abdou, Mahmoud M A (2018), “On the 70<sup>th</sup> Anniversary of the Universal Declaration of Human Rights, what is UDHR and How did it Come About?” *International Human Rights Centre*, available via [https://figshare.com/articles/thesis/On\\_the\\_70th\\_Anniversary\\_of\\_the\\_Universal\\_Declaration\\_of\\_Human\\_Rights\\_What\\_is\\_UDHR\\_and\\_How\\_did\\_it\\_Come\\_About\\_/17076047](https://figshare.com/articles/thesis/On_the_70th_Anniversary_of_the_Universal_Declaration_of_Human_Rights_What_is_UDHR_and_How_did_it_Come_About_/17076047), (accessed 17/02/2022).

Abdou, Mahmoud M A (2014), “Europe and the Question of Palestine,” MA Dissertation, *London School of Economics and Political Science*, United Kingdom, available via [https://figshare.com/articles/thesis/Europe\\_and\\_the\\_Question\\_of\\_Palestine/1320884](https://figshare.com/articles/thesis/Europe_and_the_Question_of_Palestine/1320884) (accessed 26/03/2021).

Abdou, Mahmoud M A (2014), “Humanitarian Assistance and Peacebuilding: Congruence as a By-product of Incompatibility,” *Peace and Conflict Monitor / Ideas for Peace*, available via <https://www.ideasforpeace.org/content/humanitarian-assistance-and-peacebuilding-congruence-as-a-by-product-of-incompatibility/> (accessed 17/03/2021).

Abdou, Mahmoud M A (2013), “Disunity in Palestine: its History and Implications for the Peace Process,” *Peace and Conflict Monitor / Ideas for Peace*, available via <https://www.ideasforpeace.org/es/content/disunity-in-palestine-its-history-and-implications-for-the-peace-process/> (accessed 26/03/2021).

Abdou, Mahmoud M A (2012), "The Middle East Peace Process and U.S. Special Interest Groups," MA Dissertation, *University of Heidelberg*, Germany, available via <https://archiv.ub.uni-heidelberg.de/volltextserver/13139/> (accessed 26/03/2021).

Agnew, John (2015), "Revisiting the Territorial Trap," *Nordia Geographical Publications*, 44(4): pp.43-48.

Agnew, John (1994), "The Territorial Trap: The Geographical Assumptions of International Relations Theory," *Review of International Political Economy*, 1(1): pp.53-80.

*Aljazeera Arabic* (2019), "The General of Coups," [Motion Picture], available via <https://www.youtube.com/watch?v=-9ebmzsuIV8> (accessed 21/02/2021).

*Aljazeera Arabic* (2018), "Are Saudi Arabia and UAE Forces Collaborating with Al-Qaeda in Yemen?" [Motion Picture], available via <https://youtu.be/SeaBbGXyIBk> (accessed 10/03/2021).

*Aljazeera Arabic* (2015), "Al Qaeda Informant," [Motion Picture], available via <https://www.aljazeera.net/programs/al-jazeeraspecialprograms/2015/6/4/مخبر-القاعدة> (accessed 09/02/2021).

*Aljazeera English* (2021), "Trump Ally Erik Prince Violated Libya Arms Embargo: UN Report," available via <https://www.aljazeera.com/news/2021/2/20/trump-ally-erik-prince-violated-libya-arms-embargo-un-report> (accessed 21/02/2021).

*Aljazeera English* (2019), "Syria: Who Controls What," available at <https://www.fpri.org/article/2020/03/idlib-the-most-dangerous-place-on-earth/syria-conflict-map-march-2019/> (accessed 25/07/2021).

*Al Thagheer*. Online, daily Yemeni news website, available via <http://al-thagheer.com/> (accessed 28/03/2021).

Anievas, Alex; Manchanda, Nivi and Shilliam (eds.) (2014), *Race and Racism in International Relations: Confronting the Global Colour Line* (Routledge).

Anderson, Benedict (2006), *Imagined Communities: Reflections on the Origin and Spread of Nationalism* 2<sup>nd</sup> ed. (Verson).



Anghie, Antony (2012), *Imperialism, Sovereignty, and the Making of International Law*. Cambridge Studies in International and Comparative Law (Cambridge University Press).

Ashcroft, Bill; Griffith, Gareth and Tiffin, Helen (1998), *Key Concepts in Post-Colonial Studies* (Routledge).

Armstrong, David; Farrell, Theo and Lambert, Helene (2007), “Three lenses: realism, liberalism, constructivism,” in *International Law and International Relations* (Cambridge University Press), pp.69-116.

Barkawi, Tarek and Laffey, Mark (2006), ‘The postcolonial moment in security studies,’ *Review of International Studies*, 32(2): pp.329-352.

Beach, Derek and Pederson, Rasmus (2013), *Process-Tracing Methods: Foundations and Guidelines* (University of Michigan Press).

Bellal, Annyssa and Heffes, Ezequiel (2018), “‘Yes, I Do’: Binding Armed Non-State Actors to IHL and Human Rights Norms Through Their Consent,” *Human Rights & International Legal Discourse*, 12(1): pp.120-136.

Benton, Lauren (2010), *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge University Press).

Brandt, Marieke (2017), *Tribes and Politics in Yemen, A History of the Houthi Conflict* (Oxford University Press).

Brilmayer, Lea (1991), *Secession and Self-Determination: A Territorial Interpretation* (Yale Law School).

Browlie, Ian (2003), “The Creation and Transfer of Territorial Sovereignty,” Ch.VII in *Principles of Public International Law* (Oxford University Press), pp.123–162.

Brown, Chris (2001), “World Society and the English School: An ‘International Society’ Perspective on World Society,” *European Journal of International Relations*, 7(4): pp.423-441.

Brown, Chris (1995), “International Theory and International Society: The Viability of the Middle Way?” *Review of International Studies*, 21(2): pp.183-196.

Bull, Hedley (1977), *The Anarchical Society: A Study of Order in World Politics* (Palgrave Macmillan).

Bull, Hedley (1966), "The Grotian Conception of International Society" in Butterfield and Wight (eds), *Diplomatic Investigations: Essays in the Theory of International Relations* (Harvard University Press).

Burniske, Jessica S and Modirzadeh, Naz K (2017), "Pilot Empirical Survey Study on the Impact of Counterterrorism Measures on Humanitarian Action," *Harvard Law School - Program on International Law and Armed Conflict*, available via <http://blogs.harvard.edu/pilac/files/2017/03/Pilot-Empirical-Survey-Study-2017.pdf> (accessed 26/03/2021).

Burniske, Jessica S., Modirzadeh, Naz K. and Lewis, Dustin A. (2017), "Armed Non-State Actors and International Human Rights Law: An Analysis of the Practice of the U.N. Security Council and U.N. General Assembly" *Harvard Law School's Program on International Law and Armed Conflict*, available via [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2994907](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2994907) (accessed 14/03/2021).

Buzan, Barry and Gonzalez-Pelaez, Ana (eds.) (2009), *International Society and the Middle East: English School Theory at the Regional Level* (Palgrave Macmillan).

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

Buzan, Barry (2001), "The English School: An Underexploited Resource in IR," *Review of International Studies*, 27(3), pp.471-488.

Carr, E.H. (1946), *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations* (Macmillan).

Chimni, B. S. (2000), "Globalisation, Humanitarianism and the Erosion of Refugee Protection," *Journal of Refugee Studies*, 13(3): pp.243-263.

Chimni, B. S. (2004), "International Institutions Today: An Imperial Global State in the Making," *European Journal of International Law*, 15(1): pp.1-37.

Clapham, Andrew (2006), "Human Rights Obligations of non-state Actors in Conflict Situations," *International Review of the Red Cross*, 88(863): pp.491-523.

Clunan, Anne and Harold, Trinkunas A. (eds.) (2010), *Ungoverned Spaces: Alternatives to State Authority in an Era of Softened Sovereignty* (Stanford Security Studies).

Cook, Joana and Vale, Gina (2018), "From Daesh to 'Diaspora': Women and Minors of Islamic State," *International Centre for the Study of Radicalisation*, Kings College, available via [https://icsr.info/wp-content/uploads/2018/07/Women-in-ISIS-report\\_20180719\\_web.pdf](https://icsr.info/wp-content/uploads/2018/07/Women-in-ISIS-report_20180719_web.pdf) (accessed 27/06/2021).

Copeland, Dale C. (2003), "A Realist Critique of the English School," *Review of International Studies*, 29: pp.427-441.

Cox, Robert W. (1981), "Social Forces, States and World Orders: Beyond International Relations Theory," *Millennium: Journal of International Studies*, 10(2): pp.126-155.

Crawford, James (2007), *The Creation of States in International Law* (Oxford University Press).

Crawford, James (1977), "The Criteria for Statehood in International Law," *British Yearbook of International Law*, 48, pp.93-182.

Christou, George (2014), "The European Union's Human Security Discourse: Where Are We Now?" *European Security*, 23(3): pp.364-381.

Daragahi, Borzou (2020), "Turkey Approves Deployment of Troops to Libya in High-Stakes Battle Across Mediterranean," *The Independent*, available via <https://www.independent.co.uk/news/world/middle-east/turkey-libya-troops-parliament-vote-erdogan-a9267716.html>, (accessed 05/03/2021).

Dawisha, Adeed (2016), *Arab Nationalism in the Twentieth Century* (Princeton University Press).

Del Sarto, Raffaella A.; Fawcett, Louise and Okyay, Asli S. (2017), "Contentious Borders: The Middle East and North Africa Post 2011," *International Affairs*, 93(4).

Dubois, Janique (2011), "Beyond Territory: Revisiting the Normative Justification of Self-Government in Theory and Practice," *The International Indigenous Policy Journal*, 2(2): pp.1-10.

- Dunne, Tim (1998), *Inventing International Society: A History of the English School*. (Macmillan).
- Edelman, Ethan (1994), "Global Prohibition Regimes: The Evolution of Norms in International Society," *International Organisations*, 44(4): pp.479-526.
- Elden, Stuart (2013), *The Birth of Territory* (University of Chicago Press).
- Elden, Stuart (2009), *Terror and Territory: The Spatial Extent of Sovereignty* (University of Minnesota Press).
- Elden, Stuart (2006), "Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders," *SAIS Review of International Affairs*, 26(1): pp.11-24.
- England, Andrew; and Kerr, Simon (2019), "UAE Attacks on Yemen Reveal Fractures in Saudi-Led Coalition," *The Financial Times*, available via <https://www.ft.com/content/48f44b08-caa5-11e9-a1f4-3669401ba76f> (accessed 29/09/2020).
- Epp, Roger (1998), "The English School on the Frontiers of International Society: a Hermeneutic Recollection," *Review of International Studies*, 24: pp.47-63.
- Euro-Mediterranean Human Rights Monitor* (2018), "2017 Shown Highest Ratio of Deaths to Migrant Arrivals by Sea in the Mediterranean in Years," available via <https://euromedmonitor.org/en/article/2222/2017-shown-highest-ratio-of-deaths-to-migrant-arrivals-by-sea-in-the-Mediterranean-in-Years> (accessed 09/09/2018).
- European Council on Foreign Relations. Website: <https://ecfr.eu> (accessed 28/07/2021)
- Eslava, Luis; Fakhri, Michael and Vasuki, Nesiya (eds.) (2017), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press).
- Fanon, Frantz (1963), *The Wretched of the Earth*, Translated from French by Richard Philcox (2004) (Grove Press).
- French Press Agency* (2021), "Syrian War Killed Nearly 400,000 so Far: Report," 14 March, available via <https://www.dailysabah.com/world/syrian-crisis/syrian-war-killed-nearly-400000-so-far-report> (accessed 25/07/2021).

- Gerard, Toal (2017), *Near Abroad: Putin, the West and the Contest over Ukraine and the Caucasus* (Oxford University Press).
- Gerges, Fawaz (2017), *ISIS: A History* (Princeton University Press).
- Gerges, Fawaz (ed.) (2014), *The New Middle East: Protest and Revolution in the Arab World* (Cambridge University Press).
- Gerges, Fawaz (2005), *The Far Enemy: Why Jihad Went Global* (Cambridge University Press).
- Giddens, Anthony (1990), *The Consequences of Modernity* (Polity Press & Blackwell).
- Gifkins, Jess (2016), "R2P in the UN Security Council: Darfur, Libya and Beyond," *Cooperation and Conflict*, 51(2): pp.148-165.
- Gourevitch, Philip (2010), "Can You Provide Humanitarian Aid Without Facilitating Conflict?" *The New Yorker*, available at: <https://www.newyorker.com/magazine/2010/10/11/alms-dealers> (accessed 14/03/2021).
- Graugaard, Naja (2020), "Auto Ethnography: Unsettling Colonial Research Relations," in Hansen, Ann Merrild and Ren, Carina (eds.), *Collaborative Methods in Arctic Research: Experiences from Greenland* (Routledge).
- Haklai, Oded and Loizides, Neophytos (eds.) (2015), *Settlers in Contested Lands: Territorial Disputes and Ethnic Conflicts* (Stanford University Press.)
- Hall, Stuart (1996), "When was 'The Post-Colonial: Thinking at the Limit,'" in Chambers, I. and Curti, L. (eds.), *The Post-Colonial Question* (Routledge).
- Halliday, Fred (2005), *The Middle East in International Relations: Power, Politics, and Ideology* (Cambridge University Press).
- Hassner, Ron E (2006), "The Path to Intractability Time and the Entrenchment of Territorial of Territorial Disputes," *International Security* 31(3): pp.107-138.
- Hay, Colin (2002), "Continuity and Discontinuity in the Analysis of Political Change," Ch. 4 in *Political Analysis: A Critical Introduction* (Palgrave Macmillan), pp.135-167.

Heywood, Andrew (2014), “Why Theory Matter,” Ch.21 in *Global Politics*, 2<sup>nd</sup> ed. (Palgrave Macmillan), pp.514-532.

Heywood, Andrew (2013), “Nations and Nationalism,” Ch.5 in *Politics*, 4<sup>th</sup> ed. (Palgrave Macmillan), pp.108-126.

Hinnebusch, Raymond (2015), *The International Relations of the Middle East* 2<sup>nd</sup> ed. (Manchester University Press).

Hinnebusch, Raymond and Ehteshami, Anoushiravan (eds.) (2002), *The Foreign Policy of Middle Eastern States* (Lynne Reinner).

Hobson, John (2004), *The Eastern Origins of Western Civilisation* (Cambridge University Press).

Howden, Daniel; Fotiadis, Apostolis and Campbel, Zack (2015), “Revealed: The Great European Refugee Scandal,” *The Guardian*, available via <https://www.theguardian.com/world/2020/mar/12/revealed-the-great-european-refugee-scandal> (accessed 02/03/2021).

Humphreys, Stephen (2005), “Strange Career of Pan Arabism,” Ch.3 in *Between Memory and Desire the Middle East in a Troubled Age* (University of California Press), pp.60-82.

Hurd, Ian (2002), “Legitimacy, Power, and the Symbolic Life of the UN Security Council,” *Global Governance*, 8(1): pp.35-51.

Independent International Commission on Kosovo (2000), *The Kosovo Report* (Oxford University Press).

*Institute for the Study of War* (2018), “Syria Situation Report: May 2 – May 29, 2018 [MAP],” available via <http://www.understandingwar.org/sites/default/files/Syria%20Situation%20Report%20-%20May%20Activity.pdf> (accessed 10/03/2021).

*International Court of Justice* (2010), “Advisory Opinion” No.141, available online via <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf> (accessed 13/03/2021).

*International Court of Justice* (1986), “Case Concerning the Frontier Dispute between Burkina Faso/Republic of Mali,” available via <http://www.icj-cij.org/en/case/69/summaries> (accessed 13/03/2021).

*International Court of Justice* (1986), “Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America) (Merits),” available via <https://www.icj-cij.org/public/files/case-related/70/6505.pdf> (accessed 13/07/2021).

*International Committee of the Red Cross* (2019), “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70<sup>th</sup> Anniversary of the Geneva Conventions,” 4427 ebook, Geneva, available via <https://www.icrc.org/en/publication/4427-international-humanitarian-law-and-challenges-contemporary-armed-conflicts#> (accessed 13/03/2021).

*International Committee of the Red Cross* (2016), “Non-International Armed Conflict,” available via <https://casebook.icrc.org/law/non-international-armed-conflict> (accessed 14/03/2021).

*International Committee of the Red Cross* (2015), “32 International Conference: International Humanitarian Law and the Challenges of Contemporary Armed Conflicts,” 32IC/15/11, available via <https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts> (accessed 26/03/2021).

*International Committee of the Red Cross* (2011), “International Humanitarian Law and Terrorism: Questions and Answers,” available via <https://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm> (accessed 14/03/2021).

*International Committee of the Red Cross* (2011), “The Relevance of IHL in the Context of Terrorism,” available via <https://www.icrc.org/eng/resources/documents/faq/terrorism-ihl-210705.htm> (accessed 14/03/2021).

*International Committee of the Red Cross* (2005), “Customary International Humanitarian Law,” available via

[http://www.redcross.int/EN/mag/magazine2005\\_2/24-25.htm](http://www.redcross.int/EN/mag/magazine2005_2/24-25.htm) (accessed 13/03/2021).

*International Committee of the Red Cross* (2004), "Occupation and International Humanitarian Law: Questions and Answers," available via <https://www.icrc.org/eng/resources/documents/misc/634kfc.htm> (last accessed 13/03/2021).

*International Criminal Tribunal of Yugoslavia* (1995), "Tadic," Case No. IT-94-1-AR72.

Jackson, Robert and Sorensen, Georg (2015), "Liberalism," Ch.4 in *Introduction to International Relations: Theories and Approaches* 6<sup>th</sup> ed. (Oxford University Press), pp.96-128.

Jahn, Beate (2018), "Liberal Internationalism: Historical Trajectory and Current Prospects," *International Affairs*, 94(1): pp.43-61.

Jansen, Michael (2017), "Gaza Strip 'unlivable' years earlier than predicted, says UN," *The Irish Times*, available via <https://www.irishtimes.com/news/world/middle-east/gaza-strip-unlivable-years-earlier-than-predicted-says-un-1.3153792> (accessed 15/03/2021).

Kaldor, Mary (1999), *New and Old Wars: Organised Violence in a Global Era* (Polity Press).

Karman, Safa and Al-Moliky, Gamal (2015), "The Road to Sanaa," *Aljazeera World* [Motion Picture], available via <https://www.aljazeera.com/programmes/aljazeeraworld/2015/06/road-sanaa-150624060410650.html> (accessed 22/02/2020).

Keck, Margaret E and Sikkink, Kathryn (1998), *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press).

Klabbers, Jan (2006), *The Right to be Taken Seriously: Self-Determination in International Law* (Johns Hopkins University Press).

Koskenniemi, Marti; Rech, Walter and Fonseca, Manuel Jimenez (eds.) (2017), *International Law and Empire: Historical Explorations* (Oxford University Press).



Koskenniemi, Marti (2006), "Report for the International Law Commission (ILC): Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law" UN Document A/CN.4/L.682.

Koskenniemi, Martti (2005), *From Apology to Utopia: The structure of the International Legal Argument* (Cambridge University Press).

Koslowski, Rey and Kratochwil, Friedrich V. (1994), "Understanding Change in International Politics: The Soviet Empire's Demise and the International System," *International Organizations*, 48(2): pp.215-247.

Kuijjer, Martin and Werner, Wouter (eds) (2016), "The Changing Nature of Territoriality in International Law," *Netherlands Yearbook of International Law*, 47 (Asser Press: Springer).

Lalonde, Suzanne (2002), *Determining Boundaries in a Conflicting World: The Role of Uti Possidetis* (McGill's-Queen's University Press).

Lewis, Dustin A.; Blum, Gabriella and Modirzadeh, Naz K. (2017), "Indefinite War: Unsettled International Law on the End of Armed Conflict," *Harvard Public Law Working Paper 16-17*, available via [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2923413](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2923413) (accessed 26/03/2021).

*Libya Al Mustakbal*. Online, Libyan news website, available via <http://archive2.libya-al-mostakbal.org/> (accessed 28/03/2021).

Linklater, Andrew (2013), "The English School," in Burchill, S., *Theories of International Relations* (Palgrave Macmillan), pp.88-112.

Linklater, Andrew (2010), "The Achievements of Critical Theory," in Ch.13 of *International Theory: Positivism & Beyond*, edited by Steve Smith, Ken Booth and Marysia Zalewski (Cambridge University Press), pp.279-298.

Linklater, Andrew (1990), *Beyond Realism and Marxism: Critical Theory and International Relations* (Palgrave Macmillan).

Lustick, Ian (1997), "The Absence of Middle Eastern Great Powers: Political 'Backwardness' in Historical Perspective," *International Organisation*, 51(4): pp.653-683.

Lustick, Ian (1995), *Unsettled States, Disputed Lands* (Cornell University Press).

Mackintosh, Eliza (2015), "UAE 'recklessly' supplying Yemeni militias with foreign arms, Amnesty reports," *CNN*, available via

<https://edition.cnn.com/2019/02/05/middleeast/uae-yemen-militias-amnesty-intl/index.html> (accessed 29/09/2020).

Macqueen, Norrie (2007), *Colonialism* (Pearson Longman).

Malanczuk, Peter (1997), "Legal Consequences of Changes of Sovereignty over Territory (State Succession)," Ch. XI in *Akehurst's Modern Introduction to International Law* (Routledge), pp.161-172.

*Mareb Press*. Online, daily Yemeni news website, available via

<https://marebpress.net/>, (accessed 28/03/2021).

McHugo, John (1998), "How to Prove Title to Territory: A Brief, Practical Introduction to the Law and Evidence," in *Boundary and Territory Briefing*, 2(4), Schofield, Clive (ed.), International Boundaries Research Unit (IBRU), University of Durham.

Mearsheimer, John (2005), "The Rise of China will not be Peaceful at All," *The Australian*, available via <https://www.mearsheimer.com/wp-content/uploads/2019/06/The-Australian-November-18-2005.pdf> (accessed 12/02/2022).

Mearsheimer, John (2001), *The Tragedy of Great Power Politics* (W.W. Norton).

Mearsheimer, John (1995), "A Realist Reply," *International Security*, 20(1): pp.82-93.

Morgenthau, Hans (1948), *Politics Among Nations: The Struggle for Power and Peace*, edited by Kenneth W. Thompson (A.A. Knopf).

Morin, Jean-Frederic; Olsson, Christian and Atikcan, Ece Ozlem (2021) (eds.), *Research Methods in the Social Sciences* (Oxford University Press).

Muldoon, James (2019), "Academics: it's time to get behind decolonising the curriculum." *The Guardian*, available via <https://www.theguardian.com/education/2019/mar/20/academics-its-time-to-get-behind-decolonising-the-curriculum> (accessed 09/02/2021).

- Murray, Daragh (2016), *Human Rights Obligations of Non-State Armed Groups, Studies in International Law* (Hart).
- Musa, Rami, “Libya Country Report,” *Media Landscape*, available via <https://medialandscapes.org/country/libya> (accessed 08/02/2021).
- Nadarajah, Suthaharan and Rampton, David (2015), “The Limits of Hybridity and the Crisis of Liberal Peace,” *Review of International Studies*, 41(1): pp.49-72
- Nebehay, Stephanie (2015), “Islamic State-Controlled Parts of Syria, Iraq Largely Out of Reach – Red Cross,” *Reuters*, available via <https://uk.reuters.com/article/mideast-crisis-syria-icrc/islamic-state-controlled-parts-of-syria-iraq-largely-out-of-reach-red-cross-idUKKBN0M921X20150313> (accessed 10/03/2021).
- Nikbakht, Daniel and McKenzie, Sheena (2018), “The Yemen War is the World’s Worst Humanitarian Crisis, UN Says,” *CNN*, available at <https://edition.cnn.com/2018/04/03/middleeast/yemen-worlds-worst-humanitarian-crisis-un-intl/index.html> (accessed 10/03/2021).
- O’Leary, Brendan; Lustick, Ian S. and Thomas Callaghy (eds.) (2001), *Right-sizing the State: The Politics of Moving Borders* (Oxford University Press).
- O’Loughlin, John; Kolossov, Vladimir and Toal, Gerard (2014), “Inside the post-Soviet de facto States: A Comparison of Attitudes in Abkhazia, Nagorny Karabakh, South Ossetia, and Transnistria,” *European Geography and Economics*, 55(5): pp.423-456.
- Osterund, Oyvind (1997), “The Narrow Gate: Entry to the Club of Sovereign States,” *Review of International Studies*, 23(2): pp.167-184.
- Pourmokhtari, Navid (2013), “A Postcolonial Critique of State Sovereignty in IR: the Contradictory Legacy of a ‘West-centric’ Discipline,” *Third World Quarterly*, 34(10): pp.1767-93.
- Reus-Smit, Christian (2013), “Constructivism,” Ch.9 in *Theories of International Relations*, Burchill, Scott and Linklater, Andrew (eds.) (Palgrave Macmillan), pp.217-240.
- Reus-Smit, Christian (2007), “International Crises of Legitimacy,” *International Politics*, 44(2): pp.157-174.

Ruggie, John (2004), "Reconstituting the Global Public Domain – Issues, Actors, and Practices," *European Journal of International Relations*, 10(4): pp.499-531.

Ruggie, John (1993), "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organizations*, 47(1): pp.139-174.

Sabaratnam, Meera (2020), "Is IR Theory White? Racialised Subject-Positioning in Three Canonical Texts," *Millennium Journal of International Studies*, 49(1): pp.3-31.

Said, Edward (1978), *Orientalism* (Pantheon).

Saleh, Heba (2020), "Egypt Threatens Military Action in Libya if Turkish-backed Forces Seize Sirte," *The Financial Times*, available via <https://www.ft.com/content/e6aa87b0-5e0b-477f-9b89-693f31c63919> (accessed 22 February 2021).

Sandholtz, Wayne and Sweet, Alec S. (2004), "Law, Politics, and International Governance," Ch.10 in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge University Press), pp.238–271.

Schneckener, Ulrich (2007), "Armed Non-State Actors and the Monopoly of Force," in Bailes, Alyson; Schneckener, Ulrich and Wulf, Herbert, "Revisiting the State Monopoly on the Legitimate Use of Force," *Geneva Centre for the Democratic Control of Armed Forces* (DCAF), Policy Paper No.24, pp.10-18.

Schwedler, Jillian (ed.) (2013), *Understanding the Contemporary Middle East* 4<sup>th</sup> ed. (Lynne Rienner).

Seth, Sanjay (ed.) (2013), *Postcolonial Theory and International Relations: A Critical Introduction* (Routledge).

Shah, Nisha (2012), "The Territorial Trap of the Territorial Trap: Global Transformation and the Problem of the State's Two Territories," *International Political Economy*, 6: pp.57-76.

Smith, Linda Tuhiwai (2012), *Decolonising Methodologies: Research and Indigenous Peoples* 2<sup>nd</sup> ed. (Zed Books).

*Supreme Court of Canada* (1998), "Quebec Secession," 115 ILR 536.

Sterio, Milena (2011), "A Grotian Moment: Changes in the Legal Theory of Statehood," *Denver Journal of International Law and Policy*, 39(209): pp.213-214.

Sylvester, Christine (2017), "Post-colonialism" Ch.11 in *The Globalization of World Politics: An Introduction to International Relations*, by Baylis, John, Smith, Steve and Owens, Patricia (eds.) (Oxford University Press), pp.174-189.

Tan, Seng and Acharya, Amitav (eds.) (2008), *Bandung revisited: the legacy of the 1955 Asian –African Conference for International Order* (NUS Press).

Telhami, Shibley and Barnett, Michael (2002), *Identity and Foreign Policy in the Middle East* (Cornell University Press).

*The Academy of International Humanitarian Law and Human Rights* (2018), "Human Rights Responsibilities and Armed Non-State Actors," available via <https://www.geneva-academy.ch/research/our-clusters/non-state-actors/detail/63-human-rights-responsibilities-and-armed-non-state-actors> (accessed 14/03/2021).

*The Academy of International Humanitarian Law and Human Rights* (2017), Event on the "Human Rights Responsibilities of Armed Non-State Actors," available via [https://www.geneva-academy.ch/joomlatools-files/docman-files/Seminar\\_Human%20Rights%20Responsibilities%20of%20Armed%20Non-State%20Actors.pdf](https://www.geneva-academy.ch/joomlatools-files/docman-files/Seminar_Human%20Rights%20Responsibilities%20of%20Armed%20Non-State%20Actors.pdf) (accessed 14/03/2021).

The Charter of the United Nations.

The Geneva Conventions (1949) and their Additional Protocols.

*The New Arab* (2017), "This is How many Times the US has Used its Veto for Israel's Sake," available via <https://www.alaraby.co.uk/english/blog/2017/12/19/how-many-times-has-us-backed-israel-at-un> (accessed 13/03/2021).

Toft, Monica D. (2013), "Territory and War," *Journal of Peace Research*, 51(2): pp.185-198.

Tuck, Eve and Yang, K. Wayne (2012), "Decolonization is not a Metaphor," *Decolonization: Indigeneity, Education & Society*, 1(1): pp.1-40.

*Turkish Anadolu Agency* (2021), "Yemen Remains 'Worst Humanitarian Crisis': UN Office," 12 January, available via <https://www.aa.com.tr/en/middle->

east/yemen-remains-worst-humanitarian-crisis-un-office/2106553 (accessed 25/07/2021).

*United Against Refugee Deaths*, “The List of Deaths,” available via <http://unitedagainstreugeedeaths.eu/about-the-campaign/about-the-united-list-of-deaths/> (accessed 02/03/2021).

*United Nations General Assembly* (2017), “The Right of the Palestinian People to Self-Determination,” Resolution 72/160.

*United Nations General Assembly* (2017), “Status of Jerusalem,” Resolution ES-10/19.

*United Nations General Assembly* (2007), “Friendly Relations Declaration,” Resolution 2625.

*United Nations General Assembly* (1974), “Definition of Aggression,” Resolution A/RES/29/3314.

*United Nations General Assembly* (1970), “Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations,” Resolution A/RES/25/2625.

*United Nations Security Council* (2011), Resolution 2014 [Yemen], S/RES/2014

*United Nations Security Council* (2011), Resolution 1970 [Libya], S/RES/1970

*United Nations Security Council* (2011), Resolution 1973 [Libya], S/RES/1973

*United Nations Security Council* (2011), Resolution 2009 [Libya], S/RES/2009

*United Nations Security Council* (2011), Resolution 2016 [Libya], S/RES/2016

*United Nations Security Council* (2012), Resolution 2051 [Yemen], S/RES/2051

*United Nations Security Council* (2014), Resolution 2140 [Yemen], S/RES/2140

*United Nations Security Council* (2014), Resolution 2146 [Libya], S/RES/2146

*United Nations Security Council* (2015), Resolution 2201 [Yemen], S/RES/2201

*United Nations Security Council* (2015), Resolution 2204 [Yemen], S/RES/2204

*United Nations Security Council* (2015), Resolution 2214 [Libya], S/RES/2214

*United Nations Security Council* (2015), Resolution 2216 [Yemen], S/RES/2216

United Nations Security Council (2015), Resolution 2240 [Libya], S/RES/2240

United Nations World Conference on Human Rights (1993), "Vienna Declaration and Programme of Action," 32 ILM 1661.

Weber, Max (1918), "Politics as a Vocation" A public lecture. Published as "Politik als Beruf," *Gesammelte Politische Schriften* (Muenchen, 1921), pp.396-450.

Weeler, Nicholas J. (2000), *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press).

Wendt, Alexander (1995), "Constructing International Relations," *International Security*, 20(1): pp.71-81.

Wendt, Alexander (1992), "Anarchy is what States Make of it: The Social Construction of Power Politics," *International Organizations*, 46(2): pp.391-425.

Willard-Foster, Melissa (2019), "The Post-9/11 Era: Regime Change and Rogues, Iraq 2003, Libya 2003, and Libya 2011." In *Toppling Foreign Governments: The Logic of Regime Change*, pp.175-228. (University of Pennsylvania Press).

Zaum, Dominik (2007), *The Sovereignty Paradox: The Norms and Politics of International Statebuilding* (Oxford University Press).

Zavala, Miguel (2013), "What do we Mean by Decolonizing Research Strategies? Lessons from Decolonizing, Indigenous, Research Projects from New Zealand and Latin America," *Decolonization: Indigeneity, Education & Society*, 2(1): pp.55-71.