Thesis

to obtain the degree of a Magister / Magistra in Law from the Faculty of Law of the Karl-Franzens-University Graz on the topic of

Reconsidering the legal legitimacy of Yemeni governments in light of the new wars theory

Submitted to

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# List of abbreviations

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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>UAE</td>
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<td>UN</td>
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Introduction

‘Diplomatic recognition is always a privilege, never a right’ - U.S. State Secretary Dulles

By recognising a state as such, the recognizing party, state A, issues the acceptance of the recognised state B as a public international legal entity. Often the recognition is issued by an implicit act, like starting diplomatic relations with the state to be recognised. In current times, rather than having constitutive effect such a recognition of a state has declarative effects, meaning that the characteristics of states are not influenced. Instead the three essential elements of a state are acknowledged which are state territory, state nation and state authority. Even though the three criteria - state territory, state nation and state authority might objectively exist, meaning from a third party’s neutral perspective, states who refuse recognition of fellow states, do so because of supposed lack of fulfilment of the conditions. These essential conditions which are still considered the most important ones concerning the definition of states, were developed by Georg Jellinek, and are still known as the so called “Drei Elemente Staatslehre”. This definition, which constitutes the conditions under which a state can be considered as such, was further included in the Montevideo Convention on the Rights and Duties of States from 1933. The Montevideo Convention additionally names the ability to start relations with another state, as a supplementary element of state definition. If the ability to start relations with another state is truly considered an additional element of the state definition is controversial. The inclusion of the ability to start relations with another state, also explains the importance of recognition concerning politics, meaning while not recognising a state is not changing the legal position per se, it might influence the political climate since it affects diplomatic relations.

While recognising a state usually goes along with recognition of the government of the same state, since by recognising state authority, one also acknowledges the authorities exercising the state power, namely governmental bodies, in some cases various rival parties might claim the

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2 Tak Prateek, ‘Concept of Recognition in International Law and Instances of its Breach by Powerful Nations’ [2015] 1(1) SSNR Electronic Journal 2.; Article 1 of the Montevideo Convention on the Rights and Duties of States constitutes: “The state as a person of international law should possess the following qualification: a.) a permanent population b.) a defined territory c.) government, and d.) capacity to enter into relations with other states.” Taken from <https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml> accessed 20 July 2020.
position of government simultaneously. If a foreign state recognises an oppositional government, the principle of non-intervention is generally breached, since interior affairs are influenced, which are not to be interfered with (further discussed in chapter 2.1.2 Legal principle of recognition). This issue has been further discussed in the Kosovo Advisory Opinion of the International Court of Justice from 2010.\footnote{Accordance with International Law of the unilateral declaration of independence in respect of Kosovo (Advisory Opinion) [2010] ICJ Reports 2010.} After Kosovo proclaimed unilaterally its independence from Serbia, the latter asked the court to analyse if the proclamation was breaching Public International Law or not, since Serbia claimed illegal secession. The International Court of Justice itself issued the advisory opinion three years after the actual proclamation of independence, disclosing that it had only taken legal and not political aspects into consideration. While the International Court of Justice came to the conclusion, that the proclamation itself did not breach Public International Law, since it had not been issued by a so called \textit{provisional self-governing body} from UNMIK, as per Resolution 1244,\footnote{Resolution 1244 (1999) can be retrieved from \url{https://unmik.unmissions.org/sites/default/files/old_dnn/Res1244ENG.pdf} for further information.} but by the Parliament of the Republic of Kosovo, it did not explicitly break the law. A self-governing body based on the Resolution 1244 would not have had the competence to do so. Concerning the status and public international legal personality of Kosovo it did not offer any opinion or interpretation, but rather hinted at the fact the legal questions concerning early recognition, compliance with the right of self-determination and potential breaches of the prohibition of violence, must be taken into consideration. Kosovo’s public international legal personality and therefore statute as a state, has not been fully recognised universally.\footnote{Von Arnauld (n 3) 36.}

After having shortly discussed the conditions and issues that come with state recognition, the next part shall highlight the distinctions between state and governmental recognition. Generally, the government which holds effective power is the relevant one, even if the position was acquired in an unconstitutional way. If in a civil war for instance, two oppositional parties are effectively holding power over significant territories, relations may be maintained with both, since effectivity comes before legitimacy, meaning that who effectively holds the governmental power is fulfilling the role of governmental authority. If the effective government reached power by nationally legal measures is greatly discarded as a precondition as legitimacy is assumed.\footnote{Beham and others (n 3) 89.}
The issue of more than one government claiming recognition is not a new problem to legal experts and political scholars. Putting this matter into a new context might be. Asking the question whether legal legitimacy automatically leads to political legitimacy of governments when more than one is established is the focus of this work. Problems revolving around recognition have accompanied me my whole life. Due to my parents’ heritage, it has always been something which was highly discussed in our household. Instead of focussing on European countries, struggling with recognition, I chose Yemen to deal with the concept of recognition, as the country has been fighting silently for years. It was important to me to discuss the country and the conflict briefly itself, but also to draw attention to one of the more unknown issues Yemen struggles with, that being the possible recognition of various self-proclaimed governments. An analysis of the issue of governmental recognition in Yemen within the context of the theory of ‘new wars’ by Mary Kaldor8 shall offer an example of the problem in a conceptual framework: Meaning in fewer words, the reconsideration of legal legitimacy of governments in light of the ‘new wars’ theory – But how do the phenomena of various governments claiming legality occur?

Reconsidering the legal legitimacy of governments might seem like a complex and little fruitful task, but it is significant to re-evaluate the principles implemented concerning governmental recognition since the theory, meaning the legal principles per se, in their written form and the political reality differ greatly. The formal and adequate recognition of a state or government holds little to no consequences for the actual status of the recognised item or its practical legitimacy. This means if country A is formally and in accordance with the corresponding legal requirements recognised, by country B, it does not make country A automatically a functioning and legitimate state. Rather than just the legal aspect, the political circumstances and landscape must be taken into consideration as well since those are the deciding factors. Hence, this work is not only discussing the legal aspects of legal recognition but political scientific aspects as well. Even though the focal point will lay on legal argumentation, since the issue of legal legitimacy is an interdisciplinary one, the foundation will be embedded in a political scientific argumentation. Only a few theories which tackle the core parts of recognition shall be presented on this matter.9

One aspect which must be highlighted is the fact, that already failed states deal with a variety of local groups, which establish control over different parts in the state territory and have, as a

8 Mary Kaldor, Old and New Wars (3 edn, Stanford University Press 2012) 6.
result, consolidated control over said territories. Exterior influences, such as countries supporting fighting local groups, are trying to gain territorial, economic or political advantages, therefore following their own agenda, rather than helping those failed states resolve their conflicts and combatting the humanitarian crises from which they might suffer. These actors are converting the internal conflicts into an international battle of wills which might, according to some sources, even escalate into a new proxy war.10

Furthermore, the instability of a struggling country will not be resolved by using said country and its poor situation as a prop for conflicts on an international level and in political combats. Quite the contrary, since the exploitation might even be a future trigger to wider regional conflict, which due to our globalised world, might have repercussions on an international scale. Since changes in our society and the way the world with its global politics functions has changed and started to influence various scenarios of our lives more and more, Mary Kaldor integrated the factor of globalisation into her theory of so called ‘new wars’.11 In short, countries of ‘new wars’ are states where usually an authoritarian government has failed or has been debilitated due to opening up to the external actors, while simultaneously not having the stability to withstand or deal with interference from these external forces. When external players get involved, dynamics change, sometimes even drastically.12

Nowadays, as conflicts around the world are more public than ever due to social media, the internet in general and media coverage, one might note that the issues in conflict-ridden countries are reoccurring and seem to pose a pattern different from the way we used to see wars in the past, where they were known as acts of aggression with little other components. In addition to globalisation playing a big role in so called ‘new wars’, identity conflicts of states are also one of the key factors. Many components play into a division of a once peaceful cohabitation of people with different believes or views, but the one this work will focus on shall be the issue mentioned above, of two governments claiming legitimacy in situations where legal

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11 Kaldor (n 8) 43, 270, 27.
and political legitimacy is debatable, thereby potentially dividing an already fragile society even further.\(^{13}\)

The structure of the work is as follows: The first chapter shall provide an overview on the Yemen conflict and the country’s history, since throughout the work, there will be references concerning the current situation and its connection to the topic of **legal legitimacy of governmental recognition**. Furthermore, an introduction to the legal as well as the political scientific term of recognition will be provided. The focus of this work lies within the **legal frame** (chapter 2), but cannot be isolated from politics (chapter 3), as the whole concept of recognition, at the end has rather political than legal repercussions for the actors involved, even though literature seems to make an effort not to give more importance to one than the other. If this is possible in practice is questionable. \(^{14}\)

After establishing the troubles Yemen experiences and the framework of governmental recognition, both legal and political ones, Mary Kaldor’s theory on ‘new wars’ is the following focal point (chapter 4). In her book ‘Old and New Wars’\(^{15}\) she mentions how the identity of a state is an important factor of the wars being waged since the second world war. As mentioned above, due to the fragile situation countries are in, the question which one of two potential governments is legal and/or politically legitimate only deepens the frailty of an already problematic situation. New wars are a way of explaining the phenomena that are occurring in conflict ridden states, taking new components such as globalisation, identity of states as well as the issue of double governments into consideration. In addition, in this state of affairs, it becomes more difficult for the population to differentiate between certain concepts such as state and non-state organisations as well as public and private sectors, politics vs. economy and so on.\(^{16}\)

Trying to put all the pieces together an analysis of the possibility of potentially various legal governments in Yemen will be the capital part of this work (chapter 5). Suffering from a complicated history which had the two parts of Yemen divided into the north and the south, one being occupied and led by the Ottoman empire whereas the southern one is a result of British

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\(^{13}\) Bindschedler (n 5) 384; Kaldor (n 8) 269-271.


\(^{15}\) Kaldor (n 8) 48.

colonialism, the consequences of this past division are still felt by the country and play an important role in the explanation of the dynamics of the ‘new war’ and the interest other states might have in Yemen.17

In conclusion (chapter 6), one might argue that the issue in Yemen, which prevents effective measures is the multitude of authorities in an already fragmented state, therefore the country’s population’s belief in a united and stable state of Yemen is not present, unsettling Yemen’s identity further. These instabilities are further fuelled by the fragmentation of authoritative figures in governmental positions, which constitute new governments, which is the focal point of this work. It will depict the complexity of the layers which influence the issue of legal recognition of Yemeni governments.18

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1. Yemen- providing context to the conflict

As a country with a rich history Yemen has been of interest to many different empires and religious beliefs, trying to figure out new trading routes throughout history or securing its position as a ruling force in Western Asia. This is a pattern seen throughout history and is demonstrated by the different occupations Yemen was under. Between 1539 and 1636 it came to the first occupation of Yemen by the Ottoman Empire due to economic reasons, as the Ottoman Empire established new routes to the port of the thriving city of Mocha in Yemen, which is also known al-Makha, in order to ship coffee. This sudden interest in Yemen as a geographically well-situated country for port trade caught the British Empire’s attention, as the southern port of Aden would provide for a direct route, for Britain’s trade with India. Therefore, an agreement was signed between the Indian Trading Company and Sultan Lahej, the reigning force in Yemen at the time. The constant struggles between the rulers shaped the country’s future immensely as well as establishing a deep division of the country. Furthermore, the Ottoman rulers gave the responsibility of leading Yemen to imams in the 16th century.

During the occupation, the separation of the two territories was established: the north belonging politically to the Ottoman Empire, whereas the south was mostly independent under the supervision of the ruling imam in the north. This separation still influences the country nowadays. The British were only in control of the port of Aden, signing a treaty of protection, preferring at that time not to meddle into the Ottoman Empire’s business. Trying to safeguard the northern part of Yemen and therefore the access to the Red Sea, the Ottoman forces installed the military in Yemen’s capital and formally annexed the country in 1876. The official borders were established in 1905 and named the ‘Violet Line’. This division formed the country in

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19 Moisés García Corrales, Entre la inestabilidad y el colapso, Yemen, el fracaso del proyecto republicano (1st edn, 2010) 10.; Even though the original agreement is difficult to obtain in English due to the age further information on the agreement is widely spread on the internet, such as Editor, 'Yemeni royal returns from exile' (Diplomat Magazine, 3 November 2020) <http://www.diplomatmagazine.eu/2014/11/03/yemeni-royal-Yemen%20royal%20returns%20from%20exile/> accessed 30 June 2020.
many ways and stayed official for most of the 20th century. With the process of decolonisation and the collapse of the Ottoman Empire, power dynamics shifted again, resulting in the conversion of the country into *the Kingdom of Yemen (1918-1962).*

While a traditional Zaydi dynasty led by Imam Yahya was established in the north, Britain still held interest in the port of Aden, establishing the colony of Aden in 1937 including the port metropolis and the neighbouring cities. During this period, the remaining parts of south Yemen as well as the islands were converted into the Protectorate of Aden.

While the south was taken care of as a British colony, the north experienced a coup d’état on September 26th 1962, initiated by Abdullah al-Sallal. With the help of the Free Officers Movement, al-Sallal managed to overturn the only recently crowned imam Muhammad al-Badr, thus staking a civil war being sponsored by Egypt on the side of the republican faction (Pan Arabism) and Saudi Arabia helping the monarchs (Pan Islam).

Meanwhile, the United Kingdom started losing strategic interest in Aden and the southern colony, resulting in the *creation of the Federation of the South Arab Emirates* in the parts of

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26 Dunbar (n 25) 460.

27 Pan Arabism Definition taken directly from Encyclopaedia Britannica >https://www.britannica.com/topic/Pan-Arabism <accessed October 10 2019: “Pan-Arabism, Nationalist notion of cultural and political unity among Arab countries. Its origins lie in the late 19th and early 20th centuries, when increased literacy led to a cultural and literary renaissance among Arabs of the Middle East. This contributed to political agitation and led to the independence of most Arab states from the Ottoman Empire (1918) and from the European powers (by the mid-20th century). An important event was the founding in 1943 of the Ba’th Party, which formed branches in several countries and became the ruling party in Syria and Iraq. Another was the founding of the Arab League in 1945. Pan-Arabism’s most charismatic and effective proponent was Egypt’s Gamal Abdel Nasser. After Nasser’s death, Syria’s Hafiz al-Assad, Iraq’s Saddam Hussein, and Libya’s Muammar al-Qaddafi tried to assume the mantle of Arab leadership.”

28 Sultan Onur, ‘Yemen is on Fire’ (Beyond the Horizon- Conference on Middle East Association of London, 28th October) <https://behorizon.org/yemen-on-fire/> accessed 23rd January 2020; Pan-Islamism Definition taken directly from The Oxford Dictionary of Islam http://www.oxfordislamstudies.com/article/opr/t125/e1819 accessed October 10 2019: “Ideology calling for socio-political solidarity among all Muslims. Has existed as a religious concept since the early days of Islam. Emerged as a modern political ideology in the 1860s and 1870s at the height of European colonialism, when Turkish intellectuals began discussing and writing about it as a way to save the Ottoman Empire from fragmentation. Became the favoured state policy during the reign of Sultan Abdulhamid II (r. 1876 – 1909) and was adopted and promoted by members of the ruling bureaucratic and intellectual elites of the empire. With the rise of colonialism, became a defensive ideology, directed against European political, military, economic, and missionary penetration...”.

the former Protectorate of Aden in 1959. The Aden Colony was then included in the Federation of South Arabia, the successor of the above mentioned South Arab Emirates, in the year 1963. The same year the insurrectionary movement against the British colonialists started, led by the Front National Liberation and the Liberation Front of Occupied South Yemen, resulting in the independence and constitution of the People’s Republic of Yemen. The name was later changed to the Democratic People’s Republic of Yemen, reinforced by the Yemeni Socialist Party, resulting in Yemen being the first and only pro Soviet republic in the Arab world. Currently Yemen is involved in one of the biggest humanitarian crises of the 21st century which has its roots in the history mentioned above but has escalated around the epoch of the Arab Spring.

In highlight of the Arab Spring, which only unsettled the already frail country of Yemen, the Houthi movement, a representation of the country’s Shia Muslim community, took it upon themselves to drive out the governing politicians, in order to form a new governance, which has been backed up by Iran. They have resorted to violent measures, which have also been supported by other groups and countries of Sunni belief.

The two current governments which hold the leadership in Yemen are the politicians of the General People’s Congress Party in Arden, with President Abed Rabbuh Mansur Had.

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32 ‘Beginning in December 2010, anti-government protests rocked Tunisia. By early 2011 they had spread into what became known as the Arab Spring—a wave of protests, uprisings, and unrest that spread across Arabic-speaking countries in North Africa and the Middle East. Pro-democratic protests, which spread rapidly due to social media, ended up toppling the governments of Tunisia, Egypt, Libya, and Yemen. Explanation taken directly from: Erin Blakemore, ‘What was the Arab Spring and how did it spread?’ (National Geographic, 20 March 2019) <https://www.nationalgeographic.com/culture/topics/reference/arab-spring-cause> accessed 21 July 2020.
33 Baron (n 21).
Prime Minister Ahmed Obeid bin Daghr\textsuperscript{36}. The leadership in Sana’a is held by the so called ‘Houthi Party’ with the President of the Revolutionary Committee Mohammed Ali al-Houthi.\textsuperscript{37}

In Yemen, the most influential actors in the conflict are the Houthis in the northwest of the country, which are receiving help and resources from Iran, the Southern Transition Council in the south backed by the United Arab Emirates and the Yemeni government forces which are being supported by Saudi Arabia.\textsuperscript{38}

\footnotesize
\textsuperscript{37} ibid.
2. Public International Law

Since an overview of the history as well as the current situation in Yemen have been discussed in chapter 1, the following part shall focus on the legal term of recognition, in order to be able to tackle the main research question in chapter 5. Recognition is a complex term, which internalises multiple layers of legal and political scientific aspects. Since an analysis of the reconsideration of legal recognition of Yemeni governments in light of the new war theory is the focal point of this work, it is important to break down the theory around the term in order to be able to find a potential solution. As in many different legal subjects, various opinions and principles have been established in order to provide for a unanimous solution for this issue. It is, furthermore, not an issue of recent times. Nevertheless, the issue has not been resolved, as contemporary new phenomena, like the changes in warfare, have occurred which have not been taken into consideration in the theories of the early 20th century. Such phenomena would be the self-proclamation of governments in countries of conflict, meaning that one oppositional regime, group or sect proclaims themselves to be the new legal political authority. This authority was given to them by their supporters and mostly foreign allies, while an elected government is already in charge. An easy answer to this rather complex issue cannot be given, therefore this work is trying to highlight the most important issues and the theories used to resolve them. Therefore, the following part of this work shall give an overview of theories and laws by legal scholars, which have already tried to find solutions to the issues coming hand in hand with the legal tool of recognition.

2.1. Scenarios of recognition

2.1.1 Subjects of recognition

The term recognition in Public International Law refers to a declaration of wills which results in the legal recognition of a case, legal matter, or claim. Lauterpacht even argued that recognition is a duty which must be fulfilled as soon as the relevant criteria are met. Nowadays it is not seen as a duty but rather a tool which is used to prove the existence of a legal fact thereby leading to the international consequences, such as the commencement of diplomatic

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39 A recent example of such a country of conflict with self-proclaimed governments would be Libya and later Syria. Libya’s National Transition Council, which effectively ruled only over the eastern part of the country, was officially recognised by France, Italy and the United Arab Emirates from Markus Beham and others, Völkerrecht verstehen (2nd edn, Facultas 2015) 86.
40 August Reinisch, Handbuch des Völkerrechts (5th edn, Reinisch August 2013) 187.
relations. The expressed declaration is not paired with a receiving nor an adoptive authority but develops effect and application through acknowledgment. Furthermore, recognition can also be determined as a contractual clause. Ascertainment serves for legal security. As Public International Law is a de-centralised field of the law, no institutions, or bodies per se exist to observe recognitions taking place.  

Recognition is a one-sided declaration of will which only contains constitutive effect if the will of the recognising state to establish or maintain diplomatic relations is expressed. Therefore, a recognised state must be treated as an international legal personality, in order to maintain relations, while it does not necessarily have to mean that it is a state in terms of Public International Law or according to the ‘Drei Elemente Staatslehre’ by Jellinek. This theory constitutes three characteristics in order to determine the existence of a state in Public International Law: state territory, state population and state power. Further, as mentioned in the introductory chapter, The Montevideo Convention constitutes the ability to start relations with another state, as an additional element of state definition. Nevertheless, it is still highly disputed if the ability of starting relations can truly be considered a crucial element.

It has been discussed in the past if state recognition should be implemented as the fourth characteristic (as mentioned in the Montevideo Convention) but this idea has yet to be fully implemented. In principle, the tool of recognition only has declaratory effect, but constitutes the ability to pursue political relationships with other states. As there is no obligation to establish and maintain diplomatic relations, it means that this happens in accordance with the respective state’s will.

Mostly states are the actors qualified as a subject of Public International Law, which then established the theory that if most state subjects are in accordance with each other’s existence and recognition, a sort of union is built which indicates an international community.

This is known as ‘dédoublement fonctionnel’, meaning that there is no legal effect towards third parties but also no instance of higher power to observe and examine. One common example is the recognition of international organisations. This kind of recognition depends

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42 Prateek (n 41) 2; Rudolf Bindschedler, ‘Anerkennung im Völkerrecht’ [1962] 9(4) Archiv des Völkerrechts 393.
43 Markus Beham and others, Völkerrecht verstehen (2nd edn, Facultas 2015) 80, 86; Prateek (n 41) 3.
44 Stefan Hobe, Einführung in das Völkerrecht (10th edn, Otto Kimmich 2014) 75.
45 Bindschedler (n 42) 383.
46 For further information refer to Antonio Cassese, Remarks on Scelle’s Theory of “Role Splitting” (dedoublement fonctionnel) in International Law [1990] 1(1) European Journal of International Law 210-230.
47 Bindschedler (n 342) 382.
strongly on the statute of the concerning organisation. The matter of recognition of governments is not of very common practice as it deals mostly with governments which have reached their power through an unconstitutional way. Generally, this happens through coup d’états or revolutionary acts resulting in so-called ‘de facto regimes’. The term itself was marked by Jochen A. Frowein. Characteristics are a permanent, sovereign power of an insurrectionary group or political party which emerges in usually rather instable states. Through receiving some sort of international recognition, stability is provided for the new regime, even though the public international community has not recognised the new power. Stability and permanence can also occur when the recognition is flat out denied. The legal consequences of this scenario are the limited international personality of the government in question, meaning that for instance the prohibition of violence codified in Art. 2 (4) of the statute of the United Nations as well as the prohibition of intervention as stated in Art. 2 (7) of the UN-Charta are still legally binding, even if no proper recognition has taken place in order to guarantee legal security.

Historically, the origin of the discussion and discrepancy between the need for effectivity and legitimacy, in this scenario, lies within the coup d’états which took place in Latin America in the 20th century. The classical approach, which relies on effectivity, was decided in a legal sentence at the US High court by order of the already former President William Howard Taft. This approach was based on the so called Tinoco Case between Great Britain and Costa Rica. The sentence from the year 1922 stated, that the refusal of recognition of a generally effective government, even though the government in question reached power in an unconstitutional way, does not have any legal repercussions on its governmental power. One critical argument which shall be highlighted is the fact that governments missing recognition might not have the necessary level of independence in order to effectively control the civil population and state institutions.

Legal recognition is a tool used for expression of acknowledgement concerning various institutions and organisations. Various scenarios of objects being recognised are possible, such

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49 Volker Epping, Völkerrechtssubjekte- Der Staat als die “Normalperson” im Völkerrecht. in Knut Ipsen (ed), Völkerrecht (CH Beck 2018) 162; Frowein (n 48) 36.
50 Markus Beham and others (n 43) 86.
52 Markus Beham and others (n 43) 86.
as the recognition of national committees that can be classified as a preliminary stage for the recognition of an exile government. Furthermore, a scenario in which land has been acquitted can also be recognised but only under the stipulation of it being declaratory or the question of the recognition of governments.\textsuperscript{54}

In order to properly determine if recognition can be granted, it is furthermore necessary to highlight how these scenarios can play out, meaning, what forms of different recognitions actors can be subjected to.\textsuperscript{55}

The condition for the recognition of governments is that the established government must be capable and willing to fulfil their duties of Public International Law. While one might wonder, what all this has to do with the issue of recognition, the answer is quite simple. As a tool of Public International Law, the decisions concerning recognition further influence the political climate since these two areas are closely intertwined. The forms of issuing the acceptance of those state representatives vary and is ultimately determined in Public International Law.\textsuperscript{56}

The first form which will be highlighted is the so called ‘explicit recognition’. It is understood to be an obvious action which can be accounted for expressing recognition openly.\textsuperscript{57}

Usually, explicit recognition is used if the public international personality of a state is doubtful. One of the most recent examples would be the state of Kosovo, which has been discussed in the introductory chapter. Kosovo declared its independence\textsuperscript{58} from Serbia and has been explicitly recognised by some states like the United States of America\textsuperscript{59}, while others openly refused to do so, e.g. Serbia.\textsuperscript{60} Further the ICJ did not provide any guidelines concerning the legitimacy of Kosovo as a state or its governmental authorities, but rather advised on the legitimacy of the proclamation of independence itself. By doing so it did not take any political background or content into consideration but solely focused on the legal aspects. Recognition is issued solitarily and independently by each state. Nevertheless, the practice has shown that

\textsuperscript{54} Hobe (n 44) 76; Bindschedler (n 42) 380.
\textsuperscript{55} Beham and others (n 43) 86, 89.
\textsuperscript{56} Tak Prateek, ‘Concept of Recognition in International Law and Instances of its Breach by Powerful Nations’ [2014] 1(1) SSNR Electronic Journal 3; Bindschedler (n 38) 393.
\textsuperscript{57} Bindschedler (n 42) 382.
\textsuperscript{58} Beham and others (n 43) 89, 102; Edward Newman and Gezim Visoka, ‘The Foreign Policy of State Recognition: Kosovo’s Diplomatic Strategy to Join International Soc’ [2018] 14(1) Foreign Policy Analysis 368.
\textsuperscript{59} Newman and Visoka (n 58) 371.
\textsuperscript{60} ibid 368.
collective recognition in international conferences or collective non-recognition can also take place.\textsuperscript{61}

While recognition of a government can be issued \textit{explicitly} through a legal act it can also be established by \textit{implication}\textsuperscript{62}, meaning that no open action which stands for the purpose of recognition is taking place. Nowadays the admission and maintenance of consular relations are not enough in order to establish tacit recognition of governments. This is easily explained as a consul is responsible for working with local authorities within the borders of the respective territorial sovereignty, while not having the power to decide over the state’s sovereignty. Recognition is issued by an authority which represents the state according to Public International Law, but usually recognitions are stated through authorities declared responsible by domestic law.\textsuperscript{63}

What does happen is the implicated recognition by admission into an international organisation which results in close and tight work relations within the said organisation, such as the United Nations. This is qualified as a recognitive action, as the remaining member states have had the chance of negating the admission or withholding their vote when talking about the entrance into the organisation of a potential member state. If a member state decides to withhold the recognition it must express so in the according context, such as during the vote.\textsuperscript{64}

Another form of indirect recognition\textsuperscript{65} of a state or government would be the conclusion of a contract. When it comes to multilateral contracts, the conclusion of said document is linked to a wish regarding recognition. The positive vote for the admission into the United Nations can also be classified as an indirect recognition.\textsuperscript{66}

Furthermore, the two concepts of \textit{de iure}\textsuperscript{67} and \textit{de facto}\textsuperscript{68} recognition of a state or government shall be presented. The two forms of recognition differ in terms of legal effect and content. The

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\textsuperscript{61}August Reinisch, Handbuch des Völkerrechts (5th edn, Reinisch August 2013) 189; Hobe (n 44) 76; Epping (n 49) 168.
\textsuperscript{62}Instead of openly pledging alliance or proclaiming acceptance, in a case of recognition by implication the will of the recognising party is not communicated verbally but through implicit actions like through a bilateral agreement for instance from Bindschedler (n 42) 393.
\textsuperscript{63}Reinisch (n 61); Hobe (n 44) 76; Epping (n 49) 169.
\textsuperscript{64}Epping (n 49) 162.
\textsuperscript{65}Bindschedler (n 42) 382.
\textsuperscript{66}Reinisch (n 65) 189; As per Beham and others (n 48) 87, India, Philippines, Ukraine, and Belarus.
\textsuperscript{67}The Recognition of Israel by President Truman: ‘This country recognises the Provisional Government as the de facto authority of the State of Israel. When a permanent government is elected in Israel it will be promptly given the \textit{de iure} recognition.’ Citing Charles L Cochran, ‘De Facto and De Jure Recognition: Is there a Difference?’ [1968] 62(2) The American Journal of International Law 458.
\textsuperscript{68}ibid.
\end{flushright}
so-called recognition per de iure is not only the ‘legal’ one but considered final and thorough, meaning that one international legal personality has the opinion that the recognised case or relation fulfils all legal requirements which are bound to its existence. As mentioned in chapter 2.1. recognition is a one-sided declaration of wills in international law. The most important case of de iure recognition is the beginning of diplomatic relationships which results in limited legal capacity for subjects of international law. Generally speaking, de iure recognition of a government is irrevocable and legally binding. 69

While the de iure recognition is considered irrevocable and legally binding, the de facto recognition of a government is only a provisional form of recognition and solely constitutes provisional legal effect. The de facto recognition is not only the effective recognition but constitutes provisional legal effect and can only be taken back under certain circumstances. According to de facto recognition, the recognising state expresses the recognition of a case or legal matter but only with allusion to the fact that the recognition took place on a short-term basis and only provisionally. According to this logic it comes as no surprise that the legal effects are few and not strongly binding, therefore this form is recommendable for uncertain situations where political situations are trembling. Recognition in these situations is hardly ever given as new governments are built during state formation and international partners tend to wait until circumstances have cleared up. Usually the relations between states based upon de facto recognition are limited to consular relations and trade. Therefore de facto recognition is associated with a certain amount of suspicion and instability. 70

Looking at the legal effects and political consequences, a de iure recognition of a government is more desirable than a de facto recognition. It is possible to convert a de facto recognition into a de iure one, especially after a government is removed by a revolutionary regime and provisional de facto recognition is granted. When recognising a state, de facto recognition is a rather unusual approach, while in state practise it is used in order to express political disapproval of the concerning matter like the government in charge, while reasons are present which require a certain degree of recognition. In order to recognise states, the legal practice should not differ between the two as the most important and universal requirement is the existence of the elements of state. As a political tool recognition itself is quite useful, especially concerning this work, as it poses as the approval or disapproval of a new government coming into power. This

69 Hobe (n 44) 760; Epping (n 49) 162.
70 Georg Nolte, 'Anmerkungen zu Jochen Froweins “Das de facto Regime im Völkerrecht” im Licht aktueller Entwicklungen' [2015] 75(1) Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 720; Hobe (n 48) 760; Epping (n 49) 162.
scenario often results rather in political consequences like open support for the opposing political figures, than legal ones.\textsuperscript{71}

2.1.2. Legal principle of recognition

While now it has been established which ways exist to issue recognition when appropriate, in the following chapter, a closer look to the actual legal framework such as legal principles and doctrines will be taken. Especially the principles developed after World War II try to tackle the issue of legal governmental recognition along with the repercussions that come with it. The main sources are the Charter of the United Nations, from which following Articles shall be explained further: Art. 2 (1) UN Charter, Art. 2 (4) Un Charter and Art. 2 (7) UN Charter as well as a couple of examples of Public International Customary Law based on decisions by the International Court of Justice and legal practice. Some theories, which will be highlighted, as they were highly influential in the 20\textsuperscript{th} century in order to constitute requirements and consequences of legal recognition are the Tobar and Estrada Doctrine.\textsuperscript{72}

Starting off with the doctrines, it is important to note where they come from and what they constitute. Developed in scenarios in which de facto regimes were established, the \textit{Tobar Doctrine from 1907} \textsuperscript{73} states that the recognition of a government which reached its position in an unconstitutional way can be refused if the general public did not give their consensus. This is a rather unpractical approach as any governing party shall be ignored for as long as the illegitimacy takes place. The Tobar doctrine was never implemented in Public International Law.\textsuperscript{74} Public International Law gives states as its subjects the choice and organisation of their governments entirely free.\textsuperscript{75}

So, while the Tobar Doctrine claims that recognition of governments which reached their point of power in an unconstitutional way, meaning by means which breach the national constitution, the \textit{Estrada Doctrine}\textsuperscript{76} approaches the pending issue of recognition in another way. Originated in 1930 in Mexico, the focal point of this approach is that the unconstitutional change of government does not affect diplomatic relations. The origin of this approach describes the sense behind it, as Mexico itself was suffering from many governmental changes during this time.

\textsuperscript{71} ibid 163.  
\textsuperscript{72} Markus Beham and others, Völkerrecht verstehen (2nd edn, Facultas 2015) 87; August Reinisch, Handbuch des Völkerrechts (5th edn, Reinisch August 2013) 187.  
\textsuperscript{73} Andreas von Arnauld, Völkerrecht (3rd edn, C.F. Müller 2016) 36.  
\textsuperscript{74} Charles Stansifer, 'Application of the Tobar Doctrine to Central America' [1967] 23(3) The Americas 255.  
\textsuperscript{75} Beham and others (n 72) 87; Reinisch (n 72) 187.  
\textsuperscript{76} 'The Estrada Doctrine proclaims that unconstitutional change of government shall not influence Diplomatic Relations' from Markus Beham and others (n 72) 87.
claiming that governmental issues are affairs of internal matter and shall not be considered of external affair. Meaning that form of recognition is seen as an interference in a state’s internal affairs and therefore a violation of international law.  

Furthermore, one must bear the issue of so called ‘international legal personalities’ in mind. There is a differentiation between two kinds of international legal personality, meaning that on one hand only states can be classified as regenerated international legal personalities whereas on the other hand other legal entities are partial international legal personalities. This has been further established by the ‘Reparations for Injuries Case’, with the International Court of Justice stating that ‘The subjects of law (...) are not necessarily identical in their nature or in the extent of their rights (...). ’

For partial international legal subjects, for instance international organisations, the extent and range of its legal capacity is determined in its respective statute or if not explicitly given, it is at least derivable from its statute. Furthermore, the partial international legal personality is referring to the legal tool of recognition and therefore the fact that partial international legal subjects have only been recognised by a certain number of states meaning that relations can only be built with those respective states.

Another important aspect which must be taken into consideration is the difference between the legal capacity to act and actionability. Reaching the status of an international legal personality entails the legal capacity to act. An example explaining the importance of the difference are sovereign states, which are dependent on other states. Actionability is taken from states, like in cases of occupation by winning forces of losing states. One example would be the status of the German Reich, which lost its international legal actionability due to the fact that the winning forces of the second world war governed over Germany, even though the country did not lose its international legal person per se.

Generally, recognition nowadays is only applied in cases where the international legal personality of a state is doubtful. Other than that, it does not occur frequently in state practice, as it is not needed and would lead to severe political discussions. If two states have had diplomatic relations for hundreds of years, there is no need to ask for an explicit recognition.

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77 Stansifer (n 74) 256.
79 Stefan Hobe, Einführung in das Völkerrecht (10th edn, Otto Kimmich 2014) 70.
80 ibid.
every time a change is upon the state such as a change of government or an amendment of the constitution.\textsuperscript{81}

One of the biggest issues that come with issuing recognition is the potential breach of the established principles such as the principles of sovereignty, non-violence, and non-intervention. When understanding what each of these mean for a state, it might be clearer why for instance recognising de facto regimes as proper governments, poses as a thorn in the eye of the formerly recognised government. The line between issuing a statement, which every state has a right to do and getting involved in internal affairs is generally very thin and can be blurred sometimes.

To start off, the following paragraphs are going to discuss the principle of sovereignty. A codification of the distinction between legal and political sovereignty has been discussed within scholars. The great difference between these two approaches is that while legal sovereignty is determined by the fact that one public international legal personality is not submissive to another one, the political sovereignty is determined by the independent execution of all-important state functions. Criteria as to where to draw the line and when a state loses its public international legal personality have yet to be established. This mostly concerns the cases of micro-states or failed-states.\textsuperscript{82}

Sovereignty itself is one of the pillars of Public International Law, since being used as a key factor in establishing institutions and tools such as the principle of state equality, the principle of non-intervention or the unanimity in international rulings and resolutions. Even establishing the ius ad bellum, the law of war, is partly based on state sovereignty, as until the twentieth century any war that was declared by sovereign state was considered a legal war.\textsuperscript{83}

Article 2 (1) of the United Nations Charter, henceforth UN Charta, codifies the principle of sovereignty by stating that ‘\textit{It is based on the principle of the sovereign equality of all its members.}\textsuperscript{84}

Sovereignty also comprises the freedom to decide which form of government shall be operated in a state. This was emphasised by a scholar named Soares, who stated that the crisis in Haiti, where the President Aristide, who was backed by the Haitian military but was exiled due to a

\textsuperscript{81} ibid 74-75.
\textsuperscript{82} Reinisch (n 72) 36.
\textsuperscript{83} Hobe (n 79) 40.
coup d'état, was one of ‘internal nature’, therefore no other country should get involved or issue any statements regarding the recognition of the new government. Recognising the continuation of President Aristide in Washington and consequently not recognising the government which had been established after the coup d’état, would be an interference in internal affairs and therefore prohibited by Public International Law according to Soares. The case of Haiti was an exception though as the continuation of recognition did not pose a state to state decision. It was rather based on the common decision of the Organisation of American States collectively, therefore giving the Resolution 1080 not only political but also legal character, as it was declared binding for all member states. This was argued through the explanation that states abiding to similar democratic principles and laws, can lawfully express the recognition of one exiled government while disregarding the unconstitutional approach of the government in situ. This shall also share the narrative that coup d’états and other revolutionary acts are undesired and unlawful as governments which have come into power in an unconstitutional way, shall not be rewarded through recognition. 85

Another principle worth mentioning which can be found in Public International Law is the principle of non-violence. The importance of the principle of non-violence in this work is given by the development of conflicts in the 21st century. While it is clear that the main conflict in Yemen is executed by fighting parties in its own borders, a breach of the principle might be given by political or economic pressure and measures taken from involved countries like Iran or Saudi Arabia. Generally speaking, this is a highly discussed topic, where the only thing scholars clearly agree on is the fact that as soon as the threshold of (armed) forces is surpassed, the actions are already prohibited under Art 2 (4) of the UN Charter and a violent intervention is undertaken. The goal of this norm is to balance out the political differences of international power players and their political views and approaches in order to maintain peace. 86

According to Art. 2 (4) UN Charter: The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

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86 Reinisch (n 72) 8.
(4) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.  

Any form of violence is prohibited. Therefore, the prohibition of violence is also pertinent if an armed conflict cannot be classified as a war by military operations from an individual state. Undoubtedly, violence executed by military forces in any shape or form against the territory of another state or armed forces of said state fall under the definition of violence. Furthermore, as stated in the case of ‘Nicaragua’ by the International Court of Justice, henceforth ICJ, violence carried out through arms by non-state forces such as bandits or rebels also falls under this definition. Consequently, providing resources for these violent groups through munitions, artillery or financial aid is also considered as an act of violence in the sense of a violation of the prohibition of violence. It is unclear though, if economic and political pressure can also imply a violation of said prohibition. An indication that this does no constitute a violation of the prohibition of violence, can be interpreted in the Nicaragua case. The United States embarked economic help for Nicaragua in the year of 1981 without it being considered as a violation of the prohibition of violence by the ICJ. It is important to note that the Nicaragua case itself is not classified as public international customary law, but actually as ius cogens, meaning it is obligatory for all actors whether they are contractual parties or not.

Ultimately, Art 2 (4) UN Charter only prohibits the use of violence in international relations, therefore two constellations are not included in Article 2 (4). Firstly, the application of violence within state borders and secondly the so-called ‘intervention on invitation’. An exception to the rule of Art 2 (4) UN Charter constitutes ‘intervention on invitation’ where an incumbent government can ask for the deployment of armed forces, or rather give its consensus on the deployment of armed forces, to keep control over a rebellion or civil war for instance. Due to the request or consent in the action, the sovereignty and the prohibition of violence is strictly speaking not considered to be violated. One case offering an example to this legal principle is the Nicaragua case from 1986 which was issued by the International Court

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90 Nicaragua (n 88) 108.
of Justice. In this famous sentence, it was determined that such an invitation to intervene cannot be issued by a non-governmental group, therefore making the legality of a government essential.91

In practice this legal principle is prone to abuse since it is not always clear if an invitation was issued in the first place, or who it issued in the first place, meaning if it was issued by domestic authorised institutions or not. Ideally, the UN Security Council would determine which the legitimate governing party is, and therefore who is to be recognised, which happens rarely though. Furthermore, the intervention on invitation can also be misused in order to help dictators reach power and high governmental positions against the will of the general public. This would violate the population’s right to self-determination. Consequently, especially in civil wars but in no context of conflict shall governments be supported on basis of an invitation.92

The establishment of the principle of non-violence has been a difficult one throughout times. Whereas the acceptance of a prohibition of armed intervention was not as difficult to obtain after the second world war, Western states hesitantly accepted the new approach which was necessary for peaceful coexistence though. Furthermore, developing countries emphasised the importance of respecting the intervention of non-violence, in order to assure their state sovereignty after many had been liberated from colonialism recently.93

Lastly, the principle of intervention will be discussed in this segment. The significant question here is if the public issuing of a conflicting declaration of recognition, such as the recognition of the Houthi government by their Irani neighbours, could be potentially classified as a breach of the principle of non-intervention. Art. 2 (7) UN Charter explicitly prohibits the United Nations to intervene in internal affairs by stating the following:

‘Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.’94

91 Cöman and Butler (n 98) 135; Beham and others (n 72) 241- 242; Reinisch (n 72) 448.
92 Beham and others (n 72) 241-242; Reinisch (n 72) 449.
93 Reinisch (n 72) 448.
The prohibition of intervention contains two legal elements, the first one being the intervention in internal affairs of a state and the second the threat or exercise of force. In order to understand this article, one must determine what the term internal affairs contains. Basically, those are all subjects and matters which are not regulated by Public International Law and are therefore preserved for state affairs such as the election of political, economic, or social systems. 95

Caused by the growing interdependence of states through multilateral or bilateral contracts, the lines of whether a subject can be qualified solely as an internal affair of a state or rather cross border or external affairs, are increasingly blurring. Rather than using the classic definition of the term intervention, which stems from the 19th century, the definition changed in the course of the 20th century. Otherwise the above explained non-violence principle, and the principle of non-intervention would overlap 100% due to the fact that the 19th century version only emphasised the prohibition of threat and use of military force. Rather than focusing on military actions, other forms of influence, intervention, like providing resources for rebels or helping oppositional groups with logistics, is what the ICJ determined to be contained by the recent definition of intervention. This was codified in the Resolution 2131 (XX) from 1965 and the Friendly Relations declaration.96

In conclusion, Art 2 (7) UN Chartra, explicitly prohibits any kind of intervention concerning internal state affairs, while also mentioning an exception in the last sentence of the Article as ‘... this principle shall not prejudice the application of enforcement measures under Chapter VII” meaning that in order to ensure world peace and collective security, measures can be taken to point out a breach of peace or a potential breach.’ 97

The importance of this article and principle when it comes to recognition of governments, is the following: As mentioned above, recognising one’s government can be taken as an offense or compliment, depending on the circumstances. If a government and its new officials have not asked for recognition or if a regime is acknowledged as a government, the state in question might take this as a prohibited and unwanted involvement, claiming breach of the principle of intervention according to Art. 2(7) UN Chartra.98

95 Nicaragua (n 88) 108; Hobe (n 79) 292.
96 Hobe (n 79) 292; General Assembly Resolution 2131 (XX) of 21 December 1965, Declaration on the inadmissibility of intervention in the domestic affairs of states and the protection of their independence and sovereignty.
98 Hobe (n 79) 293.
2.1.3. A closer look at the recognition of governments

As stated above, government recognition is not very much practiced and therefore in most cases a superfluous legal tool. However, if the change of government coincides with a revolution, it may be questionable whether there is still a government in the concerned state with which diplomatic relations are possible. This issue is resolved through the government's explicit recognition. Such recognition has nothing to do with recognition as a state if the continuity of the subject of international law in which the revolution took place is not up for debate. Furthermore, the recognition of a government does not imply a judgment on the domestic legitimacy or legality of the recognized government. Rather, the prerequisite for the recognition of a government is only its effective rule. If, after a revolution, the situation is clear and the new government recognizes that the continuity of the state should be preserved, no act of recognition is required to maintain diplomatic relations. If a revolutionary government has taken over part of the country's territory, the insurgents can be recognized as belligerents if the civil war continues. If there is no longer any fighting, so that recognition as a war leader is out of the question, the revolutionary regime can be recognized as a ‘de facto regime’. This recognition is cannot be classified as proper legal state recognition, but it is a step in the relevant direction.99

Especially in non-international armed conflicts and in cases of unconstitutional governmental change it is often unclear who is to be considered as governmental force. The answer to this question is of utmost importance as the government does not only represent the state outwards to the public, but also manages the state’s finances or has the power to invite other states and their representatives to an intervention. Recognition can occur explicitly by a public statement or implicitly derived by the factual conduct of the recognising state. Therefore, many states, under those are United States of America and the United Kingdom, do not issue recognitions of governments in general. Traditionally, the identification of the government holding power is determined by the political party or institution which holds effective control over the state apparatus or rather which holds the control over much of the state territory.100

The recognition of rebels during internal conflict, in a scenario where the already existing government still holds power over a significant amount of state territory, can therefore be determined as premature and a violation of the prohibition of intervention. A recent example of this issue could be the recognition of Libya’s National Transition Council in the course of the conflict in Libya in 2011 by Italy, France and the United Arab Emirates. Ultimately, the

99 Stefan Hobe, Einführung in das Völkerrecht (10th edn, Otto Kimmich 2014) 76, 235.  
100 Markus Beham and others, Völkerrecht verstehen (2nd edn, Facultas 2015) 85.
National Transition Council solely held power over the eastern parts of Libya. One issue that had been confirmed with the practise of recognition in the wake of the conflict in Libya and later in Syria was that states do not necessarily have to issue a legal recognition but can only use the tool of political recognition, which, as mentioned above, does not bring a grand ray of legal consequences with it. Meaning that even though the United States and Russia proclaimed the National Transition Council as the representation of the will of Libya’s people, they explicitly cleared up that this status would not have any legal repercussion. Therefore, the reigning party also had to refrain from handling the state wealth located in the United States. Furthermore, the United Kingdom viewed the Ambassador assigned by al-Gaddafi still as representative of Libya in the United Kingdom.101

Apart from effectivity, an absolute minimum dimension of legitimacy must be provided. This criterion is second to the effectivity but has been emphasised in the 1980s by Ronald Reagan. By the end of the Cold War it also gained importance in the rest of the globalised world. Therefore, in order to receive the minimum dimension of legitimacy, the population can be asked to vote in favour or against the new regime having reached power after a coup d’état. This would be ideally manifested by fast elections after the coup d’état. Some scholars have argued that a coup d’état exercised against a democratically elected government can pose a threat to world peace, therefore legitimising potential acts of aggression authorised by the UN Security Council in order to reinstate the formerly considered legitimate government.102

One must keep in mind that the recognition of governments is independent of the international legal personality of its state. Meaning that for instance the international isolation and ostracism of the Taliban regime had no consequences on the existence of Afghanistan’s public international legal personality.103

Furthermore, the recognition of new states and de facto governments, as well as the recognition of insurgents as belligerents is connected to a risk. If the legal governments push through its regime, the prematurely recognising state might have to face uncordial reactions from the government in power or even being sued for compensation, from the state which held the civil war in the first place. Therefore, it is recommendable not to prematurely issue recognitions of governments in order to evade repercussions like the ones mentioned above.104

101 ibid 86.
103 Beham and others (n 100) 86.
104 Hobe (n 99) 77.
This was the case in the 1990s during the war of Yugoslavia, where Germany was accused of having furthered the conflict between the participating, then autonomous regions, as it prematurely recognised Slovenia and Croatia as states, undermining the power of their former mother state Yugoslavia.\(^{105}\)

Domestic changes are insignificant for as long as there is no interruption in the continuity of the subject of Public International Law, the recognition of a new government is generally of little importance. In cases where it is unclear whether the change of government interrupts international legal continuity or not, recognition is mostly used to express approval or disapproval of the new government. If the continuity has been interrupted, the recognition of the government usually also means the recognition of the state. In recent times, recognition has found importance in the Arab Spring, so that the number has increased due to Arab revolutions. The best example to this was the recognitions of the Libyan National Transitional Council on the 13th of June 2011 and then later the French government recognised the Syrian oppositional movement as the legitimate government on the 20\(^{th}\) of November in 2012. What has been debated in this case is if the recognition by the French government posed a breach of the prohibition of intervention according to the UN Charter, since it interfered in internal affairs.\(^{106}\)

One example of how discontinuity can be treated in Public International Law in recent times is the reunification of the Arabic Republic of Yemen with the Democratic National Republic of Yemen to the Federal Republic of Yemen on May 22\(^{nd}\), 1990. Thereby the two-former states in their respective international legal personality perished as one forged international legal personality came into existence, the Federal Republic of Yemen. Since the formerly two governments ceded to exist, the new government for unified Yemen was the one which received recognition, since Yemen was recognised as a new state itself. In this case the recognitions went hand in hand, and it was not necessary to address both scenarios individually. A Public International continuity in this regard therefore, must be negated.\(^{107}\)

According to traditional interpretations of Public International Law, the legal tool of recognition is superfluous, as the public international identity of the state stays untouched even after an unconstitutional change of government and its officials. As an example, the Taliban government

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105 ibid.
106 Hobe (n 99) 235.
in Afghanistan, has only been recognised by three states, while Afghanistan’s Public international personality stayed untouched.\(^{108}\)

If a state expresses the wish to maintain diplomatic relations with the current government of another state, this government is indirectly recognised by the act of maintenance. Now if the state wants to maintain diplomatic relations with the old government an explicit recognition will be hardly possible to evade. Furthermore, it is possible for a state to recognise the expelled government in exile as the rightful government and therefore pressure with the assistance of the United Nation’s military forces to reinstate the government in exile.\(^{109}\)

The problem posed in this scenario, is that two or more opponent political authorities, declare themselves to be the rightful government of the exact same state. According to the principles mentioned above and looking further into the state practice it is clear, that recognition, even though it has been discussed in the past, has not been eradicated yet. Neither as a tool of Public International Law nor political practice since recognitions are regardless mentioned in official political statements. It is a challenging situation, trying to pin down recognition and its legal and political consequences, especially since the literature is very divided on this topic. Some legal scholars claim that abolishment of recognition altogether is the right way, as it is an outdated tool with little to no legal consequences. On the other hand, due to political changes and secession of countries, or rather the wish to success that has increased in the past decades, the former tendency of not recognising governments which came into power in an unconstitutional way is making a revival. This means that solely the democratically elected government, which represents western values, is continuously recognised, even if banished due to a coup d’état.\(^{110}\)

### 2.2. Resolving issues around recognition

One possible solution for the issues mentioned above could be the movement of philosophical positivism, different from the political naturalism represented by John Locke, for instance. The capacity to fulfil international legal duties depends on the efficiency of the government. The will to do so does not suffice, as there is a natural responsibility to fulfil obligations. Such a

\(^{108}\) August Reinisch, Handbuch des Völkerrechts (5th edn, Reinisch August 2013) 187.

\(^{109}\) Beham and others (n 100) 86.

\(^{110}\) Talmon (n 102) 10.
principle that must be obeyed and fulfilled is for example ‘ex injuria ius non oritur’ the prohibition of acts of violence in Public International Law.111

This issue and the difficulty of resolving it lies within the structure of Public International Law. As a decentralised entity with a little developed coherent legal system the principle of effectivity is the crucial factor which determines whether international legal principles will be followed or not.112

According to some scholars who have the stagnation of Public International Law in mind, the political aspect and significance of recognition outweighs the legal one. This legal tool is used to make either a negative disapproving statement or a positive and supportive statement of a new government, either referring to the organisations or political parties of the government itself, or their methods of reaching the high political positions. In times of high tensions conflict recognition is used to make a political statement and letting other world players know on which side the recognising party stands. An example would be Yemen being supported by Iran which has not only backed up the anti-governmental forces publicly but also vowed to support them in times of need through donation of resources, money and military equipment.113

Ultimately, every sovereign state practices foreign affairs and therefore pursues its own interests above everyone else’s.114

The following points could provide a guide on what is needed, and which kind of reforms could be useful in order to make the procedure of recognition more efficient and binding. One of the proposals worth contemplating would be the centralisation of the process of recognitions, meaning that one procedure is applicable for all scenarios with a higher entity coordinating the process. Furthermore, it would be essential to assign the competence of determination and observation to an international organisation with the possibility of examination by an international court.115

The most logical approach of a court taking it upon themselves to examine the issue of recognition would be the ICJ. It must be taken into consideration though that the ICJ only takes the legal perspective and aspects into consideration and generally leaves out the political ones,

112 ibid 380.
113 ibid 383.
114 ibid 383-386.
115 ibid 387.
which are of undeniable importance in this case. The UN could take upon this responsibility by an amendment of the Chartra. The question presenting itself is if the relevant criteria are linked to legal or political aspects. If the UN would take it upon themselves to find a joint approach concerning recognition, another aspect that has to be taken into consideration would be the consultation of recognition in plenum. Looking at the political climate globally right now, this is rather unlikely to happen.\textsuperscript{116}

In conclusion, what is required is a level of jurisdiction in order to clarify the corpus delicti and to conclude whether recognition has been issued or not and under which circumstances. As well as a homogenous clarification on what the term recognition entails and the conditions that must be met. Recognition cannot convert a non-state into a proper state, while non recognition cannot defy an already existing state. \textsuperscript{117}

Recognition is not only a legal but also a political tool especially since the consequences are closely intertwined. When used in a constitutive manner, recognition establishes duties and responsibilities which must be respected and recognised. Whereas constitutive recognition establishes legal duties and responsibilities, declarative recognition is used in order to implement corpus iuris delicti in Public International Law and the legal consequences that come with it.\textsuperscript{118}

Recognition per se is often used in order to express approval of a certain government or disapproval, but one must bear in mind that there might be repercussions that come with this type of declaration of wills. For instance, the former American presidents Woodrow Wilson, John F. Kennedy and Jimmy Carter made the recognition of governments in South America dependent on the fact whether the government came into power according to the will of the national population. This was captured in the so called Tobar Doctrine, which was discussed in chapter 2.1.2. while some South American countries claimed that this constituted a breach of the principle of state sovereignty and refused to obey (Estrada Doctrine, also discussed in chapter 2.1.2.).\textsuperscript{119}

\begin{thebibliography}{9}
\bibitem{116} ibid.
\bibitem{118} Stefan Hobe, Einführung in das Völkerrecht (10th edn, Otto Kimmich 2014) 75.
\bibitem{119} August Reinisch, Handbuch des Völkerrechts (5th edn, Reinisch August 2013) 825.
\end{thebibliography}
As a matter of fact, the political reasoning for recognition of a disputable government is far more probable than legal motives. This is a direct result of state’s agenda to promote self-interests.\textsuperscript{120}

‘Always, recognition is admitted being an instrument of national policy, to serve enlightened self-interest’\textsuperscript{121}

But why is recognition of governments such an important political tool? By recognising recently established governments, whether the position was reached due to a coup d’état or elections, the recognition by other states serves as a tool of support and enforcement. Recognising a government establishes an alliance between the new government and its supporter. This is seen throughout global politics such as in the Yemen conflict whose Houthi government has been recognised and supported by Irani forces. Naturally, the opposite applies to states which refuse the recognition of a new government, meaning that it establishes distrust and disapproval of the government in power or the way the position was acclaimed. \textsuperscript{122}

\begin{footnotes}
\item[120] Bindschedler (n 111) 380.
\end{footnotes}
3. Recognition Determined by Political Science

After having a closer look at the legal theory that revolves around the term of recognition in chapter 2., such as the highlighted principles, doctrines and the ways recognition can be issued for different subjects (e.g. recognition of states or governments declared through the means of explicit recognition, de iure recognition and so on) the following greater part of this work shall provide an overview of political scientific approaches to the question of recognition of governments. As an enormous amount of literature and consequently theories can be found concerning this subject, only the ones of capital importance for this work shall be presented in this part. A selective few shall be presented here. The question on which this work is based on is the reconsideration of the legal approach of recognition of governments in light of the new war theory, which, as the title already indicates, puts the nucleus on the legal perspective. Nevertheless, since the legal and political issues are so closely intertwined in regard to recognition, some political scientific theories will be highlighted for better understanding, since the legal theory results in political consequences. Rather than solely focusing on the legal theory of the matter, the political reality leads to more ramifications than the declaration of legitimate recognition only through a theory.123

It is quite a challenge to gather the necessary information, as scholars openly and distinctively discuss and divert on the topic of legitimacy. While some political scientific theorists claim that the only reason of cause for legitimacy is found in the correct carrying out of political procedures, other scholars rely on the argument that values, which are exhibited through correctly carried out political procedures are the main factor contributing to legitimacy.124

Notedly, the term recognition finds its roots in philosophy and its theories, which have then been picked up by scholars and promoted into political theories. Some examples would be Hegel’s ‘Kampf um Anerkennung’, which translated into English means ‘the struggle for recognition’ or Immanuel Kant’s theory on recognition. Nevertheless, the philosophical aspect dates back to ancient times and has carried on into nowadays’ legacy. Theorists of political sciences have tried to find explanations and regenerate the term recognition with a legal component by including multiculturalism. This also meant the apprehension and acceptance of differences (recognising differences) and diverseness, which brings us back to Mary Kaldors’

124 ibid.
theory on new wars and the role globalisation and the motivation of identity politics instead of global politics play.

Following theories of political sciences, recognition as a term has many different meanings and approaches: Firstly, it can be used as form of intellectual premonition, explained through an everyday life example, for instance when acknowledging a child making an error or the big part gun lobbyists play in American politics. Secondly, it can be used as a form of acknowledging another being, like recognising a classmate on the street and thirdly, treating an individual or an institution by recognising a certain powerful status. When talking about politics, the philosophical approach usually refers to the last form of recognition as identifying one’s status and serving respect. It is not possible to easily answer the question what political legitimacy is, as various theories have been established, throughout history, accommodating the times of establishment of the concerned theory.125

3.1. Highlighted theories

As previously discussed in chapter 3, scholars and philosophers alike seem unable to agree on a simple concept of recognition. Following the interpretation of John Locke, who represents the ideology of naturalism, all human behaviour is to be considered legitimate until natural law is breached. This is very difficult to live by as natural law is not codified, restrained and a breach does not come with consequences which then can be enforced. According to John Locke, therefore a social contract must be formed, in order to codify natural law and its principles. Of John Locke’s approach the main aspect which is still being taken into consideration in theories nowadays is the mentioning of ‘consent’ by the mass public. Political authority does not require the consent of the public, as authorities have to acknowledge the natural law and must not breach it. Natural law establishes the required legitimacy in this scenario.126

From a conservative point of view, the tool of legitimacy is associated with the state institutions carrying out the volition of the state as a concept. Being considered too conservative this theory has been replaced by the normative approach in which the authoritative body itself must provide

some sort of legitimacy in order to be able to distinguish between effective governments and so-called de facto regimes.  

After highlighting the conservative outlook of John Locke, another theory worth mentioning due to its publicity and significance in the world of political science, stems from Max Weber, who invented the principle on ‘Herrschaft’. This ‘Herrschaft’, German for ‘rule or ‘authority’ relies on the pillars of command and obedience, meaning that any order given by a higher authority should be executed, no questions asked. One important component of ‘Herrschaft’ is the legitimacy, which is the correctness of a ‘Herrscher’. According to Max Weber, the component of legitimacy is not a required condition to the term ‘Herrschaft’ since the above-mentioned obedience to tasks having to be executed might also occur through pressure and not necessarily legal appreciation and reliance in the authorities. As mentioned by Beethran David, finding a correct translation of the German word ‘Herrschaft’ turned out to be tricky as ‘authority’ is usually defined as ‘legitimate power’ (so that ‘legitimate authority’ would be pleonastic), whereas ‘domination’ is simply too strong a term, ‘rule’ too specifically political and ‘power’ far too general. 

Nevertheless, legitimacy is not considered a required condition for Weber’s ‘Herrschaft’, it is still a necessary component. It is not only used as a form of justification of the actions carried out by those authorities which hold the power, but also a way to stabilise the principle, since the necessary obedience is obtained easier through legitimacy. The importance in Weber’s theory is considered by the various bases of legitimacy, have different significance to the ‘Herrschaft’s’ principle. Judicial ‘Herrschaft’, is grounded in the trust in the authority of rules which formerly have been implemented in the proper and legally appropriate manners.

Secondly, Weber talks about ‘Herrschaft’ grounded on the trust in the so called ‘sanctity of tradition’, in which the obedience is owed to the so called ‘Herr’, a figure whose power is established due to traditional rules and duties. Thirdly, Max Weber mentions a charismatic figure taking over the role of the ‘Herrscher’. This is the admiration of skills and personality of a being, whose qualities are deemed incomparable. To him one must obey. These three

distinctions are idealistic examples, whereas in everyday life we only encounter mixtures which are constantly developing and changing of the three.\textsuperscript{130}

The necessary legitimacy finds its bases upon the state given laws which, according to Weber, have no space in his conservative view on ‘Herrschaft’. Basically, one cannot exist without the other, shown by an example: The law that land and the possessions on it are inherited by birth is a tradition which was made enforceable by a law. An authority trying to find a justification for their position of power will have to conclude that his or her position has acquired through laws or that the acquisition in accordance with the law. Furthermore, legitimacy requires norms and justification as well as the possibility to explicitly express consent.\textsuperscript{131}

Following Max Weber’s theory further, he claimed that power was the competence to accomplish one’s goals, while resisting to the backlash or rather resistance of the among. Authority on the other hand is given when the exercised power is acknowledged as legitimate and not necessarily forced. When the desired trust and respect have been established the civil population will not be resisting too much and perceives the decisions being made by the governmental authority as reasonable and profitable.\textsuperscript{132}

A further theory, worth highlighting due to its significance, is the view on recognition by John Raz. This is worth mentioning insofar, since, unlike other contemporary theories, which have further developed Locke’s ideas in several ways, Raz has not followed this approach. Joseph Raz on the other hand claims that legitimacy is the key factor to justifying political authority. Conforming to Raz, authority has crystallised itself out of the broad concept of authority, making it a special case scenario. In accordance with his theory, authority is linked to a claim, generating so called ‘pre-emptive reasons’. These reasons substitute other reasons individuals might have to act in the way they have. A government is dubbed effective, according to this theory, if it manages to make people carry out actions according to the reasons established. Following Raz’ reasoning, one must distinguish between an effective authority and a legitimate one. The first one is implying that change comes in order to waiver reasons of others, whereas a proper legitimate authority could establish another reason altogether.\textsuperscript{133}

\textsuperscript{130} Beethran (n 128) 35.

\textsuperscript{131} ibid 39.


Another important issue to be taken into consideration is the difference between a politically legitimate effective or simply de facto authority. Raz further established two explanations for these scenarios: The first one is the so called ‘dependence thesis’. According to the “dependence thesis” political authority and its justification is closely linked to normative rules which are applicable to the individuals living on their respective sovereign territory. Furthering this thesis to the ‘normal justification thesis’ he establishes that political authority permits the people subjected to it to abide with the reasons applying to them in any case. \(^\text{134}\)

‘The normal way to establish that a person has authority over another involves showing that the alleged subject is likely to better comply with the reasons which apply to him (other than the alleged authoritative directive) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.’ \(^\text{135}\)

### 3.2. Sovereignty in Political Science

As already established in chapter 2.1.2, sovereignty is a crucial pillar to resolve the issues that come with legality of recognition of governments. It is not only a principle in Public International Law though, but also an important aspect in political science in regard to the recognition of governments, meaning that one sole and centralised authority holds not only the power as a legislature, but also governmental authority. These unique powers are exercised over the civil population of a distinctly marked land. Furthermore, according to this system the whole globe and its territory are split into sovereign territories, whose borders stand strong. The only exceptions to this rule are the oceans and Antarctica, the last had suffered from tries of occupation, though. \(^\text{136}\)

The modern approaches in political science are taking different aspects and new developments into consideration. One of those theories is the ‘new wars’ theory by British political scientist Mary Kaldor. The term of identity politics itself was established around the 1960s, basing off


the American civil rights movement, or feminism movements we see up to date. This indicates that recognition does not only influence individuals but whole groups and forges people together, by recognising a common desire or threat, depending on the issue at hand. This might happen through a common characteristic of a certain group such as a common oppressor, gender, sexuality, religion, and such. Even though, as mentioned above, Max Weber’s theory on recognition is one of the most prominent ones, current times require a different approach, which makes the theories of Charles Tylor or Nancy Fraser more adequate for this work. One thing both have in common is the fact the people are the base of the justice system, as a common and individualistic formation of recognition results in a justice system, which consequently is recognised by the people. 137

The recognition we know from current times was developed in the 1990s, as political changes were sweeping through the globe, showing the necessity of a modern concept of recognition. Therefore, according to some scholars of political scientists the term of recognition is an important requirement in order to establish a contemporarily adequate justice system. He emphases the importance of historical and circumstantial issues as well as the environment occurring during the respective epoch.138

This is mirrored in a few examples throughout recent times, one of the hotspots being the Middle East in the early 2010s. Granted to the Arab spring, some recently undisputed politically stable regimes, have been overthrown and seemingly stable institutions and processes have lost their stability. Civil population unified and managed to overthrow old regimes such as the one by Ben Ali, Gaddafi and Mubarak in countries like Tunisia, Libya, and Egypt.139

States require higher authority, someone taking over the necessary responsibilities, which is usually done by the governmental authorities. The governmental authority then goes on to exercise power over the people, which are the ones being ruled over. Relationships are being formed and forged through processes between the citizens and its respective state, or institutions and the according clients. Those examples go into much more personal relationships like between parents and children or teachers and pupils as well. Therefore, the relationship between the civil population and the government is only one aspect, furthermore the unwillingness of being ruled by a certain government and its authority must also be taken into consideration.140

137 ibid.
138 ibid.
139 ibid.
4. The Narrative of the New War Theory by Mary Kaldor

‘The use of the term ‘new’ is a way of demonstrating that neither of these approaches (referring to the old wars) are appropriate, that these are wars with their own logic but a logic that is different from ‘old wars’ and which therefore dictates a very different research strategy and a different policy response. In other words, the ‘new wars’ thesis is both about changing character of organised violence and about developing a way of understanding, interpreting and explaining the interrelated characteristics of such violence.’

To begin with, according to Mary Kaldor, neither so old wars nor new wars are optimal types but only certain ideas of war. These cannot be accounted for as empirical descriptions of war. The term New wars shall be used in order to provide new guidelines and frameworks for policies as well as providing a new foundation for the research of wars rather than ideas of how to wage wars in the 21st century. This idea of a war can be described as a blend of war, crimes and human rights violations.

Following Kaldor’s narrative, political sciences were in a dire need of a new theory taking new phenomena and globalisation into consideration, as opposed to so called symmetrical wars. Symmetrical wars are battles between equivalently armed enemies, are progressively damaging through both parties and consequently more difficult to siege and comes with little political prestige.

In previous times war was waged by using the state resources in order to achieve a political goal like expansion of territory or determination of power by fighting against an equally organised and resourceful enemy. Following the warfare of the 18th and 19th century, recent developments were being taken into consideration which resulted in the establishment of various theories and the according terminology. Example are ‘internal conflicts’ as called by Brown in 19996, ‘protracted social conflicts’ following Azar from 1990 and ‘new wars’ as established by Mary Kaldor in 1999, which is the one that shall serve as a framework for this work.

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142 As stated in: Mary Kaldor, ‘In Defence of New Wars’ [2013] 2(1) International Journal of Security and Development 1-16: War (organised violence for political ends), crime (organised violence for private ends) and human rights violations (violence against civilians).
144 Kent State University, Conflict and Conflict Management (Aptara 2012) 269-270.
All of the theories mentioned above have three conditions in common, which are also the three root premonitions of the ‘new wars’ theory by Mary Kaldor. These intrastate wars are not fought between two states, which use professional military equipment and wage war according to military norms. Rather, these wars are waged by non-state actors, like rebel groups for instance, moved by identity issues rather than nationwide state interests. A classic military organisation is not provided, and usually new wars result in mayhem. Resources stem from transnational support networks, people living in Diaspora, diamond money, arms and organised crime. The second main condition are the above-mentioned identity issues which are used as a catalyst for the war. Further information on this will be provided shortly. And thirdly, in New Wars, the distinctions and organisation between internal and external politics, internal and external social realms as well as private and public, military and civilians are not taken into consideration.145

This rather new distinction did not go unnoticed. Kaldor’s theory has been highly criticised, some critics argue that even though warfare definitely has changed and these changes must be addressed and taken into consideration, the theory of ‘new wars’ is not fitting to do so as it is only a new way of referring to already existing types of warfare. Nevertheless, some scholars have also made statements not only with entailing similarities to the theory of ‘new wars’ by Mary Kakdor but also supporting it. One example is a statement issued by Galvin in 1992,146 ‘in the immediate future we will see the same causes of low-intensity conflict we have found in the past, including weak national administrations, lack of political infrastructure, economic stagnation, historic problems of disfranchisement for large parts of the citizenry, corruption and mismanagement, and difficult military–civil relationships.’147

Furthermore, some argue that those aspects on which the theory of new wars is based on, are not necessarily new phenomena but rather that the focus has shifted and that those characteristics are now put into the limelight. Berdal for instance is judging a lack of consideration of historical perspective and tends to simplify as well as putting too much importance on the role of global economy in civil wars. Another criticism issued by Kalyvas, is the fact that the new wars theory seems to presume that ideology never played a role in old wars, where only senseless brutality was used.148
Governmental recognition per se is not tackled or rather no satisfying answer is given by Kaldor, as she herself refers to other scholars and focuses on highlighting the problems that occur in new wars. Nevertheless, through combining different requirements of the theory such as governmental insecurity, state identity crisis, group identity crisis and an instable socio-economic situation, the fertile ground for internal conflicts is provided. Groups determining its superiority and following solely their own ideology, deeming the ideology of the governing party for instance, as unrightful, then proceed to gather many supporters, resources from external actors and feel confident enough to proclaim themselves as the new legitimate government.149

Some scholars, especially in political science, are highly critical of the new wars’ theory, understandably so, as very little data presents findings and conclusions of new wars. This comes as no surprise, since generally it has been difficult to get a hold of empirical data providing facts and explaining patterns of new trends in armed conflicts and war. Nevertheless, the conditions and developments in warfare mentioned above as well as the fatalities and consequences in recent armed conflicts can be indicators for trends and patterns.150

4.1. Excursus: Differentiation of terminology

4.1.1. Old and new wars

At this point, some terminology and its differing origins and significance shall be highlighted, to provide better context for the issue which will be tackled in chapter 5. of this work. In every day live we throw around terms like ‘conflict’ or ‘war’ without really grasping what those entail. The following chapter shall explain the term ‘war’ as per Clausewitz and the difference between conflicts and wars.

The definition of ‘old wars’ finds its roots in a theory of Clausewitz, stating that war is an act of violence intended to compel our opponent to fulfil our will151 meaning that wars are used in order to achieve a political objective and therefore closely intercorrelated with politics and policies. Rather than classifying war as an art or form of science, Clausewitz used economic theories and economic competition in order to provide analogies for the illustration of his thesis. War has its roots deep in history, as the forms of war the average person associates with the terminology developed between the 15th and 18th century and has lived through many changes,
such as from solely conquering the opponents territory and establishing power or the revolutionary wars by Napoleon to the American civil war. War is therefore closely interlinked with the history of state-building.  

Following the approach according to Clausewitz, in such situations, where an objective wants to be achieved, war is determined as the best option to do so by the state authorities who stated the objective in the first place. The grand political objective is the state interest and not the interest of an individual. Furthermore, he claimed that warfare offers two different sides, which are the objective (‘abstract war’) war on the one hand and the subjective war (‘real war’) on the other hand, the so called ‘real war’ being the warfare that is carried out by individuals in the field of combat. Additionally, in the more classical approach wars are not only financed by states but also carried out through them and against each other in order to achieve a certain goal. These are carried out by national armed forces which follow a strict protocol and are under a command structure. Historically speaking, the invention of a modern army being sovereign under state power, was an important development for state monopoly, which is now the core of modern states. Waging wars like this predominantly took place in the nineteenth and early twentieth centuries.

Warfare and strategies have come a long way and in the past were used as ways to defend one’s geopolitical or ideological motives. Nevertheless, the former ways of waging war are of importance as granted to them, the rules and principles of legitimate warfare were developed. This was later codified as ius in bello, whose representation changes throughout times.

The end goal was to win against the opposite state in the battlefield and strengthen one’s power. It is undeniable that the world is changing though and therefore also the way warfare is carried out and which actors are getting involved into conflict situations.

4.1.2. Conflict and war

Generally speaking, when we refer to conflict, we talk about provocative actions between antagonistic entities, trying to either force some sort of ideology or belief onto their opponents or completely take control over them. This must not be confused with a crisis, even though both concepts are closely intertwined, and a crisis mirrors conflicting circumstances. A crisis usually

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152 Kaldor (n 149) 34-36.
153 Kaldor (n 149) 38-40; Mary Kaldor, ‘In Defence of New Wars’ [2013] 2(1) International Journal of Security and Development 6; Kent State University (n 151) 14.
154 Kaldor (n 149) 7; Kaldor (n 156) 34-36; Kent State University (n 150) 15; Clausewitz (n 151) 235.
155 Kaldor (n 149) 7.
derives from one problematic situation, for example one policy the civil population does not agree with, whereas a conflict is usually based on various causes which result in violence between opposing groups. The theory of war on the one hand, constitutes military forces breaking out in violence between two states as participants. Wars used to be solely seen as interstate whereas conflicts and crises usually refer to intrastate issues.156

Whereas the theoretical differences are quite blurry, the main aspect to be mentioned as a difference in a legal sense between the terms conflicts and war is the fact that a war, according to Public International Law, has to be formally declared. This one-sided declaration of will does not fall under any formalities as a condition and has not been used very often as a tool of Public International Law since 1945. Scholars of opposite opinions claim that the tool of declaration is unnecessary and anachronistic as war is automatically declared through violent actions such as offensive attacks and acts of terrorism. Kaldor states that conflict as a concept occurs in all societies and is a crucial aspect of development and modification of societies. In order to regulate conflicts, the governmental system of democracy is used in most states. 157

4.2. The Conditions of new wars

In new wars violence is not only taking place on the battlefield as it used to but is further executed against the civil population and often through operating paramilitary groups. In the past, wars were basically waged from one state against the other through military operations in order to defeat the enemy and ideally conquer parts of its territory. In the framework of new wars conquering land is not a priority anymore. What counts is the power exercised over the population, by gathering supporters on the one hand and finding a scapegoat which can be blamed for the political, social or economic issues the state is experiencing on the other hand. Instead of openly killing the population, things are being made unbearable through open discrimination, forced famine, mass rape and internal displacement of the inhabitants, which are not desired. One must bear in mind though that these developments are also prominent in old wars and have a long history, meaning that it is not exclusively applicable to new wars. More can be written to this topic, but the explanation of Clausewitz’ view on wars, is only mentioned to provide context by explaining what old wars were referred to and what the differences between new and old wars entail.158

The greater the sense of insecurity, the greater the polarization of society, the less is the space for alternative integrative political values.159

Kaldor claims that the motivation and backgrounds for wars since the late 20th century have changed and that instead of basing it on geopolitical or ideological fundamentals, identity politics are of much more importance. Enforcing democracy of state-building is outdated but rather ‘movements which mobilize around ethnic, racial or religious identity for the purpose of claiming state power’160 are where the new focal point shall be when talking about modern warfare and post war development. State leaders call upon the identity and justify authoritarian laws and policies through it. By furthering the fear and insecurity of the population, scapegoats are being found to blame for the problems being experienced.161

Whereas legitimate violence used to be a state affair in old wars, this is not applicable to new wars. Multiple characters, not only public and official figures but also private ones, as well as a mix of state and non-state participants come together. Apart from the known regular armed forces, paramilitary groups, bandits, warlords, rebel groups etc. get involved and commit crimes while not having a military hierarchy or structure and using lighter arms whereas regular armed forces tend to use heavy artillery. While the objective in the past was to win combat against another state and capture territory from military opponents, nowadays, according to the new wars theory, the objective is achieving the support from civil population. Voluntary fighters take part in defending their home, even though they are not provided with sufficient means to ensure their survival in the long term. Furthermore, new wars also give capacity to host international organisations.162

According to Mary Kaldor’s theory of new wars, globalisation, and its potential to influence must be taken into consideration at all levels, whether it be political matters, economic issues or even conflict situations. Whereas in the past predominantly inter-state wars were held, since the early 1990s the number of so called ‘intrastate wars’163, meaning two fighting parties within

159 Kaldor Mary, New and Old Wars (3rd edn, Stanford University Press 2012) 84.
160 ibid 77-78.
161 Kaldor (n 157) 7.
162 ibid.
163 Kaldor (n 157) 7; Difference between interstate and intrastate wars as issued by Kent State University, Conflict and Conflict Management (Aptara 2012) 262: “Following the Data of the Uppsala Conflict Data Programme, 35 out of the 36 major conflicts which took place since 2003 have been classified as intrastate, unlike in the past where wars were fought cross borders establishing interstate wars. Nevertheless, those intrastate conflicts meaning state internal conflicts, have experienced some sort of internationalisation due to involvement of external actors like bordering countries or international organisations. These conflicts are dragged on for years, without really new conflicts breaking out meaning that they are being protracted.”.

the same state borders, have risen. These tend to happen in states with weakened authoritarian regimes, where the exposure and resulting influence of globalisation to the regime is weakening the authorities and system even further.  

Erasing formerly clear borders of internal and external, economic and political as well as public and private or state and non-state actors are fuelling the negative dynamics and resulting in new wars. This does not mean that globalisation has begun in the 1990s, far from that. It is simply that since the conflicts of the 90s the intensity was accentuated. While globalisation has its negative aspects, it is also responsible for developing, integrating, and including differences. Some scholars, pessimists according to Kaldor, claim, that the need for violence is simply deeply manifested in the roots of human beings. Nevertheless, Kaldor refers to a new form of politics, a cosmopolite form of governing, that includes values such as peace, human rights and environmental consciousness. While military potential was further developed through transnational relations in the post war period, the end of the cold war reinforced renationalisation of states, meanwhile furthering international military pacts through peacekeeping and security treaties, intertwining military powers once again. Examples would be the collective peacekeeping missions or the establishment of the Euro-Atlantic Partnership Council.

External actors help financing certain aspects of the conflict, sending resources, arms as well as money to their allied group. One example, which will be further discussed in detail, but shall be used here to provide a practical example to the theory, would be Iran getting involved in the Yemen conflict, by closely backing up the governmental enemies, namely the so called Houthis. Whereas Saudi Arabia for instance tries to weaken the Houthis, Iran has been providing the Houthis with military training, political as well as mediacal support.

It is important to note though that globalisation itself is not the malady in the scenario of new wars but rather the way it is accepted and integrated into a state, meaning that the state is unable to deal with the changes it is experiencing.

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164 Kaldor (n 157) 8.
165 Kent State University, Conflict and Conflict Management (Aptara 2012) 270; Kaldor (n 159) 43, 270, 27.
166 Farea Al- Mushini, Iran’s Role in Yemen Exaggerated, but Destructive, in The Century Foundation, May (2013).
167 Kaldor (n 157) 8.
4.2.1. Group identity as a catalyst for new wars

Analysing the new wars theory, it seems like authorities of countries in conflict are fuelling insecurities of the civil population, which results in the deliberate targeting of certain groups if not the population as a whole as well as forced displacement not only outside of the country borders but also internally.\(^{168}\)

Identities sourcing from nationalism or common ethnical backgrounds are awakened from authorities which see an opportunity to perpetrate their own goals, which then use the common sense of identity for the retrieval of supporters within and outside of the state borders. Different sections of the population are agitated against one another in the name of identity and its protection, even though in the past they managed to live peacefully door by door. New wars are being waged for the purpose of identity. The promise of an overpowering or common identity also is appealing to (former) citizens living in diaspora, which constituted not only a grand part of followers believing in the cause which the war is aimed at, but are also an important financial resource for conflicts in a new war context. Furthermore, the mobilisation of people in diaspora and their influence is not to be underestimated, especially in the age of globalisation and modern technology.\(^{169}\)

According to Mary Kaldor, this can consequently perpetrate that ‘the effects of these new conflicts are even more devastating than in the case of traditional cross-border wars. They strike at the very heart of a nation’s social fabric [...] threatening its political and economic development’\(^{170}\), meaning that governmental authorities try ridding the country of the civilians not useful to their cause by ethnic cleansing, expulsion or else which can stem from differing political opinions or religious beliefs. Conditions are being influenced in such a way that targeted groups feel uncomfortable through either physical, economic or psychological means. Some examples are purposefully attacking civilian targets, forcing famine and systematic rape. Furthermore, this new warfare is defined as a ‘predatory social condition.’\(^{171}\)


\(^{171}\) ibid.
Such a conflict rarely stays within its own borders, but expands into neighbouring countries, as mentioned above, which are then also influenced by the war situation close by. This results in a loss of trade partners, burden of refugees and a rise of illegal activities.\footnote{Artur Malantowicz, 'Civil War in Syria and the 'New Wars' Debate' (Amsterdam Law Forum16th, 16th May) <https://www.peacepalacelibrary.nl/ebooks/files/369249550.pdf> accessed 11 December 2019; Manuel Escher, 'Politologin Kaldor: "Es ist die Atmosphäre, in der 'Neue Kriege' entstehen" (Der Standard, 4 January 2019) <https://www.derstandard.at/story/200095315970/politologin-kaldor-ueber-die-die-atmosphaere-in-der-die-neuen> accessed 6 December 2019.}

When the state is disassembled, roads are blocked, the economy has collapsed and the state does not function properly anymore, the involved groups have to find another way of financing the activities carried out by them. Looking further into it, a few options are available to those groups, the most common ones being robbery, extortion, but also levying taxation for instance. The weakened state which often finds itself in social hardship, is used by the leading forces of identity groups to perpetrate their own interests. The debilitated state serves as a speeding mechanism for the spread of the ideology. Furthermore, finances also stem from external parties and contributors, especially from the individuals living abroad in diaspora, as shortly mentioned two paragraphs above, as well as resources from foreign governments and humanitarian aid from foreign governments and international organisations, not to mention also kidnapping, smuggling of oil and diamonds and human trafficking. To resume the issue one can say that countries of new wars are dependent on external funding and assistance. The will to help does not stem from a geopolitical view but rather from a common ideology, ethnic or religious identity.\footnote{Ibid.}

Political narratives are the engine and motivation behind the war waging of the engaged actors, be it paramilitary groups, regular armed forces, criminals, fanatics and such acting out of self-interest, economic reasons or in order to obtain a group identity. Identities are strengthened through warring against a common enemy, fuelling even further hatred and panic within the civil population. This is not a novelty by the new wars theory as Clausewitz also brought up how closely intertwined patriotism and war are and how this bond is even invigorated through acts of war. It is used as a political instigation, in order to forge together the dissembled aspects which are required for an organised war. What happens in new wars though is that the various connections between fighting groups and internal as well as external supporters, regular armed forces, paramilitary forces, mercenary soldiers as well as different organisations such as non-
governmental organisations which might provide resources for the civil population are left in a tangled web and unclear.\textsuperscript{174}

\textbf{4.2.2. State identity crisis as a catalyst for new wars}

In the past political identity was mostly associated with nations and the pride the population felt for their nation, resulting in nationalism. Nowadays, the connotation that nationalism is solely based on the love of pride for a nation is outdated, as identities merge and forge new movements thanks to globalisation which makes it easier to communicate and establish relationships across borders.\textsuperscript{175}

The globalisation which takes place and should not be simply ignored by instable authoritarian regimes, comes with consequences for the state in crisis. Firstly, the crisis is intensified by the fact that states do not have sufficient power in order to maintain and govern over their external and internal affairs and relationships. States, according to the new wars’ theory, often find themselves tackling the difficulties that come with increased globalisation like change of dynamics, causes, economic realms, trade, migration and many more. All implications of transnationalism and globalisation are overwhelming to an already weakened state. Furthermore, globalisation influences the civil population, where processes of globalisation are seen as a menace. Globalisation also influences the dynamics of collective violence, which increases the fear of individuals on whether their security is guaranteed or not.\textsuperscript{176}

Furthering the crisis, a state finds itself in identity conflicts and crisis is what happens after globalisation has been let into a weakened state. Fuelling the suspicions and negative connotations that exist between groups is nothing new per se. These tactics in order to gain followers and supporters for the own cause and objectives by the political authorities has been used in old as well as new wars. Leaders manage to gain supporters by providing a certain narrative and spreading an ideology which aligns with the morals and principles of individuals who then go on to find a network of people sharing their views. In order to spread the own agenda, violence erupts and is not only endured but actually wished for in this toxic environment that has been created. Social organisations gather together around either linguistic, ethnic, religious or other similarities, establishing clear border between the ‘us’ and the ‘them’.

\begin{flushleft}
\textsuperscript{175} Kent State University, Nations, States, and Identity (Aptara 2012) 80.
\textsuperscript{176} Kent State University, Conflict and Conflict Management (Aptara 2012) 270.
\end{flushleft}
or how it is called in the new wars ‘in- group’ and ‘out- group’. The commonalities stem from historical events or myths but have been deeply integrated into the belief system of the group’s members. By trying to protect the own pride, history and rights, the other group is demonised due to their actions or beliefs in the past as well as present. Changes and modernisations are unwanted and actions of the past as well as outdated myths are desired.177

The resources of the state authority are declining, while being further exposed to the globalisation, which then results in individuals rather confirming loyalty to local small groups than the state and the nation interest, the cohesion of the state is falling apart and state capacities are further declining. It comes as no surprise, that individuals are looking for alternatives which can provide security and answers to the questions and doubts of identity. Rather than taking part in a national identity and representing the values of the nation, so called ‘primordial identities’ are taking the place of the former national identity, offering security.178

This dissatisfaction is increasing by the day, as even in countries perceived as stable and modernised, frustrations arise. With the growing failure of the social democrats, the increase of votes for the right wing and new dangers like climate change on the horizon, generations divert in their opinions as well as goals, instead of pushing for common ground.179

4.2.3. Excursus: Identity Politics

Coming back to the topic at hand, one must understand how global politics are constructed. The three main pillars would be the nations, nation- state, and nationalism. The according terminology on how to differentiate between these three have been highly influenced by the works of Benedict Anderson, whose argumentation for a nation, for instance, was a common but imagined political community based on pillars of similarities like common cultural heritage. Due to the length of this work, only some aspects will be highlighted which have to do with identity politics.180

The first pillar of nation is determined by the fact that a certain amount of people compart some sort of cultural heritage, which is accepted and lived by them as a whole, the dubbing of a

177 ibid 271.
178 Term directly taken from Kent State University, Conflict and Conflict Management (Aptara 2012) 271.
whole, meaning that their common component is sufficient in order for them to feel connected in such a way that a community is built and the wish of independent politics.¹⁸¹

Nations share certain kinship due to having the same language, speaking the same language, having experienced certain historical events together or sharing cultural traits. This group of people share common symbols that symbolise their nation, such as flags, national holidays, or national animals (like Scotland’s animal the Unicorn). Furthermore, these similarities result in the population sharing a feeling of union, like being part of something bigger than themselves. Lastly, a nation desires to be politically independent. This phenomenon is referred to as ‘self-determination’¹⁸², meaning that a nation is looking for political independency or at least a certain amount of autonomy, which is not the case when talking about ethnic groups for instance. Many different groups can coexist within a nation but are only classified as ethnic groups as they do not have the desire for political independence. One must be careful with this classification though, as the differentiation between nations and ethnic groups is not always easy as some ethnic groups can demand political change and independence from the ruling majority therefore blurring the established lines. ¹⁸³

The second pillar is nationalism, which is basically turning the feeling and values shared by the nation into a political ideology and agenda. Principles according to values are constructed, which then determine how to act in order to fulfil those. One must also bring together the ones who identify with the political ideology and establish borders in order not to be associated with the ones not participating in this ideology. As Smith described in 1994 ‘For nationalists... the role of the past is clear and unproblematic. The nation was always there, and it is part of the atrial order, even when it was submerged in the hearts of its members. The task of the nationalist is simply to remind one’s compatriots of his or her glorious past, so that he or she can recreate and relieve those glories.’¹⁸⁴

Lastly, all of the above comes together in the nation-state which is the end result of politically independent nationalists. States are referred to as sovereign countries, as explained in the chapter about sovereignty in Public International Law. They have to fulfil certain criteria

¹⁸¹ Kent State University (n 175) 81.
¹⁸² Cárdenas, Emilio J. and other, The Limits of Self-Determination. in Wolfgang Danspeckgruber (ed), Self-Determination of Peoples: Community, Nation and State in an independent World (Lynne Rinner Publisher 1994) 183.
¹⁸³ Kent State University (n 175) 81- 82.
¹⁸⁴ Citing Smith 1994 in Ken State University (n 175) 83.
according to Jellinek, meaning the state territory, population and execution of power over the citizens. This is an ideal which is not very common in practice, as in Yemen for instance.  

Nationalism can not only be considered a problematic aspect of politics, as it has a rather negative connotation to it, but one must also bear in mind the positive things that come with it. For instance, nationalism has played a great role in the spread of global political systems, through establishing law and order on a smaller level, for instance in societies, while also providing adherence. Furthermore, political communities can go ahead and establish independent governments and look for some sort of security. Nevertheless, it has also been the cause of many wars in the past and fuelled instability and suspicion amongst societies. 

As highlighted in chapter 4.2., identity politics are a great component of the new wars, rather than global politics, the reasons for the wars being fought in the 21st century are based on identity politics. Especially since the Cold War era, a shared identity is the reason for civil population to fight a common enemy. This identity can stem from shared culture, religion, ethnicity, or race. Usually, the members of one group outnumber existing smaller groups, and further their political and economic goals and establishing the desired social construct, without really taking the smaller groups and their desires into consideration. These antics can become not only part of the political agenda but the reason for wanting to change the whole system, as one’s group is perceived as superior to the other one. Throughout history, states have had to change the borders of their state territory, as political independence was demanded by identity groups. These groups are looking for ‘political expression’ and ‘representation’ which is what political identity consists of.

The repercussion of this rather new political ideology has not only been the secession of new states from their mother state, as identity groups required self-expression and reached it through these means. Furthermore, the creation of conflict within state borders due to disagreeing or incompatible identities which have set out for reaching clashing goals, as well as cross border conflict between existing states are happening therefore one must not underestimate the repercussions of identity politics, which is why the concept is also highly criticised. The chances of tensions within states rise and consequently the chance and wish for secession of the overpowering state and ideology. Civil war can emerge which then leads to many small and

185 Kent State University, Nations, States, and Identity (Aptara 2012) 83.
186 ibid 89.
187 Terminology for political expression and representation directly taken ibid 116.
rather weak new states. Furthermore, when becoming an extreme identity, identity politics can go against the principles of tolerance and pluralism which are crucial in order to establish a functioning liberal state.\textsuperscript{189}

The roots of enmities have its seeds in history and myths, which are further perpetrated by the political figures which use the animosity and fuel the suspicion between identity groups in order to achieve their own political agendas. If the proper circumstances are provided, identity politics can take a dangerous turn, fuelling the misconceptions and suspicion between differing identity groups and resulting in discrimination in society but also non-inclusion in processes, as well as exclusion of political participation. Further down the line the tensions can erupt in violence.\textsuperscript{190}

4.2.4. Technology and its influence on identity politics in new wars

New forms of spreading information and communication through recent technology are strengthening so called identity politics which are triggered by either the interests of an individual or a group. It is increasingly easier not only to obtain but also spread information outside of the own borders, meaning the expansion of criminal networks, as well as easier access for international agencies and institutions, Non-Governmental Organisations, or henceforth NGOs and such. In case of mobilisation in new wars, the new technologies and communication devices are used to expand fear and extremism within civilians. Taking the change of communication and the speed with which information can be obtained is, considering the above said, of importance and helps spread the agenda of authoritarian identity politics.\textsuperscript{191}

These identity politics are also a new base of motivation for new wars, whereas geopolitical or ideological reasoning are decreasing. Furthermore, identity politics also spread not only through technological means, as mentioned above, but also through migration from the countryside to the cities as well as migration across borders, therefore furthering the globalisation process. The following quote ‘Political mobilisation around identity is the aim of war rather than an instrument of war, as was the case in old wars’ seems oppositional at first, as we just established that identity politics are the motivation for new wars rather than geopolitical or ideological motivation, but looking further into it, it is actually not. While identity politics, meaning claiming and defending an identity and gathering as many supporters or sympathisers as

\textsuperscript{189} Kent State University (n 185) 116-117.
\textsuperscript{190} Cárdenas and others (n 182) 183; Kent State University (n 185) 117.
possible, may be the path an authoritarian regime chooses to take in order to prevent the state from opening up to external influences and possibly losing (more) power, it can also be the aim of said government. The establishment of social cohesion and solidarity while fighting a common enemy—anything that is different or does not act according to the government’s will.¹⁹²

Important for the understanding of the new war theory is the significance of authoritarian governments, as new wars tend to take place in states with such governmental structures. This type of governments is rather strict and does not support the involvement of the civil population in the decision-making processes of the state. This is a form of governance in which the political authority does not concern itself with the wishes and demands of civil society and perpetually tries to exercise power. According to the Economist Intelligence Unit, Democracy Index, Yemen, the exemplary country of this work, is dark reddish, therefore scoring only a 0-2 in the index and indicating a decrease in democracy while expanding non-democratic regimes.¹⁹³

![Democracy Index 2019](image)

*Figure 1. Democracy Index, 2019, Source: The Economist Intelligence Unit, 2019.*


¹⁹³ The Economist Intelligence Unit, Democracy Index 2019, Chart [https://www.eiu.com/topic/democracy-index](https://www.eiu.com/topic/democracy-index) accessed 20 February 2020; Kent State University (n 192) 111.
4.3. New wars and recognition of governments

Following the narrative of Kaldor’s theory, war cannot be classified as a geographically restricted conflict anymore. Peaceful zones as well as zones of conflict can exist right next to each other on the same ground.\(^{194}\)

Narratives expand through media and the new technologies used in order to spread the word, as well as the previously mentioned other conditions nurturing new wars such as transnational criminal networks, networks in the diaspora which are based off of a feeling of a common identity and national and international overwhelming of the system when it comes to refugees. Issues like identity politics as well as political decentralisation and global economic warfare exist in most countries to some certain extent, though.\(^{195}\)

It is important to note that every epoch is characterised by its own complexity of issues, especially when it comes to different forms of government, legitimacy and security models. The form of government determines the rules by which people live together. Legitimacy is, as mentioned in the political scientific part before, the bases on which the government determines the power and lastly, security models on how organised crime is supervised. Political institutions must maintain the law and order of the state as well as protect its citizens physically from harm. Furthermore, it has to provide the basis for a well working state administration, protecting the rule of law and securing the state territory from external harm. Insecurities arise when one of the factors is not given, especially when looking into the future of governments, meaning the political authority, according to Kaldor. Following her theory, a ‘security vacuum’ exists, which must be filled through actions by international institutions. The national monopoly on the use of force has been eroded by the trans-nationalisation of armed forces on one hand and the privatisation of organised crime on the other, the latter posing as a typical characteristic of new wars.\(^{196}\)

In consonance with Kaldor, three conditions are required in order to provide protection for the civil population from privatised forms of violence. Firstly, we must determine which form of politics is being pursued. Secondly, we must define how violence is determined in the period we are referring to and lastly which concept of security is chosen to be carried out. Antiquated theories only refer to legitimate governments in accordance with certain conditions, which have

\(^{195}\) Kaldor (n 194) 270.  
\(^{196}\) ibid 271-273.
some sort of legitimacy, while nowadays the attention should be brought to individuals or groups acting in the belief of superiority of their own identity.  

Kaldor is referring to two theories when it comes to legitimacy, one being by Samuel Huntington’s Clash of Cultures. There he poses a thesis in which legitimacy is established through cultural identity and carried out by the loyalty to the leader of the cultural heritage. Furthering this narrative ideology, it is used as a link between societies and states, where he thinks the world is heading to in a multicultural globalised world. Nevertheless, he also emphasises the importance of core states, such as the United States of America or the People’s Republic of China. Huntington determines between six and seven culture circles, while claiming that the differences between our westernised world and Islam are too big to be overcome and that Islam poses an international threat.

The second theory referred to by Kaldor is the theory of modern anarchy by Robert Kaplan, in which he predicts a new form of anarchy, based on a break between the present and the past, as well as the differences between new and old wars. He is convinced that future political perspectives and authority are closely intertwined with cultures and even invented a concept in which governments function without security and political legitimacy.

Lastly, the so-called cosmopolitan form of governing is based on exclusive nation state and its political institutions. Supposedly this cosmopolitan form of governing shall conclude the gap between the island of civility as stated by Kaplan as well as the transnational institutions. Territorial borders are unrequired, political ones are a must. Nowadays the differences between cosmopolitism and particularism cannot be territorially identified. In some respects, one can say that a cosmopolitan regime has already been established, and transnational NGOs are trying to point attention to human rights violations and genocides. What is still missing is the according law enforcement, which would, according to Kaldor, help establish a high functioning cosmopolitan regime. This could possibly fill the previously mentioned security vacuum and consequently provide more legitimacy for international organisations and fight disparities. Looking at all these models, what Kaldor can assure is that a regime according to Huntington’s model will not be established, as disparities and exclusion of potentially not as powerful or wealthy countries only provide ore ground for conflict and fuels internal insecurities.

\[197\] ibid 273.

\[198\] ibid 275-276.

\[199\] ibid 281-283.
5. Yemen in a new war

Recapping shortly what has already been established in the introductory chapter to Yemen, the main focus on the continuing crisis in Yemen will lie within the timeframe after the Arab Spring took over.

Throughout the struggles Yemen suffered in the past, focusing on the time since the Arab Spring, a civil war has displaced large parts of the population, not only internally but also into the diaspora, and mass rape and killing of civilians have shaped the society of Yemen. Instable political processes as well as groups spreading ideologies contradicting the norm have made Yemen one of the more interesting places to analyse identity politics. While the internationally recognised Yemeni government tries to maintain its power, in the north, the Houthi rebellion have established a radical but very supportive array of followers willing to do what it takes in order to establish the Houthi power. At the same time, the al-Qaeda used the instable socio-economic situation of Yemen in order to spread their own ideology and use the space provided for finding supporters for their cause.\textsuperscript{200}

In the spring of 2011, when the Arab Spring arrived in Yemen, the so-called Houthi movement, joined protests taking place. The Houthis, as will be further explained in chapter 5.1.2., are followers of Zaydism, a branch of Shi’ism, which at its core an advocate for a Muslim ruler, to rule over the Muslim state. Differing with other Shi’a beliefs, the Zaydis are convinced that in case of conflict or uprising, which was caused by an unfair supreme ruler, an imam can prompt a hail for support for his cause, which would be a revision of the injustice. The imam in question must convince the so called ‘religious aristocracy’ but also the Zaydi followers to support his cause.\textsuperscript{201}

In 2011 when the Houthis operated under the name ‘Ansarullah’, the group joined the rebels and the protests taking place. Houthis had taken over part of Yemen in 2009, including Saada which is the frontline between Yemen and Saudi Arabia, where Saudi forces were overpowered by the sheer force of the Houthis. With increased confidence after this win, the Houthis also partook in the Arab Spring, whose actions resulted in the expulsion of President Saleh and the elections of President Abed Rabbo Mansour Hadi. After 30 years of reign, former President Ali Abdullah Saleh was asked to step down and a government of national unity was implemented.

\textsuperscript{200} Barak A Salmoni and others, Regime and Periphery in Northern Yemen: The Huthi Phenomenon (1 edn, 2010) 289; Kent State University, Conflict and Conflict Management (Aptara 2012) 270.
\textsuperscript{201} Barak A Salmoni and others, Regime and Periphery in Northern Yemen: The Huthi Phenomenon (1 edn, 2010) 289.
with the help of the United Nations. These protests resulted in the expulsion of former President Saleh from office. In the beginning, things were looking up as the new President Abd Rabbo Mansur Hadi seemed to be backing up the Houthis, but in fact, the situation of Yemen, which already was the poorest of the countries in the Arab Peninsula, further deteriorated as the economy and the national security worsened. The deterioration of the security and socio-economic situation made the Houthis out as the new beacon of hope for the civil population, giving them something to believe in and someone who they could identify with. As a result, more and more people started to identify themselves with the Houthi ideology leading to an increase in followers for the rebel group, even from Saleh’s supporters. 2014 was the year when the Houthis managed to take over Sana’a, the capital, in September and even the Presidential Palace in January of the following year. After taking over the power in the capital and expanding their influence, the Houthis suspended the parliament of Saleh, leading to the flight of former President Saleh, first into the formerly British occupied Aden and later to Saudi Arabia. 202

In order to fight the rebels, as their own resources were insufficient and the Houthi’s enjoyed the support from former President Saleh, President Hadi asked for military support from the newly built unity coalition led by Saudi Arabia, triggering airstrikes and offensive attacks against the Houthis and spiralling Yemen into a deeply complex civil war.203

Furthermore, through the involvement of the USA as well as the British into an already fragile situation, the matter escalated quicker and the causes changed. From a dispute concerning territory between Saudi Arabia and Yemen, which was carried out by opposing religious parties, meaning the Sunnis vs the Shia, the situation ended in nothing but a fight between Saudi Arabia and Iran, fought out on Yemeni ground. Besides the internal issues and the ongoing armed conflict, Yemen had to deal with another influence within its borders: The ascent of terrorist

203 ibid.
groups such as al-Qaeda and the Islamic State, as well as the re-establishment of the Yemeni separatist groups of the south.\textsuperscript{204}

5.1. Actors in the conflict

5.1.1. The Southern Movement

After having established an overview of the conflict, with focal point on the Houthis and the events which led them to be strong participants in the Arab Spring and the conflict afterwards, now a general closer look into the different actors partaking in the Yemeni conflict will be presented. In order to push their own identity feeling and therefore furthering the identity crisis of Yemen, it is important to analyse the war in a new war framework. Leaders of several identity fractions claim to be following the only right narrative and are gathering supporters while simultaneously having a destructive impact on the country they claim to save. The south of Yemen, which used to be called the People’s Republic of Yemen, as mentioned in chapter 1, was considered an independent entity until 1990. Furthermore, after the unification of Yemen, as a result of the Yemeni civil war of the early 1990s, the south still tried to maintain its independence after the unification process had already taken place and tried to separate themselves from the northern part of the country. The issue of the desire to be independent by the south was never fully resolved, it rather accumulated until reaching a breaking point with the establishment of the Southern Movement in 2007, which has been advocating for the independence of the south ever since. While previously being more popular in villages in the mountains, the Southern Movement managed to gain more and more supporters for their cause, as it provides a common goal and a joint identity, one of many in Yemen, having spread into the south of the state. It further helped the case of the separatists, that the government of Yemen graciously neglected the wishes issued by The Southern Movement and its followers, increasing the feeling of malaise and inequity within the civil population who followed the doctrine of The Southern Movement. Nowadays, the more successful figures of The Southern Movement have set up a political party called the Southern Transitional Council. This council consists of various figures, amongst them politicians, military personnel, armed groups as well as leaders from smaller tribes supporting the cause of independence.\textsuperscript{205}


The Southern Transitional Council is mainly backed up and associated with the United Arab Emirates, while the majority of the international community sticks to the importance of a unified country of Yemen. Currently, The Southern Transitional Conflict is not only fighting the Houthi rebels with its forces and the support of the governmental allies, which are receiving support from Saudi Arabia, but also the governmental allies itself. This results in a more layered situation in the war, as due to the involvement of the Southern Movement, the number of involved parties in the conflict was extended, from the Saudi led government fighting the Irani backed Houthis, and the failure of President Hadi protecting Yemen from extremist groups like the al-Qaeda, to the Southern Movement reviving the fight for southern independence from its government.206

As announced on April 25th 2020, The Southern Movement of Yemen has proclaimed independence of the southern part of the country. In this case it seems as if the secessionist group has used the burning insecurities the country found itself in to develop their own agenda. Yemen officials as well as the United Nations were trying to implement a security plan in order to protect the civil population in one of the biggest humanitarian crises, from Covid-19. Currently, it is still unclear if the sudden proclamation of independence was used as a provocation for the Hadi government or a real attempt at establishing an independent state. According to officials from The Southern Movement, the party acted in accordance with the 2019 Riyadh Agreement. Following this approach, the members of the Southern Transitional Council have lived to their part of the bargain, while the coalition failed to do so, triggering an extreme response.207

5.1.2. The Houthi Movement

As shortly mentioned in chapter 5.1, the Houthis are a group of Shia Muslims. More precisely Houthis are part of the so-called Zaydism, who make up almost a third of the Yemeni population. Until 1962, when the first civil war broke out, the north was ruled by the Zaidi Imams, who were not only effectively ruling the North, but also observing and highly

206 ibid.
influencing the South, even during times of British occupation and colonialism in the former Protectorate of Aden. This Zaydi rule effectively lasted over a thousand years.  

The followers of Zaydism felt pushed back, due to the increasing influence of extremist Sunnis in the country during the 1990s. These actions led to deepened insecurities within the Zaydi community, or following Mary Kaldor’s narrative, seeding doubt in their identity as a group as well as survival chances as a collective. During this time, the first leader of the group establisher Hussein Badreddin al-Houthi and his family, consisting of all Zaydi scholars, forged alliances with the local tribes, inaugurating a movement called the “Ansarullah”, meaning the followers of god. As mentioned in chapter 5.1. part of the Zaydi ideology is having a qualified imam, gathering the necessary support to fight against what they deem to be an unfit ruler in a politically frail situation. The required religious scholars, that are as mentioned in chapter 5.1., required for legitimate support, can be seen in Hussein Badreddin al-Houthi, since he fulfilled the conditions of a fit Zaydi leader by being highly educated in Zaydism and from good descendant, in fact from a family filled with scholars. Pinpointing back to the establishment of the Houthi rebellion and how the new war theory plays part in it, the growing tensions and fears of identity loss of the Houthis led to an open and armed conflict with the Yemeni army in 2004, which in addition prompted the Houthis being called out and stigmatised as terrorists by the former president Ali Abdallah Saleh, who himself was a Zaydi. The back and forth between the government of the early 2000s and the rebel group have led to the death of thousands, only until 2010.  

In the early 2000s the Houthi movement, as we know it nowadays, began, when the former leader Hussein Badreddin al- Houthi gathered his followers and started to protest for proper representation in the government of Yemen. Furthermore, they called for implementation of a Shia rule and demanded measures in order to end Yemen’s issues with corruption. Claims that the Houthi movement is solely based on ideologies and resources stemming from Iran, are not to be followed, as the movement or rather the ideology itself emerged in the first years of the 1990s within Yemeni borders and a lack of external influence. The Houthi movement became a violent threat by the year of 2004, following protests at local mosques which were held by Houthi supporters, exclaiming their infamous slogan ‘Death to America’, resulting in the death

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of the Houthi establisher Hussein Badreddin al-Houthi by the hand of governmental forces, angering the Houthis even more and drifting them further apart from the governmental forces in situ.\textsuperscript{210}

Not only influenced by Iran’s support, the Houthis have also experienced aid from countries like Oman and Russia, perhaps even more so than from other Middle Eastern countries. Russia for instance, managed to influence the composition of the Houthi formed government by proposing Houthi’s council delegated Abdel-Aziz bin Habtour as prime minister.\textsuperscript{211}

Even though the battles between the Houthis and some rivalrous groups have ceased, for instance the battles against the Saudi led coalition, since the accordance of the Stockholm Agreement, peace has not fallen upon Yemen, as small groups incise conflicts due to Yemen’s complicated internal history. Conquering more ground in Yemen, the Houthis have managed to expand their wings into many parts of the country, while also risking to lose some unattended lands in the process. The tribes fighting against the Houthis are often not on their own, but receive help and resources through external actors, especially neighbouring countries. One example proves the fight between the Houthis and the so called Hajour tribe, which were able to withstand the Houthis for a couple of months even though their military equipment was inferior. Fighting these small tribes is of strategic interest for both the Houthis and Saudi Arabia as they are usually located in economically and politically significant places, such as along the borders of Saada or the coast.\textsuperscript{212}

The one political figure who managed to keep control until his death in December 2017 between the Houthis and different tribes was the former President Ali Abdullah Saleh, who helped the Houthis conquer the capital Sana’a and simultaneously forced President Hadi to flee the country to his ally Saudi Arabia. The Houthis were the group he was fighting six years prior to their alliance.\textsuperscript{213}


\textsuperscript{213} ibid.
Houthis are seen as a threat by different sides, which made it difficult for them to form an external political ally until Iran offered its support. Nevertheless, the Houthis have managed to win smaller and bigger battles against opponents due to the crippling and deep division within Yemen into many different opposing tribes and parties. Instead of talking through solutions in conflict, opponents are accusing each other of their loss in public. Nevertheless, parts of the country which are governed by the partly internally recognised Houthi government, are still fought after due to the Houthis violent style of governance and methods in order to stay in power which constitutes animosity towards the Houthis by their enemies.214

As the Houthis have aligned themselves along the borders to Saudi Arabia, reactions from the Saudi’s have been provoked only through that action prompting attacks on both sides since 2009. Saudi press and officials use these incidents in order to blame Iran for providing support and resources to the Houthis. The involvement of Iran which is a sting in the eye of Saudi Arabia, even implying a secret coup against Saudi Arabia, planned by Irani forces, the Houthis as well as the Lebanese Hezbollah group.215

Supporters for the fighting sides have gathered multiple times in order to try for new peace talks and reach ceasefires, going for political stability in the long term. This has proven to be quite a challenge as any peace process proposals will need not only the consent from the Hadi government and the rebelling Houthis, but also The Southern Transitional Council and not as present but still sufficiently influential groups like for instance the Islah, which embodies Yemen’s Sunni Islamist party.216

Yemen is a country full of history of conflict stemming from not only European colonialism but also intervention by the United Arab Emirates or Egypt and such. Even though Yemen faces its own challenges, and has been dubbed the most serious current humanitarian crisis apart from the situation in Syria, instead of providing proper help and fixing peace treaties, the war in

215 “The Hizbollah or Hezbollah is a Lebanese Shiite group, which was established during the 1980s but has expanded into the lands of Israel and Syria. The military group has allegedly caused and carried out terrorist attacks all over the globe and is seen as a great threat to international security by states such as the United States of America” Information directly retrieved from: International Crisis Group, ‘Hizbollah rebels without a cause’ (International Crisis Group, 30 July 2003) <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/lebanon/hizbollah-rebel-without-cause> accessed 27 February 2020.
Yemen seems to develop into another proxy war, mainly waged by Saudi Arabia and Iran, with other players coming frequently into place.\textsuperscript{217}

5.2. External Actors

As discussed in chapter 5.1., different sections of the country’s population have established various group identities whose objectives are being followed dedicatedly by its followers. The sections are being supported from external actors, as it is customary in new wars. The Southern Transitional Council is backed by the United Arab Emirates, while the Houthi rebellion receives resources and moral support from Iran. The intervention does not stop there at the provision of resources but can end up in attacks such as the airstrikes dropped by the United Arab Emirates, which argued its attack by the attempt to defeat terrorism in Yemen. The Hadi led government even asked the United Nations to intervene in the situation, as the government felt a violation of its principle of sovereignty took place and therefore, repercussions must follow. It seems like Yemen is further being used as a playground for power establishment by the United Arab Emirates and the Saudis, some scholars even claiming that another civil war, if not even a proxy war, can be ignited by the actions currently taking place. Interventions from external actors have remained fruitless thus far.\textsuperscript{218}

5.2.1. Iran’s Role in the Yemen Conflict

An important external actor involving himself in the Yemeni internal conflict and providing an additional characteristic of the New War theory, is Iran. Yemen is not the only country receiving support from Iran, the officials preoccupy themselves with unsteady governments in the area, using its influence to further repel what is considered a Western Lifestyle by establishing strict regimes.\textsuperscript{219}

Iran itself is sending resources from Teheran to the Houthi rebels, which are negating a bond between themselves and Iran. This actually led to the involvement of the United States, as Iran’s influence is being used as a scapegoat by the Saudis expressing concern that Iran is not in it for helping the civil population, but is rather providing resources for the Houthis. Allegedly Iran


pushes their own narrative and spread the Iranian ways in the Arab Peninsula, therefore threatening Yemen’s identity and undermining its independence, as well as using resources in order to expel a westernised country. According to some sources the influence of Iran in Yemen is not to be underestimated, but neither should it be over dramatised, as other countries in proximity are providing help and sending resources to the Houthi rebels as well, such as Lebanon, Syria or Iraq. Therefore, the financial support the Houthis receive from Teheran is important, but not the main source of finances, as the weapons used by the Houthis are mainly bought off the black market, but other external parties, like Russia and Egypt are also providing resources to finance the war. Even though both parties, the Houthis in Yemen and Iran’s officials, negated any deep relationships between each other, after the coup d’état in 2015, Houthis decided to re-open the Sana’a airport and using it as a main road for flights between Sana’a and Teheran, making the bystanders wonder what for, as not sufficient Yemenis are living abroad in order to justify the frequency of the flights from Sana’s to Teheran. What really has been transported, if it was goods or individuals, stays unclear up to this day.²²⁰

Even after strengthening the bond with the Houthis and the country of Yemen as a whole, as in 2015 it had been taken over by them, Iran still preferred to use the Houthis rather for their own interests than complying with the promises made in secretive meetings. Furthermore the ties between Iran and the Houthis also have endured some difficulties as to Iran, fundamental religious differences are prevailing between the two parties, as Iran is inclined to the belief of the Twelver Shiites while Yemen’s Houthis follow the regime of Zaydi Sunnis. Moreover, the main link between the Houthis and Teheran has been provided by the Hezbollah party, an organisation labelled as a terrorist organisation, which has been providing training capabilities and sending information between the two parties.²²¹

As of 2016, President Hadi vowed to use all his power in order to stop Iran from intervening into Yemen’s politics, through financing and backing up the Houthi rebels, as according to him, the main interest for Iran is not the establishment of safety for Yemeni population and the unification of the country but a sole interest in establishing a Persian state outside their own borders. These claims even resulted in Hadi proclaiming that the war he wages was actually against Iran and not a Yemeni civil war. Nevertheless, it should be mentioned that until 2013, President Hadi as well maintained clandestine relations with the state of Iran and its officials,

²²¹ ibid.
while claiming that the influence of Iran in Yemen is even more dangerous than the influence of al-Qaeda while residing in the debilitated country of Yemen.\textsuperscript{222}

Saudi Arabia has entered the picture as well, in order to combat what has been called the Iranian influence on Yemen by the Saudis, pledging support to President Hadi and reinforcing his position in 2017.\textsuperscript{223}

Even though both parties repeatedly tried to negate connections between each other in the past, it is clear that to a certain degree, relations have been maintained due to aid in medial, financial or even political matters through statements. Even though it has been argued that even though the Houthis would technically be able to maintain power in Yemen, without the support or resources from Iran, it gives them additional security to know that they actually do receive the support. While this seems like an external issue, it is rather an internal one, as the influence of Iran does not extend into relations outside the borders, but secures the Houthis is their quest for identity empowerment and establishment of their own ideology. President Hadi for instance, was rendered unable to recapture power in Yemen without external forces and intervention, such as by Saudi Arabia.\textsuperscript{224}

After the difficulties arose in the capital and the Houthis managed to capture Sana’a, some western countries decided to close their embassies in Sana’a, while Iran decided to help the Houthis out of their dilemma by ending their international solitude and backing them up, pushing the Houthis’ confidence and strengthening their identity.\textsuperscript{225}

In resume, one can say that even though Iran’s influence in Yemen might in fact not be as big as once believed, or as it is presented under the Trump administration and other Saudi allies, it is still of utmost importance for the Houthis and their quest for identity security, as Iran poses as a public and external ally, giving the Houthis the confidence needed to keep carrying on with their campaign. As well as providing resources in financial and medial form, Iran also fills in

\textsuperscript{222} ibid.
\textsuperscript{224} ibid.
the blanks for the Houthis in aspects where they are not sufficiently equipped to act in, such as planning strategies or managing weapons.\textsuperscript{226}

5.2.2. Saudi Arabia’s Role in the Yemen Conflict

As mentioned in the prior chapter 5.2.1., the question whether the influence of Iran in Yemen is really that big is actually not of that much importance when talking about its role within the framework of the new wars’ theory. What is of importance though is the fact that Iran’s back up gives the Houthis the confidence to pursue what lies beneath their identity, the ideology they are trying to spread. On the other hand though, Yemen is being teared up between two external enemies, Iran and Saudi Arabia, providing fertile soil for identity insecurities, as the civil population confides in their respective group leaders, which in turn confide in their external supporter for resources and confidence boosts. Currently, Yemen has been used as a proxy for acting out and reliving the issues of Iran and Saudi Arabia, a never-ending history of rivalry in the Middle East, making Yemen a playground for Teheran vs. Riyadh.\textsuperscript{227}

The Saudis did get properly involved when the Houthis managed to overthrow the local government and capture Sana’a, resulting in airstrikes coming from the Saudi side against the rebels and even civilians. While Saudi airstrikes took place, aid also came from the side of the United States under the Obama, and now the Trump administration, supporting the combats against the Houthis. The most likely interest of the United States is a self-interest, meaning the assurance of a Middle Eastern ally. Especially when it comes to the nuclear deals between the Middle East, Iran in particular and the United States. \textsuperscript{228}

Saudi’s interest in intervening in Yemen and putting a wedge between Iran and the United States of America, stems, according to different sources, from the wish to prohibit a nuclear contract between the state of Iran with the United States, France, Russia, Germany as well as the United Kingdom, fearing that such a deal might increase Iran’s influence in the Arab Peninsula and the rivalry state’s power as it already constitutes a driving force in countries of conflict like Lebanon and Syria, acting against Saudi’s will by impairing Saudi’s power and to

\begin{itemize}
\end{itemize}
manipulate Saudi Arabia’s fear of Iran.\textsuperscript{229} Furthermore, as historically established, Yemen is very well situated geographically due to the oceanic connection between the Red Sea and the Gulf of Aden, priorly interest of the British, which constitutes a crucial oil shipping channel called the Bab el Mandeb strait.\textsuperscript{230}

Even though the relationships in the Middle East has not been amicable in the past 30 years, phases of one-dimensional relations did exist, as the ongoing conflict in Yemen does not bode well with any of the countries involved, being Iran, the United States or Saudi Arabia. A common enemy poses a threat to all three, which is al-Qaeda, which has used the instabilities in Yemen in order to expand their territory and operate from their main site now residing in Yemen. Even though the current elected government of President Hadi is backed up by Saudi Arabia, which in turn also receives support from the United States, the question if its respective desires could be fulfilled by using Yemen as a prop, most likely has to be negated because at the end neither the Saudis nor Iran have managed to force their will on Yemeni leaders.\textsuperscript{231}

As the Houthis have established themselves in the northern mountains of Yemen, bordering Saudi Arabia, provocations by the rebel group against the neighbouring country were not difficult to obtain. After expanding their influence and power into the South of the country, Saudi Arabia seemed to be increasingly irritated. In 2010, the first battle was initiated by the rebel group against their neighbour, but the government in the capital of Riyadh assembled 150,000 soldiers, in order to re-establish the, according to them, legitimate government of President Hadi and to detain the Houthi rebels from taking over the total power in Yemen. Nevertheless, the Houthis have indeed managed to regain power in Sana’a and continued to receive aids and resources from the Shia regime in Iran.\textsuperscript{232}

\textsuperscript{229} ibid.
6. Summary and Conclusions

6.1. The Hadi Government

In chapter 1, a closer look into the Yemen conflict was provided albeit only scratching the surface, pinpointing the important actors and aspects necessary for this work. In the first part, chapters one through three, the legal and political legitimacy was discussed concerning governments and the second part (chapter 4) was dedicated to the new war theory by Mary Kaldor. Both parts were written to provide a general overview of the content necessary to reconsider the legal legitimacy in light of the new war theory in Yemen (chapter 5). In this chapter, the work shall provide an analysis of whether the two established governments, the Saudi led Hadi coalition government on one side, and the Houthi led government on the other side can be considered legitimate in light of the new war theory. After the long runner Ali Abdullah Saleh was expelled from the government in 2012, Abed Rabbo Mansur Hadi took and over has been officially reigning in Yemen ever since. Even though Hadi and his officials have been titled the internationally recognised government by the civil population, they have also been perceived as incapable of leading in the past, due to the fact that they were unable to stop the al-Qaeda from occupying the South of Yemen and operating from there. 233

Throughout the research, it was quite evident that the Yemen conflict is so deeply layered and complex, that a whole work could solely be dedicated to the identification of the causes and developments of the conflict. Since this work shall analyse another aspect, which is the reconsideration of legal legitimacy of governments in light of the new war theory, the important aspects of the conflict, such as a short historic overview, the most prominent identity groups, The Southern Movement and the Houthi regimes as well as the two most influential external actors, being Saudi Arabia and Iran, have been highlighted and explained, as they play a crucial role in this work. 234

In order to properly interpret the occurrences, the subjects of potential recognition will be highlighted again. The insurrection of insurgents as warriors thus receives a partial subjectivity under international law for the purpose of expenditures of martial law, through which the

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The horrors of war are alleviated, can be recognised as well as national committees as a preliminary stage for the recognition of an exile government.\textsuperscript{235}

Furthermore, the recognition of a land acquisition is only declaratory, since the land acquisition is usually achieved through an agreement between the acquiring and the assigning state and governments can be subjected to the term or rather issue of recognition, the last one being the relevant scenario for the following chapters of this work.\textsuperscript{236}

6.1.1. International Recognition

Even though Yemen has been struggling with political and socio-economic issues for years, the country’s international legal personality prevails, as states are regenerated legal personalities.\textsuperscript{237} Partial international legal personality is, furthermore, not an issue as this only applies to either International Organisations or to states which have only been recognized by a certain number of other states, such as the example of Kosovo, and which for a diplomatic relation can only be built with those who have issued recognition.\textsuperscript{238}

As previously discussed, recognition is usually only an issue where international legal personality of a state is doubtful, but that only applies to the recognition of a state as a whole. This is not an issue with Yemen, as the state is internationally recognised as a whole and diplomatic relations between Yemen and over 40 countries have been established and maintained through the installation of embassies and consulates.\textsuperscript{239}

Generally, recognition is nowadays only applied in cases where the international legal personality of a state is doubtful. Other than that, it does not occur frequently in state practice, as it is not needed. If two states have had diplomatic relations for hundreds of years, there is no need to ask for an explicit recognition every time a change is upon the state such as a change of government or an amendment of the constitution.\textsuperscript{240}

Another aspect which must be taken into consideration, is the principle of sovereignty. While every country has its own right to choose their form of governance and elect their respective


\textsuperscript{236} Hobe (n 233) 76; Bindschedler (n 235) 380.

\textsuperscript{237} Markus Beham and others, Völkerrecht verstehen (2nd edn, Facultas 2015) 79.

\textsuperscript{238} Stefan Hobe, Einführung in das Völkerrecht (10th edn, Otto Kimmich 2014) 70.

\textsuperscript{239} The number was taken from Embassy Worldwide https://www.embassy-worldwide.com/country/yemen/ accessed 15 February 2020.

\textsuperscript{240} Hobe (n 238) 74-75.
representation in the way it seems fit, external actors’ commentaries on sovereignty tender issues can go south quick. Furthermore, one must also bear in mind the difference between political and legal sovereignty. In the case of the Hadi government the legal sovereignty is hardly an issue since the backup it received by the United States of America or Saudi Arabia took care of doubts in this regard. In a political sense, concerning the independent execution of the essential state functions might be questionable in some cases. The Hadi government has been criticised by its own people, for its lack of action in defending Yemen against the al-Qaeda or its powerlessness when it came to defeating the Houthis.  

Sovereignty itself is one of the pillars of Public International Law, since it is used as a key factor in establishing institutions and tools such as the principle of state equality, the principle of non-intervention or the unanimity in international rulings and resolutions. Even establishing the “ius ad bellum”, the law of war, is partly based on state sovereignty, as until the twentieth century any war that was declared by sovereign state was considered a legal war.  

The principle which is codified in Article 2 (1) of the UN Charter, has shown merit in quite a few politically fragile situations in the past.  

Unlike in the previously discussed case of Haitian President Aristide, where a statement concerning the recognition of the counter government was not advised by the Organisation of American States, Iran openly recognized the Houthi government, while the United Nations back up the Saudi led coalition. Openly recognising the continuation of the Hadi government leads to an expression of dissatisfaction with the Houthi led government of salvation, as their approach of taking over the power is deemed unconstitutional and cannot be seen in accordance with the democratic principles of most modern states. The decision of The Organisation of the American states furthermore states that undesired and unlawful governments shall not be rewarded by recognition, therefore the Hadi government is perceived as the desired one due to its democratic election and diplomatic relations with other countries.  

241 August Reinisch, Handbuch des Völkerrechts (5th edn, Reinisch August 2013) 36.
242 Hobe (n 238) 40.
245 Stefan Talmon, Recognition of Governments in International Law: With Particular Reference to Governments in Exile (1st edn, Oxford University Press 1998) 13; Markus Beham and others (n 37) 326.
246 Talmon (n 245) 13.
The next principle taken into consideration is the principle of non-violence according to Art 2 (4) UN Charter, which is a tricky one since it actually only concerns cross border violence. An exception has been made in the case of Nicaragua by the International Court of Justice, stating that violence carried out through arms by non-state forces such as bandits or rebels also falls under this definition. Consequently, providing resources for rebel groups through munitions, artillery or financial aid are also considered as acts of violence in the sense of a violation of the prohibition of violence. This is also a point that has been highly criticised by the Hadi officials about Iran and its involvement in the matter of the Houthis. Until this day Art 2(4) UN Charter is still applicable to cross border violence rather than conflicts within state borders.  

In addition, Art 2 (7) UN Charter prohibits the intervention in internal affairs, which has been executed highly in the case of Yemen. The modernised interpretation, nowadays refers to other forms of influence such as providing resources for rebel groups, or logistics, which can also be said about Iran as Teheran not only provided artillery to the Houthis but also regularly flew goods in and out of the country, paying for the aerial transport, therefore breaching the Resolution 2131 (XX) from 1965 and the Friendly Relations declaration.

Recognition can be seen as a welcomed tool or taken as an offense. In the case of Yemen it is quite clear that the recognition of the Saudi led government posed a threat to its political opponents such as the leaders in Teheran, but has been re-installed and supported by the United Nations and United States, publicly but implicitly by referring to the Hadi government as the “internationally recognised one” in speeches and media publications. These comments from both sides have led to arguments, as a potential breach of Art. 2 (7) UN Charter was criticised.  

Another legal aspect advocating for the legal legitimacy of the Hadi led coalition is the Tobar Doctrine of 1907. According to this doctrine governments which have reached their governmental position in an unconstitutional way should be refused the international recognition as long as the civil population did not give their consent. This is a tricky one, as the follower Houthis have indeed expressed their satisfaction and will to follow the new regimes ways and support the installation of a Houthi government of salvation. This though can

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248 Hobe (n 238) 292; General Assembly Resolution 2131 (XX) of 21 December 1965, Declaration on the inadmissibility of intervention in the domestic affairs of states and the protection of their independence and sovereignty.
249 Hobe (n 238) 293.
250 Markus Beham and others (n 237) 87.
be discarded as the Tobar doctrine was never implemented as legally binding by Public International Law.\textsuperscript{251}

More likely to be followed is the narrative of the Estrada doctrine, where the unconstitutional change of government should not influence diplomatic relations as these issues are of internal matter and not external for other actors to be judged. However, in the case of Yemen the Houthis cannot be simply left to lead as the circumstances in which Yemen finds itself, civil war, terrorist actions, biggest humanitarian crisis at the moment, are vastly different from the ones Mexico found itself in when its politicians proposed the doctrine as the implication of recognition by other governments was simply seen as insulting.\textsuperscript{252}

The way the Saudi led coalition was recognised can be qualified as explicit recognition and still supports President Hadi as the official lead of Yemen, even though effective control is in the hands of the Houthis. A tacit recognition is also given since the diplomatic relations are still carried out with Hadi officials and U.N. relations with the Saudi led Hadi government are still intact.\textsuperscript{253} As Yemen has not been kicked out by the United Nations and the Saudi led Hadi government still enjoys its support, this can also be qualified as a recognitive action.\textsuperscript{254}

The issues revolving around recognition are prone to discussion not only from a legal perspective but also from a political one. If the structure of Public International Law is not overthought as a decentralised entity with a little developed coherent legal system, the principle of effectivity is the crucial factor which determines whether international legal principles will be followed or not.\textsuperscript{255}

Ultimately, recognition in a legal sense is not only difficult to define, but almost impossible to ensure since in Public International Law, the structure prevailing is a decentralised one, careful not to step on its actors’ toes, by potentially breaching the laws of sovereignty and provoking members.\textsuperscript{256}

\textsuperscript{251} Markus Beham and others (n 237) 87; Reinisch (n 241) 187.
\textsuperscript{252} ibid.
\textsuperscript{254} Reinisch (n 241) 189; Hobe (n 238) 76; Volker Epping, Völkerrechtssubjekte- Der Staat als die "Normalperson" im Völkerrecht. in Knut Ipsen (ed), Völkerrecht (CH Beck 2018) 161.
\textsuperscript{256} Hobe (n 238) 76; Epping (n 254) 159.
6.1.2. The Hadi Government in the conceptual framework of new wars

The Saudi led coalition of Mansour Hadi is the force that must be defeated by the small identity groups. After years of being suppressed and discriminated against, the Houthis have established dominance against their first enemy, Saleh, and knew to take advantage of the fragile situation the country and its civil population found themselves in. Interestingly enough, Saleh later became one of the supporters for the Houthis, expanding their influence and providing them with more followers than before as part of his former followers changed camps, in order to support the Houthi rebels. By proroguing the narrative of a united front, whose seed of unison stems in the group religion and building a whole political party around it, the Houthis have managed to take over the power in most parts of Yemen.257

6.2. The Houthis

6.2.1. The Houthis as a de facto regime

In order for a government to properly function some sort of legitimacy is craved by all institutions. This recognition provides stability not only for the governmental party proclaiming itself in an unstable political or socio-economic situation of its state, but also reassurance for the civil population. Providing legitimacy to a de facto regime, can lead to limited international personality, meaning that the Houthis would have to obey to the prohibition of violence of the UN-Charta, as well as the respecting of state sovereignty therefore obeying to the prohibition of intervention as well.258

Nevertheless, if the government in situ is denied the recognition due to its being a de facto regime, no legal repercussions are taken against them if they are generally effective. The Houthis can be classified as a de facto regime, an underdog reaching for power and driving out the legally determined government, in order to promote its ideology and reign over the population.259

258 Hobe (n 257) 76; Volker Epping, Völkerrechtssubjekte - Der Staat als die "Normalperson" im Völkerrecht. in Knut Ipsen (ed), Völkerrecht (CH Beck 2018) 163.
Ceasefires have been achieved, due to the signing of the Stockholm Agreement in December of 2018, nevertheless, their quest for control and the establishment of a Houthi regime is far from over. As of now the current explosive fights taking place are between the Houthis and various smaller tribes, one of which being the Hajour tribe. Conflicts as such are being carried out in the North of the country, close to the Houthi’s home base of Sadaa. The Hadi government has been criticised and deemed incapable of reigning due to the lack of sustainable peace agreements as well as the fact that the al-Qaeda established their last proper base in the country’s middle. Without Hadi and his officials deterring the terrorists, the Houthis have been accused of a lack of leadership as the south fell back into the hands of the elected government and the back and forth between the Houthis and local tribes have weakened their troops and bases.\(^{260}\)

Establishing their own government in 2016 was partly welcomed by the northern population of Yemen as the discrepancy between the Houthi occupied north and the Yemeni territory being governed by the internationally recognised government of Hadi is deepened. The decision was taken by the ‘supreme political council’ a body established by the Houthis in 2015. The Houthi government, a government of so called ‘national salvation’\(^{261}\) shows that the identity aspect of this conflict is on one hand even more divisive and de-stabilising the situation, but on the other hand is strengthening their own group identity in order to further the Houthi agenda.\(^{262}\)

Yemen’s rebels announced a so called ‘national salvation’ government, deepening divisions in the Arab world’s poorest nation. Consisting of 42 officials with the support of the followers of former President and ally Ali Abdullah Saleh, the government was led by Abdel Aziz bin Habtoor, who used to be the governor of Aden, the strategically infamous port.\(^{263}\)

The way the government was set up and promoted, the Houthis tried, following the narrative of Mary Kaldor, to establish and strengthen their collective identity as Houthis and the only way of resolving the conflict. Gathering followers through means of fuelling the insecurities of the


\(^{261}\) ibid.


civil population and deepen the division between the different groups into “us” and “them”, the Houthis managed to provide a safe haven for many lost civilians. 264

Some reports following the narrative of the Houthi saviours are the following:

‘[…] The government, which was formed amid the difficult conditions experienced by the country, is tasked with putting in order the internal situation and confronting the [Saudi] aggression,’ 265

‘The Council noted that this comes amid the intransigence of the aggression and its [Yemeni] mercenaries to move within the framework of a national solution … to spare the country further bloodshed and destruction.’ 266

6.2.2. Recognition by legal standards

Having already discussed most legal requirements and pre-dispositions for a public international recognition as given to the Hadi government, at this point a closer look is taken at possible Houthi recognition as far as the concepts of recognition de facto and de iure are concerned.

As mentioned in chapter 2.1 the recognitions by de iure and de facto are distinct in effect and content. De iure is considered the final most thorough of the recognitions, meaning that it has been established that all legal requirements have been met in order to determine the existence of the recognition in doubt. But since recognition per se is a one-sided declaration of will, which can be issued by any entity with public international personality, it is rather used for the beginning of diplomatic relations than the recognition of governments. 267

The Houthis have not complied with these standards, by simply exclaiming their governmental status in 2016, without proper elections beforehand or taking into regards the opinion of the

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267 Stefan Hobe, Einführung in das Völkerrecht (10th edn, Otto Kimmich 2014) 76; Völker Epping, Völkerrechtssubjekte- Der Staat als die "Normalperson" im Völkerrecht. in Knut Ipsen (ed), Völkerrecht (CH Beck 2018) 158.
civil population. The form of recognition that can be devoted to the Houthis would be the one of provisional legal effect—de facto recognition. The recognition is provided but only under the allusion to the fact that it is only provisional or for a certain amount of time. The legal effects are therefore not as strong as the ones that come with de iure, but nevertheless, it provides a fitting solution for uncertain political situations. The Houthis have received recognition by few and far in between, their biggest supporter being Iran, which openly recognises its government as legitimate. If this is to be determined as de facto or de iure is quite difficult to gather, since the recognition on side of Teheran is final and a potential recognition of the Saudi led government seems unthinkable. Naturally, the interest behind the support does not stem from Teheran’s good will in order to provide and protect the people of Yemen, but rather the fact that the Houthis serve a bigger purpose, helping to establish a Sunni regime, influenced by Iran and irking Iran’s enemy Saudi Arabia through its proximity.268

Generally speaking, in order to provide recognition to a subject, many factors have to be taken into consideration. Where a definite legal answer is required, one can hardly be provided simply due to the high political influence that concerns this matter, as well as the lack of enforcement when recognition was issued or the observation if it happened rightfully so. Nevertheless, it is a useful political tool, as it helps to openly express either the approval or the disapproval of governments coming to power in one way or another—But how does the new wars theory play into the recognition?269

6.3. Findings

After establishing the most important legal aspects of recognition in regard to the opposing governments of Yemen, the next focal point shall be putting the findings into the conceptual framework of the New Wars theory.

Globalisation, as established in chapter 4.2, is one of the key factors of Mary Kaldor’s theory. The already weakened system of Yemen, after the termination of President Saleh’s governance, which was further negatively affected by the Arab Spring, has been highly influenced by external perpetrators, whether it be the Saudi led coalition, the declaration of recognition of the Hadi government, even in exile or the support Houthis receive from Iran. Instead of using the positive aspects of globalisation to stop the civil war, the fighting parties are feeding off of the

268 Hobe (n 267) 76; Epping (n 267)162.
insecurities within the civil population a neighbouring countries or regimes are trying to take advantage of the insecurities themselves.  

It is important to note though that globalisation itself is not the malady in the scenario of new wars but rather the way it is accepted and integrated into a state, meaning that the state is unable to deal with the changes it is experiencing.

One aspect, which cannot be taken from the Houthis, is the core of their existence, the ideology that drives them— their identity. After being deliberately targeted and discriminated against by former governments, a common strength was found when al-Houthi gathered his supporters and provided them with a leading figure in order to step out of the shadows of their existence. Fuelling their spirits further by immediately not only fighting back, but labelling the Houthis as terrorists, has given them international recognition, even if it was in a negative way. Their identity was strengthened, even if it is sourcing from an extremist point of view. The Houthi leaders managed to engage their followers and overpower their political enemies so much that the majority of the country, including Yemen’s capital, was seized. Identities which used to lead lives in the shadows, are craving some sort of confirmation, some sort of legitimacy. Taking all things into consideration, the Houthis definitely found acknowledgement not only within Yemen’s borders, but also outside. Brutal execution of power and protection of the current position are more likely to be of importance than a public international recognition of their self-proclaimed and composed government.

Even if legal standards have to be met in order to obtain proper recognition, the drive comes from political narratives and the self-interest of the parties involved in the conflict, be it paramilitary groups, regular armed forces, criminal groups or such. In new wars identities are strengthened with little regards to legal standards, as the survival of the groups and the recognition of the identity is more important. Patriotism, minority identity, nationalism all are not new concepts to warfare, but blowing it up and using it as such a string political instigation as did the Houthis in Yemen, is.

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270 Kent State University, Conflict and Conflict Management (Aptara 2012) 270; Kaldor (n 269) 43, 270, 27.
273 ibid.
The lines between what a legitimate government in the public international legal sense and the international political sense is, are quite blurred. As we have established legal standards and practises to rely on, such as the principles in the UN Charta, bilateral treaties as well as decisions from the International Court of Justice, throughout legal history, and more specifically this work, one big issue has presented itself: The fact that recognition is based solely on voluntary decisions and cannot be forced upon or executed. As the system of legal recognition applies to different scenarios, not all that can be recognised is exposed to the same pattern. For instance, the recognition of a state has many aspects, as explained in the first part of this work, but at the same time depends on other factors which outweigh the need for explicit recognition by other states. Such factors would be the state population, state power and state territory according to the ‘Allgemeine Staatslehre’, that provides the ground of the existence of a state. Its existence is undeniable if requirements are fulfilled, what the recognition is needed for though, are the diplomatic relations and public international interrelations between the different subjects. Diplomatic relations, as a whole, are politically driven, so are most decisions made in international organisations. To claim that legal recognition has nothing to do or is distinct from political recognition, would be a false statement.274

In the very tangled case of Yemen, recognition seems to have been used as a ploy. Openly exclaiming the legality and public international recognition of the Saudi led Hadi coalition, while simultaneously dismissing the Houthi government, even though it is in effective control of the majority of the country and has seized the capital of Yemen Sana’a years ago, is an open declaration of disapproval. In the context of New Wars, which we have established Yemen falls under, such an open disapproval of a minority, following the pursuit of identity politics, is taunted by the sheer labels given the parties through external actors.275

Following this narrative, what is needed in a time were variables of conflict are so uncertain and depend on the sheer will of groups, which want to prove their identity to themselves, the state, the neighbouring country, and in order to prevent future multi layered conflicts a better implementation of the so desired concept of recognition is needed. As mentioned in the first part of the work, for public international legal recognition to be effective and desirable, some parameters must change. This is, of course, easier said than done, especially since many laws

275 Kaldor (n 269) 283-286.
and regulations from Public International Law stem from politics. Maintaining peace and a high profile sometimes means sacrificing the own political interest for a greater good. 276

Nevertheless, we must think of possibilities in order to evade situations like the governmental dispute in Yemen in the future. This might be achieved by agreeing fully on the terms and conditions of recognition, depending on what is to be recognised. Furthermore, many difficulties have arisen from the decentralisation that takes place in Public International Law. Centralising the process of recognition could make the procedure itself more efficient and binding. Additionally, the according competences have to be assigned to an international organisation. The most obvious choice would provide the United Nations, while establishing a sort of body for legal determination in doubt, such as the ICJ. 277

276 Bindschedler (269) 390.
277 ibid 380.
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