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## **LIST OF ABBREVIATIONS**

Art./Arts. – Article, Articles

ARSIWA – Draft Articles on Responsibility of State for Internationally Wrongful Acts

ICJ – International Court of Justice

ILC – International Law Commission

OPCW – The Organisation for the Prohibition of Chemical Weapons

p./pp. – page, pages

UAV – Unmanned aerial vehicle

UN – United Nations

UNGA – United Nations General Assembly

UNSC – United Nations Security Council

VCLT – Vienna Convention on the Law of Treaties

## INTRODUCTION

A highly respected nuclear scientist killed by a precise remote-controlled weapon with no perpetrator spotted anywhere near the scene. A man mysteriously poisoned with acutely toxic military grade substance at his own doorstep. A terrorist leader targeted in a thoroughly planned military strike operation. What do all these attacks have in common? All these situations show features of targeted killing, a forcible action with the aim to eliminate an individual chosen prior to their execution.

Targeted killings are not anchored in international documents and the concept is therefore doctrinal. However, that does not mean they are executed exceptionally or are a matter of only the last few years. Given that authoritative definition of this concept is lacking, attacks in the form of targeted killings vary significantly. At the same time, it is expected that the number of targeted killings adopting the most advanced technology such as unmanned aerial vehicles, commonly known as drones, or other remote-controlled weaponry will increase because of the advantages it brings for the attacking state.<sup>1</sup>

Because targeted killings do not exist in legal vacuum, I will examine the notion from the *jus ad bellum* perspective which regulates the circumstances under which states may resort to the use of force. The topic of targeted killings will be analyzed under the current perception of the fundamental provisions of the *jus ad bellum* legal framework, namely Art. 2(4) and Art. 51 of the UN Charter. Thus, in this thesis I intend to provide answers to the following questions:

1. Do targeted killings constitute a prohibited use of force under Article 2(4) of the UN Charter?
2. Do targeted killings constitute an armed attack under Article 51 of the UN Charter?
3. Under what conditions may states use targeted killings as a means of lawful self-defense under Article 51 of the UN Charter?

The analysis provided in this thesis is limited. First, I will only focus on targeted killings executed by states, not by non-state actors. And second, I will deliberately not address the implications of targeted killings for human rights law or international humanitarian law. The topics were omitted due to their complexity as they cannot be adequately covered within the

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<sup>1</sup> UN Doc. A/HRC/44/38, CALLAMARD, Agnès. Use of armed drones for targeted killings: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 15 August 2020, pp. 4, 5.

scope of this thesis. Targeted killings will therefore be considered as standalone attacks carried out outside of armed conflicts.

The research in the following chapters will be based mainly on English- and German-written scholarly texts but Czech sources will not be omitted. I will first present a general definition of targeted killings based on the synthesis of various academic writers' interpretations of the term. Further, I will provide a summary of three cases of targeted killing to demonstrate the variety of the attacks designated as targeted killings and to use them as illustrative cases in the subsequent chapters. I will then provide an overview of the currently prevailing understanding of Art. 2(4) of the UN Charter with a particular focus on the notion of force in international relations, and I will apply these findings to targeted killings using the illustrative cases. I will use this procedure again in relation to Art. 51 of the UN Charter in order to find answers to all the research questions of this thesis.

# 1. THE NOTION OF TARGETED KILLINGS IN INTERNATIONAL LAW

A look at expressions designating the attack in form of a targeted killing shows that e.g., both Czech and German language use a direct translation preserving the essence of the English expression *targeted killings*. In German-written texts such actions are referred to as *gezielte Tötungen*,<sup>2</sup> Czech uses the term *cílená zabíjení*.<sup>3</sup>

The term *targeted killing*, as self-explanatory as it may seem in commonly used language, does not have a uniform definition in public international law. Targeted killing is a doctrinal concept, not a legal one. Mainly scholars deal with this phenomenon, but the topic has been addressed by the United Nations (“UN”) special rapporteurs several times<sup>4</sup> and at the regional level, the Parliamentary Assembly of the Council of Europe adopted a resolution<sup>5</sup> concerning the issue. However, there is neither a comprehensive legal framework on the specific matter, nor an international treaty. It is not possible to define the concept of targeted killings based on international custom either.

For that reason, the definition of the term *targeted killing* varies. It may be used to designate both a legitimate lawful operation in the interest of national security and a killing of a completely unlawful nature.<sup>6</sup> Inconsistency in the use of the term results in two conflicting situations possibly having the same designation. Despite the differences in the form of execution of a targeted killing it is possible to find characteristics defining the very core of the concept of targeted killings, regardless of its lawfulness.

The very wording of the designation for acts of targeted killings in the three abovementioned languages suggests that the action consists in intentional and selective conduct

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<sup>2</sup> e.g. KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin). Or LÖFFLER, Severin (2018). *Robotik und Recht – Militärische und zivile Flugroboter – Ausgewählte strafrechtliche Problemfelder beim Einsatz von Kampf- und Überwachungsdrohnen* (Baden-Baden: Nomos Verlagsgesellschaft). Or RUDOLF, Peter, SCHALLER, Christian (2012). *Targeted Killing. Zur völkerrechtlichen, ethnischen und strategischen Problematik gezielten Tötens in der Terrorismus- und Aufstandsbekämpfung*. SWP-Studie, Stiftung Wissenschaft und Politik, Deutsches Institut für Internationale Politik und Sicherheit.

<sup>3</sup> e.g. EICHLER, Jan, STEJSKALOVÁ, Kristýna (2017). Od bombardování k cílenému zabíjení: Proměny boje USA proti globálnímu terorismu. *Vojenské rozhledy*, Vol. 26, No. 1, pp. 75-88. Or FUČÍK, Jakub, SMEKAL, Hubert (2015). Noví aktéři na poli válečných konfliktů. Případová studie Nejvyššího soudu Izraele. *Obrana a strategie*, Vol. 2015, No. 1, pp. 5-18.

<sup>4</sup> e.g. UN Doc. A/HRC/44/38, CALLAMARD, Agnès. Use of armed drones for targeted killings: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 15 August 2020. Or UN Doc. A/70/304. Or HEYNS, Christof. Extrajudicial, summary or arbitrary executions, Note by the Secretary-General, 7 August 2015. <sup>5</sup> Council of Europe Parliamentary Assembly Resolution 2051, Drones and targeted killings: the need to uphold human rights and international law, 23 April 2015.

<sup>6</sup> SCHWEIGER, Elizabeth (2019). The Lure of Novelty: “Targeted Killing” and Its Older Terminological Siblings. *International Political Sociology*, Vol. 13, No. 3 pp. 276-295.

resulting in death of a human being. However, the conclusion whether the carried-out act qualifies as a targeted killing cannot be drawn without taking other aspects into consideration. The reason for that is that the term *targeted killings* includes a wide range of attacks, which differ not only in their lawfulness and context but also in their object, purpose or circumstances.<sup>7</sup> And yet, when criteria discussed further in this thesis are met, these seemingly different actions can all be labeled as a targeted killing.

Some experts on the topic of targeted killings emphasize that targeted killings are not to be confused with assassinations.<sup>8</sup> In spite of the fact that targeted killings might seem to be continuation of political assassinations throughout the history, Krasmann notes that the term succeeded at establishing itself as a *legitimate security technology* while overcoming these controversial historical connotations.<sup>9</sup> It is, however, not unusual that more pejorative designations, such as *named killing*, *extrajudicial killing*, *preventive liquidation* or *long-range hot pursuit*, might be used in a context, where the term targeted killings would be more suitable.<sup>10</sup> While all expressions imply intentional killing, only the form of a legitimate targeted killing may nowadays be recognized as a lawful action of combat or means of ensuring national security, as they are not a method to eliminate political or ideological opponents, but a measure to guarantee national security.<sup>11</sup>

Although some academic writers indicate that *targeted killing* is a neutral term with no connotations to illegality,<sup>12</sup> Schweiger proves in her analysis, that the designation targeted killings may be used (among two other possible modes) in a *mode of expressing illegitimacy and unlawfulness*, for instance in situations like targeted killings of journalists or targeted killings of civilians conducted by Taliban units.<sup>13</sup> Under such circumstances legitimacy and

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<sup>7</sup> MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), p. 3.

<sup>8</sup> e.g. HUNTER, Thomas B. (2009). Targeted Killing: Self-Defense, Preemption, and the War on Terrorism. *Journal of Strategic Security*, Vol. 2, No. 2, p. 1. Or MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), p. 7. Or KRASMANN, Susanne (2012). Targeted Killing and Its Law: On a Mutually Constitutive Relationship. *Leiden Journal of International Law*, Vol. 25, No. 3, pp. 668, 671.

<sup>9</sup> KRASMANN, Susanne (2012). Targeted Killing and Its Law: On a Mutually Constitutive Relationship. *Leiden Journal of International Law*, Vol. 25, No. 3, pp. 668.

<sup>10</sup> HUNTER, Thomas B. (2009). Targeted Killing: Self-Defense, Preemption, and the War on Terrorism. *Journal of Strategic Security*, Vol. 2, No. 2, pp. 2, 3. Or MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), pp. 5, 6.

<sup>11</sup> *Ibid.*, p. 4.

<sup>12</sup> GRAY, Christine (2013). Targeted Killings: Recent US Attempts to Create a Legal Framework. *Current Legal Problems*, Vol. 66, No. 1, p. 78. Or LÖFFLER, Severin (2018). *Robotik und Recht – Militärische und zivile Flugroboter – Ausgewählte strafrechtliche Problemfelder beim Einsatz von Kampf- und Überwachungsdrohnen* (Baden-Baden: Nomos Verlagsgesellschaft), p. 64.

<sup>13</sup> SCHWEIGER, Elizabeth (2019). The Lure of Novelty: “Targeted Killing“ and Its Older Terminological Siblings. *International Political Sociology*, Vol. 13, No. 3, p. 279. Or UN Doc. A/HRC/31/46, Report of the United

lawfulness of those attacks are questionable to say the least, so they seem to be comparable to extrajudicial killings. And they are often referred to as such.<sup>14</sup>

Pattern of targeted killings of journalists is also mentioned by UN Special Rapporteur on extrajudicial, summary or arbitrary executions Callamard<sup>15</sup> in the case of killing Saudi journalist Jamal Khashoggi.<sup>16</sup> In the context of Callamard's report the term targeted killings is clearly not used to describe a lawful action, as the special rapporteur herself is concluding, that the attack on Khashoggi was unlawful and constituted an extrajudicial killing. The fact that special rapporteur Callamard uses both *targeted killing* and *extrajudicial execution* designation for the very same attack on Khashoggi, proves Schweiger's theory implying that targeted killings may be a term used to describe both lawful and unlawful actions, depending on the context. Moreover, UN special rapporteur Alston calls attention the term targeted killing being oftentimes interchangeably used with terms such as *extrajudicial executions* or *assassinations*.<sup>17</sup> This being said, of course the label of targeted killings executed e.g., as means of ensuring national security interests does not affect its legitimacy.

In some other cases, using the term targeted killing instead of assassination might also be a mere attempt to confer legality and legitimacy to a conduct consisting in adoption of lethal force against an individual.<sup>18</sup> In Schweiger's terminological analysis, such attempt would be called a *justification mode* of using the designation targeted killings, as it seeks rationale for “*violence within existing frameworks*” (e.g. *jus in bello* framework).<sup>19</sup>

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Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights in 2015, 11 February 2016, p. 3.

<sup>14</sup> MILLER, Seumas (2016). *Shooting to Kill: The Ethics of Police and Military Use of Lethal Force* (New York: Oxford University Press), p. 273.

<sup>15</sup> UN Doc. A/HRC/41/36, Investigation of, accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 4 October 2019, p. 3.

<sup>16</sup> Jamal Khashoggi lived in Turkey after he had been forced to leave Saudi Arabia because of his articles critical of Crown Prince Mohammed bin Salman and other Saudi policies. He was brutally killed in the building of Saudi Consulate in Istanbul. A team of Saudi operatives most likely drugged and suffocated him and subsequently dismembered his body and disposed of it in plastic trash bags (BBC (Feb 24, 2021). *Jamal Khashoggi: All you need to know about Saudi journalist's death*. And UN Doc. A/HRC/41/36, Investigation of, accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 4 October 2019, pp. 20, 21).

<sup>17</sup> UN Doc. A/HRC/14/24/Add.6, ALSTON, Philip. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Study on targeted killings, 28 May 2010, p. 5.

<sup>18</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), p. 9.

<sup>19</sup> SCHWEIGER, Elizabeth (2019). The Lure of Novelty: “Targeted Killing“ and Its Older Terminological Siblings. *International Political Sociology*, Vol. 13, No. 3 pp. 276–295, p. 279.

In numerous cases, though, the policy of targeted killings is invoked, or at least justified, as an instrument of law enforcement or self-defense in connection to counterterrorism efforts, but not exclusively. Even the roots of the practice of targeted killing go back to (especially) the United States of America's and Israel's extraterritorial counterterrorism operations and protection of national security interests.<sup>20</sup> The term targeted killing did not become widely spread until after 2000,<sup>21</sup> when Israel unprecedentedly acknowledged such actions to be its deliberate state policy of acting in active self-defense.<sup>22</sup>

The beforementioned practice of pioneering states can be considered Schweiger's third mode of using the term targeted killing – *the mode of creating a new framework*.<sup>23</sup> The states needed to find a new regulatory framework for their counterterrorism efforts. For instance, Executive order 12333<sup>24</sup> in the United States prohibits any employee or a person acting on behalf of the US government from engaging or conspiring to engage in assassination.<sup>25</sup> Krishnan calls it paradoxical that just a few years after the first executive order banning the assassinations was issued, the US still carried out several targeted airstrikes against alleged terrorist, including the military strikes against Osama bin Laden or Muammar Qaddafi. From this point in time, the targeted killing security policy started to emerge.<sup>26</sup>

In principle, it cannot be denied that in the past decades targeted killings have been gaining in both political and legal legitimacy.<sup>27</sup> Yet, it would be incorrect to claim that the term targeted killings is nowadays used exclusively as a designation for lawful security-ensuring strategy or for a counterterrorism policy.

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<sup>20</sup> GUNNEFLO, Markus (2016). *Targeted Killing: A Legal and Political History* (New York: Cambridge University Press), p. 70 et seq., 83 et seq., 193.

<sup>21</sup> LÖFFLER, Severin (2018). *Robotik und Recht – Militärische und zivile Flugroboter – Ausgewählte strafrechtliche Problemfelder beim Einsatz von Kampf- und Überwachungsdrohnen* (Baden-Baden: Nomos Verlagsgesellschaft), p. 65.

<sup>22</sup> The first officially proclaimed targeted killing was carried out by Israel during the second Intifada on 15 November 2000 against a Palestinian senior commander of armed wing of Fatah Hussein Abayat (GRAY, Christine (2013). Targeted Killings: Recent US Attempts to Create a Legal Framework. *Current Legal Problems*, Vol. 66, No. 1, pp. 77, 78).

<sup>23</sup> SCHWEIGER, Elizabeth (2019). The Lure of Novelty: “Targeted Killing“ and Its Older Terminological Siblings. *International Political Sociology*, Vol. 13, No. 3 pp. 276–295, pp. 279, 280.

<sup>24</sup> (and its previous versions Executive Order 11905 from 1976 and Executive Order 12036 from 1978).

<sup>25</sup> United States Intelligence Activities, The Executive Order 12333 of the President of the United States of America, 4 December 1981, Part 2, Article 2.11.

<sup>26</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), p. 71.

<sup>27</sup> KRASMANN, Susanne (2012). Targeted Killing and Its Law: On a Mutually Constitutive Relationship. *Leiden Journal of International Law*, Vol. 25, No. 3, pp. 667.

## 1.1. Defining characteristics of a targeted killing

This subsection aims to summarize the defining characteristics and elements which according to experts constitute the core of *targeted killings*. While the specific criteria that define a targeted killing may vary in the scholarly texts and other relevant publications, essentially their basic definitions overlap to this extent: A targeted killing is a premeditated, intentional (deliberate) action of a state with the aim to eliminate individually selected person or persons.<sup>28</sup>

Melzer systematically describes five cumulative essential features to determine a targeted killing. First, he introduces a constitutive criterion of lethal force. This element indicates that the strike involves force capable of resulting in death of a human being.<sup>29</sup> Similarly, Krishnan writes about lethal force (*tödliche Gewalt*) while pointing out, that the methods of projecting such force onto humans can take many forms.<sup>30</sup> Although often associated with the unmanned military systems, Alston also observes that targeted killings may be executed in many different ways – e.g., with sniper fire, missiles from helicopters, or poison.<sup>31</sup>

Second, essential characteristics of targeted killing are intent, premeditation and deliberation to kill. Acts such as targeted killings are therefore not negligent or accidental use of force, as the motivation for the attacks is the choice to kill a person.<sup>32</sup>

Third, when it comes to the target of targeted killings, it must always be an individually selected human being or an individualized group of persons.<sup>33</sup> In order for a targeted killing to be considered a legitimate means of state policy, the process of selecting the targets should always be made at multiple levels and the criteria used should be well particularized.<sup>34</sup> When it comes to state-sponsored targeted killings, Krishnan adds the condition of a legitimate government being the body to select the target.<sup>35</sup> The process determines the targeted persons

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<sup>28</sup> e.g. MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press). Or UN Doc. A/HRC/14/24/Add.6, ALSTON, Philip. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Study on targeted killings, 28 May 2010). Or GRAY, Christine (2013). Targeted Killings: Recent US Attempts to Create a Legal Framework. *Current Legal Problems*, Vol. 66, No. 1, pp. 75–106.

<sup>29</sup> MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), p. 3.

<sup>30</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), pp. 8, 9.

<sup>31</sup> UN Doc. A/HRC/14/24/Add.6, ALSTON, Philip. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Study on targeted killings, 28 May 2010, p. 4.

<sup>32</sup> MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), p. 4.

<sup>33</sup> *Ibid.*, p. 4.

<sup>34</sup> LÖFFLER, Severin (2018). *Robotik und Recht – Militärische und zivile Flugroboter – Ausgewählte strafrechtliche Problemfelder beim Einsatz von Kampf- und Überwachungsdrohnen* (Baden-Baden: Nomos Verlagsgesellschaft), p. 65.

<sup>35</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), p. 14.

based on suspicion, that they might pose a threat to the state's security or citizens, regardless of whether the risk is relevant immediately or might become dangerous in the future.<sup>36</sup> Generally, the targets are often persons who are believed to be terrorists or to have connection to terrorist structures. Even history shows that targeted killings emerged as a form of Israeli and American counterterrorist efforts related to national security of both states.<sup>37</sup> On the other hand, it is not a rare state-conduct to target scientists or members of drug cartels either.<sup>38</sup> But in summary, the targeted person could be anyone, no special status of the person is assumed.

Fourth, a targeted killing is characterized by lack of physical custody. Meaning, that before carrying out the targeted killing, the targeted person is not in physical custody of the acting adversary, neither had been arrested or otherwise detained by it.<sup>39</sup> The extra-custodial element is closely linked to the characteristics of extra-territoriality. Targeted killings is ordered by a government of one state to be carried out on a sovereign territory of another state. It is for that reason a trans-frontier practice.<sup>40</sup>

And fifth, Melzer also defines the element of attributability to a subject of international law.<sup>41</sup> He does not necessarily view targeted killings as a practice exclusive to state actors, but when dealing with the topic of targeted killings, experts usually focus on state-sponsored killings, rather than the practice of non-state actors,<sup>42</sup> as the notion of targeted killings is often discussed in relation to counterterrorist operations.

Enumeration of entities and persons whose conduct is attributable to a state is provided in Arts. 4 to 11 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (“*ARSIWA*”).<sup>43</sup>

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<sup>36</sup> HUNTER, Thomas B. (2009). Targeted Killing: Self-Defense, Preemption, and the War on Terrorism. *Journal of Strategic Security*, Vol. 2, No. 2, p. 3.

<sup>37</sup> GUNNEFLO, Markus (2016). *Targeted Killing: A Legal and Political History* (New York: Cambridge University Press), p. 193.

<sup>38</sup> e.g. Mossad targeting Iranian nuclear scientist Mohsen Fakrizadeh or targeted killings of Afghan drug traffickers linked to Taliban. (KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), pp. 8, 14).

<sup>39</sup> MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), p. 4.

<sup>40</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), p. 14.

<sup>41</sup> MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), pp. 4, 5.

<sup>42</sup> e.g. UN Doc. A/HRC/14/24/Add.6, ALSTON, Philip. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Study on targeted killings, 28 May 2010, p. 4. Or GRAY, Christine (2013). Targeted Killings: Recent US Attempts to Create a Legal Framework. *Current Legal Problems*, Vol. 66, No. 1, p. 78. Or LÖFFLER, Severin (2018). *Robotik und Recht – Militärische und zivile Flugroboter – Ausgewählte strafrechtliche Problemfelder beim Einsatz von Kampf- und Überwachungsdrohnen* (Baden-Baden: Nomos Verlagsgesellschaft), p. 64.

<sup>43</sup> UN Doc. A/56/10, International Law Commission. Draft Articles on Responsibility of State for Internationally Wrongful Acts. In: Report of the International Law Commission, Fifty-third session. 2001. pp. 43-59.

In Krishnan's concept of determining qualities of a possibly lawful targeted killing, element of a legitimate state government mandating the attack is even considered to be essential,<sup>44</sup> unlike in Melzer's concept. Furthermore, Krishnan also pays attention to what could be considered an additional characteristic – prevention. In his understanding, targeted killing should not be an act of retaliation but a preventative action with the intention to protect national security and avoid opponent's possible future attacks or other threats.<sup>45</sup> Hunter even views targeted killings as “*a logical tool for use in preventing future [terrorist] attacks*”.<sup>46</sup> From my point of view, the prevention element is only relevant for the assessment of lawfulness of a targeted killing. For this reason, I will not consider prevention as a constitutive element.

In summary, the concept of targeted killings has started to gain more academic attention after the year 2000, when Israel admitted to using them as a deliberate security policy against terrorists' threats. Since then, the way of executing such attacks has changed significantly. Regardless of the changes over time, it is possible to characterize targeted killings as deliberate and thought-out projections of lethal force, targeting individually selected person or persons, who are not in custody of the state carrying out the attack. In the effort to find justification for the attack states frequently claim that the execution of a targeted killing was needed in order to prevent the adversary's attack.

## **1.2. Methods of targeted killings and selected individual cases**

In this subchapter I will categorize targeted killings into groups based on the method of operating the attack. I will further provide an analysis of selected carried-out attacks and scrutinize them in light of Melzer's criteria constituting a targeted killing explained in the previous chapter. These cases will also be used in the following chapters to help find an answer to the question whether a targeted killing may constitute a use of force under the provisions of Art. 2(4) of the UN Charter or armed attack in sense of the provision of Art. 51 of the UN Charter.

As mentioned above, targeted killings are operated in many forms and use a wide range of weapons. The attacks are often associated with advanced unmanned technology, which reflects actual practice today, but it is not the only method. The choice of mechanism of the attack is determined by its context and its target. Pursuant to how the targeted killing is executed, it is

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<sup>44</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), p. 14.

<sup>45</sup> *Ibid.*

<sup>46</sup> HUNTER, Thomas B. (2009). Targeted Killing: Self-Defense, Preemption, and the War on Terrorism. *Journal of Strategic Security*, Vol. 2, No. 2, p. 27.

possible to classify targeted killings into four categories: covert secret service operations, special forces, military strikes and attacks using unmanned aerial systems.<sup>47</sup>

### 1.2.1. Covert secret service operations and deployment of special forces

Out of the four methods, the covert secret service operations (*verdeckte Operationen*) are according to Krishnan the most problematic. Such efforts rely on agents physically operating on a territory of a different state, e.g., poisoning the targeted person, placing explosives under their car, or shooting them from close distance. Since this practice allows state actors to act in total secrecy and not to claim responsibility for the attack, their legitimacy and legality is the most difficult to distinguish from political assassination, both morally and methodically. Unlike the already mentioned covert agents' operations, the category of deployment of special forces (*Spezialkräfte*) to execute a targeted killing is a hazardous action of military nature, which is not kept confidential.<sup>48</sup> As representation of this category, the case of Sergei Skripal will be discussed in light of the criteria constituting a targeted killing.

#### 1.2.1.1. The Skripal Case

Sergei Skripal used to be a Russian State's military intelligence service (“GRU”) colonel, who was later convicted of high treason for espionage. Russia accused him of cooperating with the British Secret Intelligence Service MI6. After the prisoner exchange in 2010 between Russia and the US, Skripal moved to the United Kingdom, where he lives to this day.<sup>49</sup>

On March 4, 2018 Skripal was targeted in Salisbury, where he was later found unconscious on a bench in a park with his daughter Yulia Skripal. They were taken to hospital, and their samples were sent to a laboratory because a poisoning was suspected.<sup>50</sup> The UK's experts identified<sup>51</sup> the toxic chemical substance used to poison Skripals as Novichok.<sup>52</sup> On request of the British government The Organisation for the Prohibition of Chemical Weapons (“OPCW”) provided technical assistance at the site. The OPCW's summary of the report on technical assistance does not directly refer to Novichok but nevertheless confirms the “*findings of the*

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<sup>47</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), pp. 51 et seq.

<sup>48</sup> *Ibid.*, pp. 52-58, 64, 65.

<sup>49</sup> BBC (Mar 29, 2018). *Sergei Skripal: Who is the former Russian intelligence officer?*

<sup>50</sup> The Independent (Sep 21, 2021). *Salisbury novichok attack: Timeline of movements by Russian ‘spies’ accused of attack.*

<sup>51</sup> The Guardian (Apr 12, 2018); *Novichok used in spy poisoning, chemical weapons watchdog confirms.*

<sup>52</sup> Novichok is a nerve agent developed in Soviet Union and designed for use as weapons of chemical warfare. The substance is severely toxic and those, who survive the contact with this agent are still at high risk of long-term or permanent neurological damage. (TABOR, Nick (2024). Novichok. Encyclopedia entry. Encyclopedia Britannica).

*United Kingdom relating to the identity of the toxic chemical that was used in Salisbury and severely injured three people*”<sup>53</sup> (Skripals and the investigating police officer).

Three months after the attack, just a few kilometers away from Salisbury, a man found a perfume bottle and gave it to his partner, believing that the bottle was just a perfume someone had disposed of. His partner Mrs. Sturgess applied the content of the bottle on her skin. She died later in a hospital, where Novichok exposure was identified as the cause of her death. Her partner also suffered contamination but was later discharged from hospital.<sup>54</sup>

The perpetrators of the attack consisting in spraying the toxic substance on Skripal's door and thus contaminating it,<sup>55</sup> have been identified as three Russian agents,<sup>56</sup> who are believed to be linked to GRU.<sup>57</sup> There is an obvious link between Russian state officials and the country's military intelligence service. Russia, however, denies employing its agents and rejects any allegations concerning its knowledge and approval of the Salisbury attack. It has also made it very clear, that it will not extradite its own citizens to face prosecutions in the UK.<sup>58</sup> Contrariwise, the UK's conclusions on Russia's responsibility for the Salisbury poisonings have been supported by several members of the United Nations Security Council (“UNSC” or “UN Security Council”), including the US or Germany.<sup>59</sup>

As a consequence of the poisoning, in solidarity with the UK most member states of The North Atlantic Treaty Organization expelled many Russian diplomats from their territories.<sup>60</sup> Subsequently, the OPCW reacted with proposal for extension of the Chemical Weapons Convention<sup>61</sup> which should include all Novichok nerve agents.<sup>62</sup>

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<sup>53</sup> Organisation for the Prohibition of Chemical Weapon; Summary of the Report on Activities Carried Out in Support of a Request for Technical Assistance by the United Kingdom of Great Britain and Northern Ireland (Technical Assistance Visit Tav/02/18), Document Nr. S/1612/2018, 12 April 2018.

<sup>54</sup> BBC (Sep 21, 2021); *Salisbury poisonings: Third man faces charges for Novichok attack*.

<sup>55</sup> BBC (Sep 5, 2018); *Salisbury Novichok poisoning: Russian nationals named as suspects*.

<sup>56</sup> Two agents are supposed to have carried out the attack itself, while a third agent, against whom were charges authorized much later, allegedly commanded the operation from London (The Independent (Sep 21, 2021). *Salisbury attack: Denis Sergeev named as 'third man' responsible as UK police authorize charges*).

<sup>57</sup> Bellingcat (Sep 14, 2018). *Skripal Poisoning Suspect's Passport Data Shows Link to Security Services*.

<sup>58</sup> BBC (Sep 7, 2018). *UK Novichok allegations backed by world leaders*. And BBC (Sep 21, 2021). *Salisbury poisonings: Third man faces charges for Novichok attack*.

<sup>59</sup> Meetings coverage of the United Nations Security Council, SC/13279, 5 April 2018. ‘*Full Investigation Must Swiftly Identify, Apprehend Perpetrators, Security Council Hears during Heated Discussion on Salisbury Chemical Attack*’; The Guardian (Mar 27, 2018). *Western allies expel scores of Russian diplomats over Skripal attack*. And BBC (Sep 7, 2018). *UK Novichok allegations backed by world leaders*.

<sup>60</sup> The Guardian (Mar 27, 2018). *Western allies expel scores of Russian diplomats over Skripal attack*.

<sup>61</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed 3 September 1992, in Geneva, entry into force 29 April 1997.

<sup>62</sup> Nature (Nov 28, 2019). *Novichok nerve agents banned by chemical-weapons treaty*.

### 1.2.1.2. The Skripal case considering the characteristics of targeted killings

#### *Lethal force*

Projection of lethal force is one of the essential features an attack must have in order to be designated as a targeted killing. It has been explained that the concept of lethal force does include attacks such as poisonings.<sup>63</sup> It is evident that in Skripal's case, a force capable of causing death was employed in the attack. The severely toxic nerve agent used in Salisbury resulted in serious health issues requiring hospitalization of five people, and death of a woman. Under these circumstances there is no doubt about satisfying the *use of lethal force* criteria.

#### *Intent and premeditation*

Based on publicly available information about the Skripal's case, we can argue that the alleged perpetrators came to the United Kingdom as agents of GRU, and most likely traveled with fake passports.<sup>64</sup> Two of the agents purposefully smeared an acutely toxic military grade substance Novichok on the door to Mr. Skripal's house, while the third one was commanding the operation from a London hotel room.<sup>65</sup>

The intent of the attackers and those who might have ordered it is clear. Given the poisoning happened as described, no mistake or chance can be assumed. The actions of the agents were supposedly planned and well-coordinated, as suggests even the mere fact that with high probability Novichok was employed in the attack. The Novichok substance is only produced in Russia, meaning that this severely toxic substance had to somehow be transported to the UK.<sup>66</sup> Transportation of such substance would be impossible without thorough planning. For the given reasons I conclude, that both intent and premeditation were characteristic of the debated case.

#### *Individually selected targets*

Another constituting element of a targeted killing is the individual selection of targeted people. Evidently, the attacks had no ambition to target a group of people or anyone else than Mr. Skripal. The fact that in Salisbury more people were exposed to the poison does not make a difference in the assessment.

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<sup>63</sup> UN Doc. A/HRC/14/24/Add.6, ALSTON, Philip. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Study on targeted killings, 28 May 2010, p. 4.

<sup>64</sup> BBC (Sep 21, 2021). *Salisbury poisonings: Third man faces charges for Novichok attack.*

<sup>65</sup> The Independent (Sep 21, 2021). *Salisbury attack: Denis Sergeev named as 'third man' responsible as UK police authorize charges.*

<sup>66</sup> The Guardian (Mar 14, 2018). *Novichok: nerve agent produced at only one site in Russia, says expert.*

### ***Lack of physical custody and extra-territoriality***

It is obvious in the Skripal case, that at the time Skripals were exposed to the nerve agent and the substance started poisoning their bodies, neither of them was detained or arrested, which effectively fulfils the criteria of the attack being extra-custodial. The attack happened in the sovereign territory of the UK, but the agents were most likely Russian citizens connected to Russian military intelligence service. It can therefore be confirmed that the attack was extra-territorial.

### ***Attributability***

Russia has repeatedly denied any involvement in the case.<sup>67</sup> However, provided the attack did happen as the British investigations into the poisoning and an inquiry into Mrs. Sturgess's subsequent death suggest, the facts are as follows.

GRU is a military intelligence service and as such is subordinate to the Chief of the General Staff of the Russian Armed Forces and answers to the Russian Minister of Defense.<sup>68</sup> At the same time, states cannot act for themselves, it is always a person, an agent or a state representative who acts for them.<sup>69</sup> In the debated case, three men allegedly working for GRU carried out the attack. And because GRU is an organ of central government, the Salisbury attack can be attributed to Russia under Art. 4 of the ARSIWA.<sup>70</sup>

### ***Conclusion***

This short analysis shows that the attack exhibits all the features of targeted killings defined in Chapter 1, as it intentionally and deliberately employed lethal force against individuals in foreign territory, who had not been detained before the attack. Simultaneously, there are substantiated indications that this action is attributable to Russia.

#### **1.2.2. Military strike operations**

The method of military strike operations (*Militärschläge*) consists e.g., in bomb dropping during an air raid or using rocket missiles to execute the targeted individual. Such force has

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<sup>67</sup> BBC (Oct 14, 2024). *Vial had 'enough poison to kill thousands'*.

<sup>68</sup> Reuters (Oct 5, 2018). *Factbox – What is Russia's GRU military intelligence agency?*

<sup>69</sup> UN Doc. A/56/10, International Law Commission. Draft Articles on Responsibility of State for Internationally Wrongful Acts, with Commentaries. In: Report of the International Law Commission, Fifty-third session. 2001, p. 71.

<sup>70</sup> Article 4(1): '*The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State*'.

proven unsuitable for targeted killings, though, as it is often too crude to be precise.<sup>71</sup> The other problem with this method is almost inevitable collateral damage since the employed force is simply too powerful. Moreover, such actions cost a lot of money to execute.<sup>72</sup> The two best-known operations targeting individuals accused of terrorist activities, which both failed at killing the selected persons, were Operation Infinite Reach and Operation El Dorado Canyon.<sup>73</sup>

### 1.2.2.1. Operation Infinite Reach – targeting Osama bin Laden

The operation led by American military forces was carried for the purpose of eliminating one of the most prominent figures of Islamic jihad and the international terrorist organization al-Qaeda, Osama bin Laden.

After bin Laden had managed to recruit enough members to fight for his cause, the group became efficient with its violent operations, challenging both the Western and Muslim governments. Dozens of violent acts and terrorist operations were carried out by al-Qaeda during the 90s, including the bomb attack on the World Trade Center in New York in 1993 or the US Embassy bombings in Kenya and Tanzania in 1998. American Intelligence later confirmed bin Laden's involvement in the attacks and reported that he had been planning to strike US targets again.<sup>74</sup>

Operation Infinite Reach's objective was not only to kill bin Laden in Khost terrorist camp in Afghanistan, but to also reduce terrorists' ability to strike and prevent further violent attacks, for such there were more targets involved in the operation.<sup>75</sup> In 1998, the US Navy fired cruise missiles from two surface vessels and a submarine against two selected targets, the first being a terrorist training camp in Afghanistan, where bin Laden was supposed to be, and the second one being an alleged chemical weapons factory in Sudan. After executing the operation, it became clear that mission failed. None of the leading terrorists were killed, including bin Laden, who was not located in the targeted camp at the time of the strike.<sup>76</sup> The other objectives of the

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<sup>71</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), pp. 65, 71.

<sup>72</sup> *Ibid.*, p. 70, 72.

<sup>73</sup> As part of the Operation El Dorado Canyon, several attacks were carried out by American troops in 1986, one of which was supposed to target and kill the then political leader of Libya, Muammar Qaddafi, who was considered to be a sponsor of international terrorism. (KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), p. 67).

<sup>74</sup> PHINNEY, Todd R. (2007). *Airpower versus Terrorism: Three Case Studies* (Alabama: Air University Press), pp. 26-30.

<sup>75</sup> *Ibid.*, pages 32, 33.

<sup>76</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), p. 70.

operation were not reached either, as only a few years later al-Qaeda was capable of carrying out the 9/11 attacks.

#### **1.2.2.2. Operation Infinite Reach considering the characteristics of targeted killings**

##### ***Lethal force***

As far as the lethal force element goes, it is obvious, that force such as cruise missile fired from vessels onto a building on mainland is capable of causing a person's death. Even though bin Laden was not killed as a result of projecting the lethal force, it is irrelevant for meeting the first criterion of targeted killings as the force was employed, nonetheless.

##### ***Intent and premeditation***

Considering the deliberation to kill after premeditation, the following conclusion can be drawn. The operation was executed with the intention to kill Osama bin Laden (among other objectives of the operation), who was a leader of terrorist organization. It could be therefore easily argued that motivation for this attack was to defend national security of the US, since bin Laden was posing a threat to it. The decision to plan the operation had been made after long discussions among politicians, security experts and military officials. It was the President of the US Clinton who had to order the execution. The execution itself required a complex planning, close coordination of military personnel and high-level professionals.<sup>77</sup> By no means was this attack unintentional or abrupt.

##### ***Individually selected targets***

While killing bin Laden was not the only objective of the debated operation, he was still an individually selected person against whom a lethal force was used.

##### ***Lack of physical custody and extra-territoriality***

Targeted bin Laden was in Afghanistan, i.e. territory over which the US does not exercise effective control. And he was neither detained, nor arrested by the United States. It can thus be reasoned that the extra-custodial and extra-territorial criteria were also met.

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<sup>77</sup> PHINNEY, Todd R. (2007). *Airpower versus Terrorism: Three Case Studies* (Alabama: Air University Press), pp. 30, 31.

## *Attributability*

The conclusions regarding attributability of Operation Infinite Reach are evident. The operation was executed by the US Navy, which was acting on orders from the President Clinton administration.<sup>78</sup> The attack is therefore attributable to the United States of America as a conduct of organs of a state under Art. 4 of the ARSIWA.

## *Conclusion*

Operation Infinite Reach was carried out with the intention to execute one of the leaders of a terrorist organization Osama bin Laden, who was at the time in Afghanistan. The execute order was issued by the President of the United States after thorough planning and led to a cruise missile being fired from the Arabian Sea. From my point of view Operation Infinite Reach indeed constituted a targeted killing, as it met all its defining criteria.

### **1.2.3. Attacks using unmanned aerial systems**

The last category are targeted killings conducted through unmanned aerial systems. This technology is already in common use nowadays and is expected to increase in use in the following decades.<sup>79</sup> Unmanned systems are military technologies designed for aerial, ground, surface, or underwater deployment. As unmanned are designated military systems consisting of individual components, most of which need no human operator in order for the system to work as a unit. The primary component of such systems are unmanned vehicles.<sup>80</sup>

In relation to targeted killings, one specific type of unmanned vehicles is discussed – aerial. Unmanned aerial vehicles (“UAVs”) use aerodynamic forces which allow them to fly.<sup>81</sup> The UAV technology type *Reaper* or *Predator* is often employed to perform a targeted killing, since they are well suited for such attacks.<sup>82</sup> They can stay over the observed space for a long period

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<sup>78</sup> PHINNEY, Todd R. (2007). *Airpower versus Terrorism: Three Case Studies* (Alabama: Air University Press), pp. 30 et seq.

<sup>79</sup> CALCARA, Antonio, GILLI, Andrea, GILLI, Mauro, MARCHETTI, Raffaele, ZACCAGNINI, Ivan (2022). Why Drones Have Not Revolutionized War: The Enduring Hider-Finder Competition in Air Warfare. *International Security*, Vol. 46, No. 4, p. 1.

<sup>80</sup> LÖFFLER, Severin (2018). *Robotik und Recht – Militärische und zivile Flugroboter – Ausgewählte strafrechtliche Problemfelder beim Einsatz von Kampf- und Überwachungsdrohnen* (Baden-Baden: Nomos Verlagsgesellschaft), pp. 30-32.

<sup>81</sup> Deutscher Bundestag. Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Alexander Bonde, Winfried Nachtwei, Omid Nouripour, weiterer Abgeordneter und der Fraktion Bündnis 90/Die Grünen. Drucksache 16/12193. *Einführung und Bedeutung unbemannter militärischer Fahrzeuge und Luftfahrzeuge*. 26 March 2009, p. 2. Or BONE, Elizabeth, BOLKCOM, Christopher (2003). *Unmanned Aerial Vehicles: Background and Issues for Congress*. Report for Congress. 25 April 2003, p. 1.

<sup>82</sup> LÖFFLER, Severin (2018). *Robotik und Recht – Militärische und zivile Flugroboter – Ausgewählte strafrechtliche Problemfelder beim Einsatz von Kampf- und Überwachungsdrohnen* (Baden-Baden: Nomos Verlagsgesellschaft), p. 67.

undetected, even though the attacking state does not exercise control over the airspace and thus strategically wait and attack without delay at the most favorable moment.<sup>83</sup> While the UAVs do not carry any human operator in cockpits, in a sense the UAV attacks remain human-operated nevertheless. It is still an officer's decision to either engage or not to engage a strike, regardless of the distance between the decision-making officer and the attack itself.<sup>84</sup>

Employing a UAV in an attack also poses minimal risks for the military personnel of the attacking state, as the military service members do not need to be anywhere near the attack location.<sup>85</sup> On the other hand, the frequently mentioned advantage of absolute accuracy and precision of the UAV strikes is disputed. The number of civilian casualties and collateral damage resulting from drone airstrikes are likely much higher than is generally acknowledged and considering the complexity of the whole systems, the strikes are still prone to human errors.<sup>86</sup> Following the pattern of previous sections, I would like to present an individual case of exercising a targeted killing with the described method. The discussed case will be the killing of Iranian Gen Qasem Soleimani.

#### 1.2.3.1. The Soleimani case

General Qasem Soleimani was powerful figure in both domestic and foreign affairs of Iran. For over two decades he had also been the military commander of Quds Forces, an elite unit of the Iranian Revolutionary Guard Corps, one of the driving forces of the Islamic Revolution,<sup>87</sup> which operate throughout Middle East and even beyond its borders.<sup>88</sup> Since 2017 the Iranian Revolutionary Guard Corps have been considered a foreign terrorist organization by the US administrative.<sup>89</sup>

Prior to the attack on Soleimani, there had been tensions between the US and Khamenei-led Iran. Iran backed some regional militia groups making them its proxies. One of the groups

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<sup>83</sup> LÖFFLER, Severin (2018). *Robotik und Recht – Militärische und zivile Flugroboter – Ausgewählte strafrechtliche Problemfelder beim Einsatz von Kampf- und Überwachungsdrohnen* (Baden-Baden: Nomos Verlagsgesellschaft), p. 68.

<sup>84</sup> OCHMANNOVÁ, Petra (2011). Unmanned Aerial Vehicles and Law of Armed Conflict Implications. *Czech Yearbook of Public & Private International Law*, Vol. 2, p. 147.

<sup>85</sup> LÖFFLER, Severin (2018). *Robotik und Recht – Militärische und zivile Flugroboter – Ausgewählte strafrechtliche Problemfelder beim Einsatz von Kampf- und Überwachungsdrohnen* (Baden-Baden: Nomos Verlagsgesellschaft), pp. 69, 70.

<sup>86</sup> UN Doc. A/HRC/44/38, CALLAMARD, Agnès. Use of armed drones for targeted killings: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 15 August 2020, p. 6.

<sup>87</sup> BOUSSEL, Pierre (2023). The Quds Force in Syria: Combatants, Units, and Actions. *CTC Sentinel, Combating Terrorism Center at West Point*, Vol. 16, No. 6, p. 1.

<sup>88</sup> CNN (Jan 3, 2020). *Who was Qasem Soleimani, the Iranian commander killed by a US airstrike?*

<sup>89</sup> The American Society of International Law (2020). U.S. Drone Strike in Iraq Kills Iranian Military Leader Qasem Soleimani. *American Journal of International Law*, Vol. 114, No. 2, p. 314.

was Hezbollah, which had tight ties to Soleimani's Quds Forces.<sup>90</sup> At the end of 2019, the Hezbollah attacked several US targets in Iraq, and this resulted in death of an American military contractor and wounded other staff. The US subsequently retaliated, killing more than 20 people.<sup>91</sup> Afterward, on December 31, the US Embassy in Baghdad, Iraq, was surrounded by protestors attending funerals of fighters killed in Iraq and Syria during the US' reprisal attack. The protesting people were expressing their support to Iran's proxy Hezbollah and chanting anti-American slogans, while throwing stones or setting fires around the embassy's compound.<sup>92</sup>

These events escalated on January 2, 2020, when President Trump ordered the US military to take defensive action against Soleimani with the reasoning, that he commanded a terrorist organization which posed a threat to the US and future threats had to be deterred.<sup>93</sup> The attack was carried out a day later. The US military targeted Soleimani with a weaponized MQ-9-Reaper-type UAV on his drive away from a Baghdad airport.<sup>94</sup> Besides Soleimani, at least six more people died in the attacked car convoy, among them being one Hezbollah commander.<sup>95</sup>

### **1.2.3.2. The Soleimani case considering the characteristics of targeted killings**

#### ***Lethal force***

The attack on Gen Soleimani was executed with an armed UAV – MQ-9 Reaper. Such drone is capable of carrying both missiles and bombs. Dropping either of these weapons in an airstrike right against an individual will most likely result in their death. Thus, lethal force was employed in this case.

#### ***Intent and premeditation***

When drawing conclusions about the element of the deliberation of the attack, the background of the execution must be considered. The motivation for executing the attack was to kill Soleimani because of his position in an organization designated as terrorist by the attacking state. It is ultimately the official statement by the US Department of Defense<sup>96</sup> confirming the state's intent to target Soleimani. Such operation must undoubtedly be planned

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<sup>90</sup> The New York Times (Dec 30, 2019). *U.S. Launches Airstrikes on Iranian-Backed Forces in Iraq and Syria*.

<sup>91</sup> The American Society of International Law (2020). U.S. Drone Strike in Iraq Kills Iranian Military Leader Qasem Soleimani. *American Journal of International Law*, Vol. 114, No. 2, p. 313.

<sup>92</sup> BBC (Dec 31, 2019). *US Baghdad embassy attacked by protestors angry at air strikes*.

<sup>93</sup> Statement by the U.S. Department of Defense, 2 January 2020.

<sup>94</sup> The Guardian (Jan 3, 2020). *A visual guide to the US airstrike that killed Qassem Suleimani*.

<sup>95</sup> BBC (Jan 3, 2020). *Qasem Soleimani: US kills top Iranian general in Baghdad air strike*.

<sup>96</sup> Statement by the U.S. Department of Defense, 2 January 2020.

prior to its execution, requiring a cooperation of military personnel and state officials. For these reasons, spontaneity in decision about the execution must be ruled out.

### ***Individually selected targets***

As already mentioned, the analyzed operation was set out to kill Soleimani. General Soleimani was a powerful man in Iran, commander of the elite Quds Forces and was also believed to be the mastermind behind numerous attacks in the past, which had resulted in dozens of deaths.<sup>97</sup> Soleimani had been chosen as a target after escalating tensions between Iran and the US, which had also resulted in casualties at the end of 2019. The reason why the US President Trump ordered the drone airstrike was to target Soleimani. Again, the decision of the US to target specifically Soleimani, is confirmed in an official statement of the US Department of Defense.<sup>98</sup> Even though the airstrike killed six more people beside Soleimani, the attack was not random.

### ***Lack of physical custody and extra-territoriality***

The US did not arrest Soleimani before the attack, nor was he in any way in its custody. The attack happened in Baghdad, Iraq, after Soleimani had landed there, possibly flying from Syria or Lebanon.<sup>99</sup> None of the mentioned states are a territory of the US. At the very time of the execution of the attack, none of the US military service members was even anywhere near Soleimani, because a Reaper drone was used for the strike. Hence, the attack on Soleimani was in terms of targeted killings extra-territorial and extra-custodial.

### ***Attributability***

Just as in the previous analysis of Operation Infinite Reach, there is no doubt about the US' responsibility for targeting Soleimani. The targeted killing was carried out by the American military forces by the order of the President Trump Administrative,<sup>100</sup> effectively making an act attributable to a state actor under Art. 4 of the ARSIWA.

### ***Conclusion***

Lethal force in form of a UAV strike was projected by the US on a territory of foreign state – Iraq, purposefully and after deliberation, in order to deprive an individually selected

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<sup>97</sup> CNN (Jan 3, 2020). *Who was Qasem Soleimani, the Iranian commander killed by a US airstrike?*

<sup>98</sup> Statement by the U.S. Department of Defense, 2 January 2020.

<sup>99</sup> BBC (Jan 3, 2020). *Qasem Soleimani: US kills top Iranian general in Baghdad air strike.*

<sup>100</sup> Statement by the U.S. Department of Defense, 2 January 2020.

person, Qasem Soleimani, of his life. Soleimani was not in custody of the attacking state at the time of the execution. In light of above-mentioned conclusions, I find that the attack on Gen Soleimani was a targeted killing.

## 2. THE NOTION OF THE PROHIBITION OF THE THREAT AND USE OF FORCE

The UN Charter deals with the use of force in more places of its text – in para. 7 of the Preamble and Arts. 39, 44, 51 and 53.<sup>101</sup> However, the denominations for such acts in the given provisions are unlike and it is also the content of the expressions, which may be interpreted differently for each of the articles. The wording *threat or use of force* is specific to Art. 2(4) of the UN Charter and will be further examined in this thesis.

### 2.1. Threat and use of force under Article 2(4) of the UN Charter

Art. 2(4) of the UN Charter enshrines the prohibition of the threat or use of force as it provides:

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.

Whilst it is the concept of prohibition of the threat and use of force, which effectively shapes modern public international law, without understanding the terms *threat of force* and *use of force* it is hard to determine what actions are prohibited among states.

In short, the threat of force is generally one state's message addressed to another state, which expresses the intent to use force unless a demand or an ultimatum is abided by.<sup>102</sup> But the element of demand or ultimatum is not necessary. In its advisory opinion on the Legality of the Use of Nuclear Weapons the International Court of Justice (“*ICJ*” or “*the Court*”) refers to threat of force as merely a state's *stated readiness* to use force,<sup>103</sup> not further mentioning the need of making demands. Concerning the prohibition of both the threat of force and the use of force, the Court also points out the close link between the two and explains that if the use of force itself would in a particular case be illegal, the threat would be illegal, too.<sup>104</sup> Consequently, the way threats of force are assessed in public international law is dependent on the legality of the possible *use* of force. The threats of force are, however, only exceptionally discussed in the scope of Art. 2(4) of the UN Charter, because in the practice they are likely to

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<sup>101</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), pp. 208, 209.

<sup>102</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 41.

<sup>103</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory opinion, I.C.J. Reports 1996, p. 47.

<sup>104</sup> *Ibid.*, p. 47.

be followed by an actual employment of a forcible action or are simply tolerated by the international community.<sup>105</sup> In the following sections I will focus only on the use of force, because the matter of threat of force is insignificant when considering targeted killings.

## **2.2. Prohibition of the use of force**

The prohibition of the use of force anchored in Art. 2(4) of the UN Charter is a “cornerstone”<sup>106</sup> of public international law, which shapes the modern understanding of international order and is one of the main rules to prevent war.<sup>107</sup> And yet, there is no consensus neither of the states nor of the scholars on which acts constitute force and when the use of such force is prohibited. That means, that even after nearly 80 years in existence of the rule enshrined in Art. 2(4) of the UN Charter, its object and content remain disputed. Furthermore, despite the non-use of force principle being considered as one of the fundamental rules of the international relations, some authors are critical of its relevance and effectiveness. They point out that the principle is often being disregarded by the states, as we can observe numerous cases of actions violating Art. 2(4) around the world.<sup>108</sup>

### **2.2.1.1. The nature of the prohibition of the use of force**

Over time, the principle of prohibition of the use of force has evolved into international custom, i.e. has become an evidence of a general practice accepted as law.<sup>109</sup> Consequently, the rule became a part of customary international law authoritatively declared in the UN Charter.<sup>110</sup> The non-use-of-force principle is not only an integral part of the UN Charter, but is acknowledged in other international treaties, e.g., in the Rome Statute of the International Criminal Court.<sup>111</sup> Such conclusion is drawn by the UN Charter commentators<sup>112</sup> and the ICJ, too. In the Case Concerning Military and Paramilitary Activities in and against Nicaragua

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<sup>105</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 218.

<sup>106</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgement, I.C.J. Reports 2005, p. 148.

<sup>107</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 203.

<sup>108</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), pp. 72-76.

<sup>109</sup> Statute of the International Court of Justice, signed 26 June 1945, in force 24 October 1945, Article 38(1)(b).

<sup>110</sup> Draft Articles on the Law of Treaties with Commentaries. In: Yearbook of the International Law Commission, 1966, Vol. II, pp. 187-274, p. 247.

<sup>111</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 31.

<sup>112</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 229.

(“*Nicaragua judgement*”) the ICJ inferred the existence of *opinion juris* on the matter from multiple sources.<sup>113</sup> One of them were the formulations of the UN Friendly Relations Declaration,<sup>114</sup> which is considered to be an interpretation of the basic principles of the UN Charter.<sup>115</sup> The ICJ later articulated that “[...] *the principles as to the use of force incorporated in the Charter reflect customary international law.*”<sup>116</sup>

It is generally accepted that customary rules are just as legally binding as norms derived from treaties, which makes both legal sources equal.<sup>117</sup> While contents and ambit of the rule are nowadays the same in both sources – the UN Charter and international custom,<sup>118</sup> in the future some interpretive problems might arise. That problem stems from the fact the treaty rule in Art. 2(4) remains the same while the customary law is more prone to evolving over time and allowing more flexibility to the interpretation of the rule.<sup>119</sup> While not uncontested, the predominant opinion formulated by the ILC and repeated by the ICJ in the Nicaragua judgment<sup>120</sup> is, that the custom-embodiment provision of Art. 2(4) of the UN Charter is considered a *jus cogens* rule.<sup>121</sup>

Art. 53 of the Vienna Convention on the Law of Treaties (“*VCLT*”) provides the following definition of *jus cogens*:

[...] a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm

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<sup>113</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986; p. 183-191.

<sup>114</sup> United Nations General Assembly Resolution 2625 (XXV), The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 24 October 1970.

<sup>115</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 209.

<sup>116</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 87.

<sup>117</sup> ČEPELKA, Čestmír, ŠTURMA, Pavel (2018). *Mezinárodní právo veřejné*. 2. vydání (Praha: C. H. Beck), p. 69.

<sup>118</sup> POBJIE, Erin (2024). *Prohibited Force, The Meaning of ‘Use of Force’ in International Law* (Cambridge: Cambridge University Press), p. 56.

<sup>119</sup> *Ibid.*, pp.16, 59.

<sup>120</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986; p. 190.

<sup>121</sup> e.g. BÍLKOVÁ, Veronika (2015). The Use of Force by the Russian Federation in Crimea. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht/Heidelberg Journal of International Law*. Vol. 75, p. 28. Or DÖRR, Oliver. Or UN Doc. A/56/10, International Law Commission. Draft Articles on Responsibility of State for Internationally Wrongful Acts. In: Report of the International Law Commission, Fifty-third session. 2001. pp. 43-59, Article 26.

from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.<sup>122</sup>

The peremptory nature of some norms implies that a certain hierarchy of norms exists even in public international law.<sup>123</sup> Thus, *jus cogens* stands at the very top of such hierarchy, is of great importance and there is no doubt about its legally binding effect.<sup>124</sup> The same article also evinces a rule for situations, when a peremptory norm is violated. Namely, when in conflict with *jus cogens* rule a treaty is invalid.<sup>125</sup> Furthermore, circumstances precluding wrongfulness do not apply when the actions violate peremptory norms and states have an obligation to refrain from any conduct violating them.<sup>126</sup>

#### **2.2.1.2. Elements of the prohibition of the use of force**

Upon examining the provision of Art. 2(4) of the UN Charter, it is possible to identify individual conditions which have to be satisfied, in order for an attack to be considered a use of force. The formulation of the provision starts with defining the addressees, which should refrain from threat or use of force, namely *all Members* of the United Nations. The rule is thus addressed only to states as these actors of public international law are the only ones allowed to gain membership in the UN.<sup>127</sup> The provision further speaks of acts of the members in *international relations*, which means that the non-use of force applies on interstate forcible conduct, i.e. on cross-border attacks, but not on acts of violence within one sovereign state, such as a government suppressing a coup etc.<sup>128</sup>

Art. 2(4) of the UN Charter also provides, that the prohibited force shall not be directed towards *territorial integrity* or *political independence* of any state. The authors of a commentary to the UN Charter argue in favor of unrestrictive interpretation of the two expressions, because

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<sup>122</sup> Vienna Convention on the Law of Treaties, signed 23 May 1969, in force 27 January 1980, Article 53.

<sup>123</sup> DEN HEIJER, Maarten, VAN DER WILT, Harmen (2016). *Jus Cogens and the Humanization and Fragmentation of International Law*. In: DEN HEIJER, Maarten, VAN DER WILT, Harmen (eds.), *Netherlands Yearbook of International Law 2015: Jus Cogens: Quo Vadis?* (The Hague: T.M.C. Asser Press/Springer Verlag Berlin Heidelberg), p. 15.

<sup>124</sup> LINDERFALK, Ulf (2020). The legal consequences of jus cogens and the individuation of norms. *Leiden Journal of International Law*, Vol. 33, No. 4, p. 893.

<sup>125</sup> Vienna Convention on the Law of Treaties, signed 23 May 1969, in force 27 January 1980, Article 53.

<sup>126</sup> UN Doc. A/56/10, International Law Commission. Draft Articles on Responsibility of State for Internationally Wrongful Acts. In: Report of the International Law Commission, Fifty-third session. 2001. pp. 43-59, Articles 26 and 30.

<sup>127</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 213.

<sup>128</sup> *Ibid.*, pp. 214, 215.

they “cover any possible kind of trans-frontier use of force”.<sup>129</sup> They do not consider the response of the territorial state to be of relevancy. Dörr adds, that the terms territorial integrity or political independence “are not meant to be indispensable requirements for the prohibition to apply, nor to restrict its scope in any other way.”<sup>130</sup> And if some cases of armed force were still to fall outside the scope of targeting territorial integrity or political independence, they would still be encompassed in the last passage of the prohibiting article – “[use of force] in any other manner inconsistent with the Purposes of the United Nations.”<sup>131</sup> This sentence is often aptly referred to as a “catch-all provision”,<sup>132</sup> which includes purposes such as maintenance of international peace, universal respect for human rights achievement of international co-operation, settlement of disputes by peaceful means etc.<sup>133</sup> Butchard share the opinion of the commentators and agree that the catch-all phrase makes Art. 2(4) an extensive and *general* prohibition of armed force, which remains in effect until the conditions of predefined UN exceptions are met (e.g., acting in self-defense, humanitarian intervention or protection of national abroad).<sup>134</sup>

I would like to point out, however, that while dominant, the conclusion presented in the previous paragraph is not universally accepted without reservations. Especially some theorists who dealt with the issue at the end of last century sometimes argued in favor of the restrictive interpretation. They claimed that armed force is only then prohibited, when it is directed against either territorial integrity or political independence.<sup>135</sup>

### **2.3. Meaning of “force” in the prohibition of the use of force**

As already written above, the UN Charter references forcible acts in several places in the text, using a different term almost every time. The Charter does not, however, provide any

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<sup>129</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 216.

<sup>130</sup> DÖRR, Oliver (2019). *Prohibition of Use of Force*. Encyclopedia entry. In: Max Planck Encyclopedia of Public International Law, para 14.

<sup>131</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 216

<sup>132</sup> e.g. BUTCHARD, Patrick M. (2018). Back to San Francisco: Explaining the Inherent Contradictions of Article 2(4) of the UN Charter. *Journal of Conflict & Security Law*, Vol. 23, No. 2, pp. 259, 266. Or RUYSS, Tom (2014). The Meaning of “Force” and the Boundaries of the Jus ad Bellum: Are “Minimal” Uses of Force Excluded from UN Charter Article 2(4)? *American Journal of International Law*, Vol. 108, No. 2, p. 164.

<sup>133</sup> United Nations General Assembly Resolution 2625 (XXV), The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 24 October 1970.

<sup>134</sup> BUTCHARD, Patrick M. (2018). Back to San Francisco: Explaining the Inherent Contradictions of Article 2(4) of the UN Charter. *Journal of Conflict & Security Law*, Vol. 23, No. 2, pp. 259-261, 266.

<sup>135</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), pp. 33, 34.

further explanations on the content of the terms. The same applies to *force* referred to in Art. 2(4) of the UN Charter. The very meaning of *force* is still debated to this day. Understanding which acts are regarded as falling within the scope of the provision is crucial for the further analysis of whether targeted killings might be considered a use of force.

Not only the drafting process, but also the interpretation of the word *force* in context of all provisions of the UN Charter must be considered in order to clarify the purview of Art. 2(4). During the drafting process of the Charter, a proposal to expand the scope of Art. 2(4) and incorporate economic and political coercion into the text was not accepted.<sup>136</sup> Reading the text of the UN Charter as a whole, it is certain that one of the leading ideas behind the Charter and the UN as an organization is to shield future generations from the horrors of war.<sup>137</sup> In addition to that, the non-use of force is an integral part of the *jus ad bellum* legal framework,<sup>138</sup> i.e. of norms seeking to prevent states from resorting to the use of force. It is thus reasonable to conclude, that the authors of the Charter did not envisage non-forcible coercive acts as prohibited by this article but rather wanted to protect the international community from violent acts of a military or armed nature. Generally, scholars predominantly interpret the term *force* in Art. 2(4) as being limited to *military* or *armed force*<sup>139</sup> and the practice of states seems to be consistent with such understanding.<sup>140</sup>

The issue is that there is a debate about the meaning of *armed force*. The prohibition of armed force should be able to “*capture each and every form of armed force by individual States.*”<sup>141</sup> The wording indicates that the employed force must be physical and weaponized. But in fact, the understanding of armed force in the prohibition of the use of force is broader. The employed means is not restricted to a specific type of a weapon<sup>142</sup> or generally weapons in strict sense of the word,<sup>143</sup> nor does it have to be physical in a sense that it creates motion,

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<sup>136</sup> CORTEN, Olivier. (2020). *The Prohibition of the Use of Force*. In: VIÑUALES, Jorge E. (eds.). *The UN Friendly Relations Declaration at 50: An Assessment of the Fundamental Principles of International Law* (Cambridge: Cambridge University Press), p. 54.

<sup>137</sup> e.g. Preamble to the Charter of the United Nations, signed 26 June 1945, in force 24 October 1945.

<sup>138</sup> POBJIE, Erin (2024). *Prohibited Force, The Meaning of ‘Use of Force’ in International Law* (Cambridge: Cambridge University Press), pp. 2, 3.

<sup>139</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 94.

<sup>140</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 209.

<sup>141</sup> DÖRR, Oliver (2019). *Prohibition of Use of Force*. Encyclopedia entry. In: Max Planck Encyclopedia of Public International Law, para 13.

<sup>142</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory opinion, I.C.J. Reports, p. 39.

<sup>143</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 95.

because a narrow range would exclude for example cyber or chemical attacks or biological aggression.<sup>144</sup> It is also argued that the armed force should have a coercive or challenging purpose, because the coercive or intrusive element is what makes the armed force prohibited in the first place.<sup>145</sup> In other words, armed force used by a state on a territory of another sovereign state is not prohibited, as long as the territorial government body knows about the employment, has consented to it and the consent remains valid.<sup>146</sup>

The coercion aspect should be considered as hostile intent of the state using armed force against another one. Hostile intent towards the territorial state is by some authors even considered a constituting element *per se*.<sup>147</sup> But then a question arises. Does the hostile intent mean the intention to execute the attack itself or intention to cause a certain effect? Does it mean a coercive intent? Pobjie regards this issue and concludes that the answer is everything but straightforward. She observes that it might be better to understand the hostile element as a secondary factor which could work as a guide in assessing whether some otherwise non-grave or potential uses of force violated Art. 2(4).<sup>148</sup> On that matter Ruys adds: “*The underlying idea [of the required hostile intent] is to exclude incursions that are unintentional or otherwise completely harmless and to limit forcible reactions to situations in which the intruding state deliberately engages in forcible acts on the territory of another state. The most obvious example of incursions that ostensibly lack hostile intent are accidental incursions—for example, when troops unknowingly enter foreign territory.*”<sup>149</sup>

Considering the effect of the used force, the outcome of an attack should be non-abstract. Meaning that when it induces death, injury, destruction or damage, it falls within the ambit of Art. 2(4) of the UN Charter.<sup>150</sup> Besides the actual harm element, typically the employed force should cause the harm directly, without in-between steps, and the effects of the attack should

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<sup>144</sup> POBJIE, Erin (2024). *Prohibited Force, The Meaning of ‘Use of Force’ in International Law* (Cambridge: Cambridge University Press), p. 129.

<sup>145</sup> DÖRR, Oliver (2019). *Prohibition of Use of Force*. Encyclopedia entry. In: Max Planck Encyclopedia of Public International Law, para 18.

<sup>146</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 214.

<sup>147</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 125.

<sup>148</sup> POBJIE, Erin (2024). *Prohibited Force, The Meaning of ‘Use of Force’ in International Law* (Cambridge: Cambridge University Press), pp. 150-155, 157.

<sup>149</sup> RUYSS, Tom (2014). The Meaning of “Force” and the Boundaries of the Jus ad Bellum: Are “Minimal” Uses of Force Excluded from UN Charter Article 2(4)? *American Journal of International Law*, Vol. 108, No. 2, pp. 172, 173.

<sup>150</sup> BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 21.

be lasting. However, Pobjie acknowledges that under specific circumstances, the effect of the use of force might not occur and yet, the act may constitute a use of force due to its potential serious harm. Such cases might include employment of banned weapons with severe consequences for population or an attack apparently driven by hostile intent.<sup>151</sup>

#### 2.4. Gravity of the attack

An important element which must be taken into account is the gravity of the attack. While scholars like Corten propose a *de minimis* gravity threshold, which suggests that unless an act reaches a certain minimal gravity, it falls beyond the scope of Art. 2(4) of the UN Charter,<sup>152</sup> others posit a more skeptical approach towards the existence of such threshold.<sup>153</sup>

The *de minimis* threshold theory argues that forcible actions of low significance, which do not have sufficient gravity to constitute force, do not contravene Art. 2(4) of the UN Charter.<sup>154</sup> To determine a forcible conduct triggering Art. 2(4) of the UN Charter, Corten places great emphasis on the context of the action. He articulates, that when there is a state's intent to impose its will upon another state or intent to challenge it, generally the gravity threshold would be reached.<sup>155</sup> Furthermore, the minimal gravity is also reached when the action results in confrontation between “*the armed forces of the two states*”. The confrontation requirement does not have to be met, when the state taking the action is fully aware that the other State will suffer substantial damage. He also finds it important to consider the extent and intensity of the military action, because some attacks are of too “limited fashion”.<sup>156</sup> In spite of that, even Corten concedes that when agents or leaders of another state are the target of a military action, the attack is much more likely to be perceived as prohibited force under Art. 2(4) than when

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<sup>151</sup> POBJIE, Erin (2024). *Prohibited Force, The Meaning of 'Use of Force' in International Law* (Cambridge: Cambridge University Press), pp. 136, 137.

<sup>152</sup> CORTEN, Olivier (2010). *The Law Against War. The Prohibition on the Use of Force in Contemporary International Law* (Oxford: Hart Publishing Ltd.), 67 et seq. Or BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 24.

<sup>153</sup> RUYTS, Tom (2014). The Meaning of “Force” and the Boundaries of the Jus ad Bellum: Are “Minimal” Uses of Force Excluded from UN Charter Article 2(4)? *American Journal of International Law*, Vol. 108, No. 2, pp. 191,192, 208-210. Or POBJIE, Erin (2024). *Prohibited Force, The Meaning of 'Use of Force' in International Law* (Cambridge: Cambridge University Press), p. 145.

<sup>154</sup> CORTEN, Olivier (2010). *The Law Against War. The Prohibition on the Use of Force in Contemporary International Law* (Oxford: Hart Publishing Ltd.), p. 55.

<sup>155</sup> *Ibid.*, pp. 77, 91.

<sup>156</sup> CORTEN, Olivier (2010). *The Law Against War. The Prohibition on the Use of Force in Contemporary International Law* (Oxford: Hart Publishing Ltd.), pp. 89, 90.

a private person is targeted.<sup>157</sup> The existence of a minimal gravity threshold of prohibited force is advocated for by O’Connell as well.<sup>158</sup>

The abovementioned conclusions on *de minimis* threshold are supported by the Independent International Fact-Finding Mission on the Conflict in Georgia. The Mission adopted a view that only physical force exceeding the minimal threshold of gravity is prohibited under Art. 2(4). They provided examples of “*very small incidents*” which are not a breach of Art. 2(4), for instance forcible abductions of individual persons, or interception of a single aircraft.<sup>159</sup> On the other hand, Corten’s arguments partially contradict what has been said in the previous subsection. He claims that gravity threshold would be met, if the attack resulted in military confrontation between the two states. Contrariwise, commentators of the UN Charter do not consider the response of a territorial state to be important in the assessment of the attack.<sup>160</sup>

Without questioning relevance of examples analyzed by Corten, Ruys raises some arguments contesting Corten’s argumentation about the existence of a gravity threshold in connection to Art. 2(4) of the UN Charter and the customary practice.<sup>161</sup> Corten induces his conclusions mainly from his analyses of practice of states, which in the examined cases did not denounce the attack as prohibited under Art. 2(4) of the UN Charter.<sup>162</sup> However, according to Ruys, evidentiary value of such cases should not be overestimated as a simple lack of expressly condemning the action as *force* does not constitute an *opinio juris* practice and subsequently an international custom.<sup>163</sup> Corten fails to consider other reasons states may have to avoid treating some attacks as a prohibited use of force within the scope of Art. 2(4). Among these possible reasons, Ruys mentions for instance stigmatization, fear of possibly being partially blamed for

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<sup>157</sup> CORTEN, Olivier (2010). *The Law Against War. The Prohibition on the Use of Force in Contemporary International Law* (Oxford: Hart Publishing Ltd.), p. 91.

<sup>158</sup> O’CONNELL, Mary E. (2013). *The prohibition of the use of force*. In: WHITE, Nigel, HENDERSON, Christian (eds.). *Research Handbook on International Conflict and Security Law* (Cheltenham: Edward Elgar Publishing Limited), p. 102.

<sup>159</sup> Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, Report Volume II. September 2009, p. 242.

<sup>160</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 216.

<sup>161</sup> RUYSS, Tom (2014). The Meaning of “Force” and the Boundaries of the Jus ad Bellum: Are “Minimal” Uses of Force Excluded from UN Charter Article 2(4)? *American Journal of International Law*, Vol. 108, No. 2, pp. 168-171.

<sup>162</sup> CORTEN, Olivier (2010). *The Law Against War. The Prohibition on the Use of Force in Contemporary International Law* (Oxford: Hart Publishing Ltd.), pp. 67 et seq.

<sup>163</sup> RUYSS, Tom (2014). The Meaning of “Force” and the Boundaries of the Jus ad Bellum: Are “Minimal” Uses of Force Excluded from UN Charter Article 2(4)? *American Journal of International Law*, Vol. 108, No. 2, p. 168.

the forcible conduct, a prior consent of the attacked state, which may have been a strategic decision or an interest in not jeopardizing friendly relations with other states.<sup>164</sup> I find Ruys's argumentation persuasive and agree that it is not possible to claim formation of customary law based solely on the fact, that in the past states omitted to qualify some forcible acts as an infringement of the prohibition of force.

Henderson acknowledges both scholars' theories, when he admits that formally there is no evidence that the prohibition of the use of force only applies on force of sufficient quality. But at the same time claims there is evidence in state practice suggesting that a lot of forcible actions fall outside the purview of Art. 2(4) of the UN Charter.<sup>165</sup>

As regards the ICJ's position, the Court neither explicitly confirms nor denies that only acts exceeding a minimal threshold constitute a use of force.<sup>166</sup> Nevertheless, from my point of view the ICJ case law seems to favor Ruys's interpretation. The key decisions on that matter are the Nicaragua case and the Case Concerning Oil Platforms (“*Oil Platforms*”). In the former case, the Court states that “[...] *it will be necessary to distinguish the most grave forms of the use of force (those constituting an armed attack) from other less grave forms.*”<sup>167</sup> In this sentence the Court recognizes “most grave” and “less grave” forms of forcible acts, but not in terms of Art. 2(4) of the UN Charter. On the contrary. This characterization was made in order to distinguish force prohibited by Art. 2(4) from armed attacks under Art. 51. It can for this reason be assumed that all less grave forms of violence fall within the ambit of the prohibition of the use of force, but not necessarily under the provision of Art. 51 of the UN Charter. What constitutes an *armed attack* will be a subject of a following chapter of this thesis.

In a similar vein, in the Oil Platforms case the ICJ adds on the subject of armed attack: “[The Court] *does not exclude the possibility that the mining of a single military vessel might be sufficient to bring into play the "inherent right of self-defence", [...].*”<sup>168</sup> It is implied, that even an armed attack under Art. 51, which is generally graver than use of force, may be

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<sup>164</sup> RUYSS, Tom (2014). The Meaning of “Force” and the Boundaries of the Jus ad Bellum: Are “Minimal” Uses of Force Excluded from UN Charter Article 2(4)? *American Journal of International Law*, Vol. 108, No. 2, pp. 169, 170.

<sup>165</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 112.

<sup>166</sup> KREß, Claus (2016). *The International Court of Justice and the 'Principle of Non-Use of Force'*. In: WELLER, Marc (ed.), *The Oxford Handbook of the Use of Force in International Law* (New York: Oxford University Press), p. 576.

<sup>167</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986; p. 191.

<sup>168</sup> Oil Platforms (Islamic Republic of Iran v. United States of America), Judgement, I.C.J. Reports 2003, p. 72.

constituted by a small-scale forcible action. At the same time, the ICJ explained in the Nicaragua case that generally armed attacks reach a high level of gravity.<sup>169</sup>

In summary, while Corten's approach might be more appealing in terms of practice, it also creates space for disputes over why some situations violated Art. 2(4) of the UN Charter and others did not. The assessment of whether force was used is very case-by-case, instead of providing a general explanation. However, the threshold proponents Corten and O'Connell do not seem to hold the bar for prohibited force high. Some given examples are fairly scaled down – shooting at the legs of a person evading arrest,<sup>170</sup> some are disputable – mission of a secret agent to capture alleged terrorists on foreign soil, which results in death of people.<sup>171</sup>

Ruys, on the other hand, expresses a concern which is in my opinion reasonable. Namely, if we really recognize the minimal gravity threshold, it might become a dangerous practice which could erode our current legal perception of the prohibition of the use of force as a peremptory norm. Excluding small-scale attacks projecting a deliberate lethal force into the territory of a sovereign state, could lead to states engaging in more forcible activities, and subsequently finding justification more easily.<sup>172</sup> It is, however, important to bear in mind that even advocating that there is no minimal threshold, Ruys admits that attacks should generally display a hostile intent, because denouncing honest harmless mistakes as prohibited use of force would be illogical.<sup>173</sup> Pursuant to Ruys's argumentation I am more inclined towards dismissing the notion of minimal gravity threshold. I believe that if the attack shows the abovementioned characteristics, the gravity of the use of force is irrelevant. This opinion is supported by Bílková's view, as she states that any inter-state use of force is prohibited “*regardless of gravity or aims*”.<sup>174</sup>

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<sup>169</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986; p. 191.

<sup>170</sup> O'CONNELL, Mary E. (2013). *The prohibition of the use of force*. In: WHITE, Nigel, HENDERSON, Christian (eds.). *Research Handbook on International Conflict and Security Law* (Cheltenham: Edward Elgar Publishing Limited), p. 102.

<sup>171</sup> CORTEN, Olivier (2010). *The Law Against War. The Prohibition on the Use of Force in Contemporary International Law* (Oxford: Hart Publishing Ltd.), p. 85.

<sup>172</sup> RUYSS, Tom (2014). The Meaning of “Force” and the Boundaries of the Jus ad Bellum: Are “Minimal” Uses of Force Excluded from UN Charter Article 2(4)? *American Journal of International Law*, Vol. 108, No. 2, pp.159-210, pp. 196, 197.

<sup>173</sup> *Ibid.*, p. 171.

<sup>174</sup> BÍLKOVÁ, Veronika (2015). The Use of Force by the Russian Federation in Crimea. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht/Heidelberg Journal of International Law*. Vol. 75, pp. 28, 29.

### 3. TARGETED KILLINGS UNDER THE PROVISION OF ARTICLE 2(4) OF THE UN CHARTER

Having made an overview of the legal framework governing the prohibition of the use of force, I will now apply those findings to targeted killings. In summary, targeted killings are thought-out projections of lethal force targeting individually selected person or persons, who are not in custody of the state carrying out the attack. The objective of this chapter is to determine whether such attacks amount force prohibited under the provision of Art. 2(4) of the UN Charter as explained in Chapter 2.

#### 3.1. Targeted killings considering the elements of the prohibition of the use of force

As previously mentioned, the rule of the prohibition of the use of force is not only stipulated in Art. 2(4) of the UN Charter but has also evolved into a customary rule. The contents of both the custom and the UN Charter provision are nowadays identical. Hence, it is not necessary to deal with this topic any further, as it does not have any impact on the conclusions that will follow. It has also been argued in this thesis that the prohibition of the use of force is considered a peremptory norm. Since Art. 2(4) prohibits the use of force under (almost) any circumstances, it is important to understand whether attacks such as targeted killings fall within its scope and how serious a violation of the international law they might constitute when carried out.

In the current perception of Art. 2(4) of the UN Charter, the rule is binding only on states and aims to protect them.<sup>175</sup> Whether such interpretation rules targeted killings out of the scope of the provision is easy to answer. This thesis, just like most scholars (see Chapter 1), only focuses on state-sponsored targeted killings and accordingly targeted killings implemented by states. I am only considering a practice, in which targeted killings are attributable to a state. The same goes for the *in international relations* requirement of Art. 2(4) of the UN Charter. I do not reject the idea that targeted killings may occur outside the cross-border-scheme, but the phenomenon analyzed in this thesis is an extraterritorial practice of states.

Art. 2(4) prohibits force used against territorial integrity and political independence. Scholars agree that these phrases should be interpreted broadly, because their inclusion in the provision of Art. 2(4) was not intended to restrict its scope.<sup>176</sup> This interpretation is supported by the final phrase of the provision *in any other purposes of the UN*, which encompasses any

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<sup>175</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), p. 213.

<sup>176</sup> *Ibid.*, p. 215.

scenario of use of armed force, with the exceptions foreseen by the UN Charter or customary exceptions.<sup>177</sup> Considering the exceptions to the non-use of force principle, targeted killing would not constitute a breach of Art. 2(4) (a) if the territorial state had given prior consent to perform the operation, (b) the attack would be carried out based on a UNSC resolution adopted under the Chapter VII of the UN Charter or as part of humanitarian intervention, (c) or be adopted as a measure of self-defense.<sup>178</sup>

In the case of killing Gen Soleimani outlined in Chapter 1, the American-led strike attacked an Iranian citizen and a prominent figure of the state's both political and military power structure. In a similar vein, indirect use of prohibited force against a state itself can be found in allegedly Mossad's targeted attack on scientist Mohsen Fakrizadeh. In 2020 Israeli intelligence agency targeted the scientist during a car drive near Tehran with a sophisticated autonomous machine gun.<sup>179</sup> One of the reasons for this attack could be the fact that Fakrizadeh had worked for Iran's Organization of Defensive Innovation and allegedly had been working on important tasks within Iran's nuclear program as well.<sup>180</sup> Fakrizadeh could have been targeted for the reason that he had been working for a state organization and specifically for the state's nuclear program, which has been causing concern not only in the region.<sup>181</sup> His ties to Iran were therefore not insignificant.

Thus, in some cases an argument can be used that a prominent citizen of another state was extra-custodially killed on a sovereign territory with a weaponized force due to their close ties to a state and its internal affairs. Even Corten, who is skeptical about cases like these falling within the scope of the prohibition, concludes that the more prominent the targeted person and the closer the ties of the person to a state, the bigger is the chance that the attack will trigger Art. 2(4) of the UN Charter.<sup>182</sup>

Furthermore, a simple fact that a lethal force with hostile intent was projected onto a sovereign territory of a state without its prior consent leads to a conclusion that

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<sup>177</sup> BUTCHARD, Patrick M. (2018). Back to San Francisco: Explaining the Inherent Contradictions of Article 2(4) of the UN Charter. *Journal of Conflict & Security Law*, Vol. 23, No. 2, pp. 259-261, 266.

<sup>178</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), pp. 218-229.

<sup>179</sup> MILANOVIC, Marko (2021). *The Law and Tech of Two Targeted Killings*. Blog of European Journal of International Law. Or BBC (Dec 7, 2020). *Mohsen Fakhrizadeh: 'Machine-gun with AI' used to kill Iran scientist*.

<sup>180</sup> BBC (Dec 7, 2020). *Mohsen Fakhrizadeh: 'Machine-gun with AI' used to kill Iran scientist*.

<sup>181</sup> World Nuclear Association, Country Profile – Nuclear Power in Iran.

<sup>182</sup> CORTEN, Olivier (2010). *The Law Against War. The Prohibition on the Use of Force in Contemporary International Law* (Oxford: Hart Publishing Ltd.), p. 91.

territorial integrity was violated. And identical conclusion can be made about any cross-border state-sponsored targeted killing in general. In relation to the potential consent of the territorial state to an execution of a targeted killing, Melzer points out that such possibility might be very limited due to human rights law implications. He emphasizes that targeted killings are primarily a state-individual relation, not state-state.<sup>183</sup>

Finally, I would like to mention one specific circumstance of the attack on Soleimani. Iranian citizen Soleimani was targeted in the territory of Iraq. The question may arise, which of these two states was affected by the targeted killing. Based on the conclusions of this thesis so far, I believe that both Iran and Iraq were equally affected. Iraq's territory was violated by the armed operation which contravenes Art. 2(4) of the UN Charter. Iran was affected through the armed force targeted against its general and prominent public figure.

### **3.2. Targeted killings as the use of armed force**

Contemporary understanding of force under Art. 2(4) of the UN Charter emphasizes, that the force is armed, i.e. force utilizing weapons *largo sensu*. It has also been concluded in the previous chapter that rather than the means, it is the effect of the force which is essential for the assessment.

In case of Operation Infinite Reach the US Navy fired cruise missiles from two surface vessels and a submarine against two selected targets. The missile used for a targeted killing of bin Laden caused death of considerable number of people and destroyed a whole camp.<sup>184</sup> There is therefore no doubt this attack was armed both in the means used and in the effect. On the same note, the beforementioned Soleimani case was performed using a weaponized MQ-9-Reaper-type UAV and the airstrike resulted in death of at least seven people.

Less straightforward is the assessment of the Skripal case. It needs to be repeated at this point that force under the provision of Art. 2(4) does not have to produce any kinetic motion, nor to cause it, as weapons such as nuclear or chemical must be included within the non-use of force.<sup>185</sup> The means operated in Salisbury was a severely toxic nerve agent Novichok,<sup>186</sup> which was designed for use as weapons of chemical warfare.<sup>187</sup> Given the high-degree toxicity and

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<sup>183</sup> MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), pp. 51, 52.

<sup>184</sup> PHINNEY, Todd R. (2007). *Airpower versus Terrorism: Three Case Studies* (Alabama: Air University Press), pp. 32, 33.

<sup>185</sup> POBJIE, Erin (2024). *Prohibited Force, The Meaning of 'Use of Force' in International Law* (Cambridge: Cambridge University Press), pp. 128, 129.

<sup>186</sup> The Guardian (Apr 12, 2018). *Novichok used in spy poisoning, chemical weapons watchdog confirms.*

<sup>187</sup> TABOR, Nick (2024). Novichok. Encyclopedia entry. Encyclopedia Britannica.

the need to respond to the attack on Skripal, the OPCW added all Novichok nerve agents to the Chemical Weapons Convention.<sup>188</sup> Novichok is thus a weapon under the provision of Art. 2(4) and was employed as such.

To draw a general conclusion about targeted killings, the armed aspect is not problematic, because the crucial characteristics of targeted killings lies in using a lethal force and aiming to find its target dead. Moreover, it is hard to imagine a targeted killing carried out without a weapon. It has also been proven that even less conventional projections of force such as poisonings, fall within the scope of the use of force. However, it is the gravity of effect of targeted killings which is disputable.

### 3.3. Gravity of effect of targeted killings

Melzer and similarly Alston claim that state-sponsored targeted killings fall under the prohibition on interstate force enshrined in Art. 2(4) of the UN Charter, unless they are, of course, used in self-defense under the provision of Art. 51 of the UN Charter.<sup>189</sup> UN Special Rapporteur Callamard explicitly designates targeted killings executed via UAVs a use of force.<sup>190</sup>

On the same note, Milanovic advocates that “[...] *killing of a single individual by one state on the territory of another can quite reasonably be said to constitute a use of force against the latter*” and acknowledges the targeted killing of Fakrizadeh as such.<sup>191</sup> Besides, targeted killings, albeit very precise, often cause collateral damage, even though they mainly aim at individuals.<sup>192</sup> Several people died as a result of targeted killing of Soleimani, and the attack has been argued to constitute a use of force by Labuda<sup>193</sup> or the UN Special Rapporteur Callamard.<sup>194</sup> The argument stands in the Skripal case, too. He and his daughter only survived

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<sup>188</sup> Nature (Nov 28, 2019). *Novichok nerve agents banned by chemical-weapons treaty*.

<sup>189</sup> MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), p. 51. And ALSTON, Philip (2011). The CIA and Targeted Killings Beyond Borders. *Harvard National Security Journal*, Vol. 2, No. 2, p. 306.

<sup>190</sup> UN Doc. A/HRC/44/38, CALLAMARD, Agnès. Use of armed drones for targeted killings: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 15 August 2020, p. 4.

<sup>191</sup> MILANOVIC, Marko (2021). *The Law and Tech of Two Targeted Killings*. Blog of European Journal of International Law.

<sup>192</sup> UN Doc. A/HRC/44/38, CALLAMARD, Agnès. Use of armed drones for targeted killings: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 15 August 2020, p. 6.

<sup>193</sup> LABUDA, Patryk I. (2020). *The Killing of Soleimani, the Use of Force against Iraq and Overlooked Ius Ad Bellum Questions*. Blog of European Journal of International Law.

<sup>194</sup> UN Doc. A/HRC/44/38, CALLAMARD, Agnès. Use of armed drones for targeted killings: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 15 August 2020, p. 39.

the attack thanks to a quick and professional healthcare. Otherwise, he would have almost certainly died.

Furthermore, destruction of some buildings or other object on a territory of the affected state cannot be ruled out either (e.g. Operation Infinite Reach). When dealing with the consequences of targeted killings it is oftentimes not just a death of an individual but further harm and damage as well. Similarly to Milanovic, Ruys who consistently advocates that small-scale attacks constitute a use of force, claims that “[...] *even if the targeted persons are private individuals, rather than state organs, and even if no actual damage is done to state infrastructure*” the attacks do amount to use of force.<sup>195</sup>

In the Skripal case, it was an individual, rather than state organ who was targeted. Skripal was not in any way connected to the UK's state structure. For that reason, a hostile intent towards the UK is not present in this poisoning case. Ties of the targeted person to a state do not, however, play a role in the assessment of the use of force. And, whether targeting a state's sovereignty or not, bringing a lethal poison to a state's territory can constitute a use of force.<sup>196</sup>

Another question arises considering the effect of the Salisbury attack. As the force, albeit lethal, did not result in death of the targeted person. Notwithstanding, the poisoning caused serious health condition requiring hospitalization of at least four people, and one death.<sup>197</sup> It does not matter that the originally intended consequences did not occur. On the contrary, the effect was much more intense. Potentially, much greater number of people than five could had been exposed to the possibly lethal substance.<sup>198</sup> And exposing possibly hundreds of people on several sites on a foreign soil to a lethal chemical substance is in the eyes of the author a consequence attaining such gravity, that it amounts to force under Art. 2(4) of the UN Charter. Although, the actual effect was not nearly as grave as it could had been. In this case there was a harm caused by the poisoning, even though the outcome of the Novichok exposure could had been much worse. But some authors indicate that the harm does not have to ensue at all in order for the attack to be of sufficient severity, provided that the potential harm is very serious.<sup>199</sup>

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<sup>195</sup> RUY, Tom (2018). “*License to Kill*” in *Salisbury: State-sponsored assassinations and the jus ad bellum*. Just Security.

<sup>196</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), pp. 215, 216.

<sup>197</sup> BBC (Sep 21, 2021). *Salisbury poisonings: Third man faces charges for Novichok attack*.

<sup>198</sup> Statement by Ambassador Jonathan Allen, Chargé d’Affaires, at a UN Security Council Briefing on a nerve agent attack in Salisbury, 14 March 2018.

<sup>199</sup> POBJIE, Erin (2024). *Prohibited Force, The Meaning of ‘Use of Force’ in International Law* (Cambridge: Cambridge University Press), pp. 136, 137.

A conclusion that even attack such as the Skripal poisoning may violate the non-use of force principle is accepted by Ruys<sup>200</sup> or Weller. But the latter author notes that the practice of states on that matter will have to be observed, for this question to be clarified.<sup>201</sup> Furthermore, following up on his argumentation mentioned in the Chapter 2.2.1., Ruys comments on the fact that the US regularly claim to be acting in self-defense when explaining their reasons for targeted killings.<sup>202</sup> If the US wanted to “raise the bar” of gravity and support the idea of minimal threshold, they would do so instead of trying to find justification for the practice in one of the few exceptions to the prohibition.<sup>203</sup>

And finally, to make the argument of non-existence of the gravity threshold even more convincing, it does not hold true that states always abstain from using the vocabulary of Art. 2(4) of the UN Charter in relation to targeted killings. An example can be the statement by British Ambassador in the UNSC briefing on the attacks in Salisbury, where he clearly stated: “[...] *this was no common crime. It was an unlawful use of force – a violation of article two of the United Nations charter, the basis of the international legal order.*”<sup>204</sup> In summary, attacks in form of a targeted killing amount to prohibited armed force and thus fall under the prohibition enshrined in Art. 2(4) of the UN Charter.

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<sup>200</sup> RUY, Tom (2018). “*License to Kill*” in *Salisbury: State-sponsored assassinations and the jus ad bellum*. Just Security.

<sup>201</sup> WELLER, Marc (2018). *An International Use of Force in Salisbury?* Blog of the European Journal of International Law.

<sup>202</sup> RUY, Tom (2018). “*License to Kill*” in *Salisbury: State-sponsored assassinations and the jus ad bellum*. Just Security.

<sup>203</sup> *Ibid.*

<sup>204</sup> Statement by Ambassador Jonathan Allen, Chargé d’Affaires, at a UN Security Council Briefing on a nerve agent attack in Salisbury, 14 March 2018 (emphasis added).

#### 4. ARTICLE 51 OF THE UN CHARTER

As already discussed in this thesis, there are situations provided for by international law, whether based on the UN Charter or customary law, in which the otherwise prohibited use of force does not constitute a breach of Art. 2(4) of the UN Charter.<sup>205</sup> One of them is self-defense anchored in Art. 51 of the UN Charter:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.<sup>206</sup>

Self-defense against an armed attack regulated by Art. 51 is the only exception to the principle of the prohibition of the use of force foreseen by the UN Charter outside actions mandated by the UN Security Council.<sup>207</sup> The inherent right to self-defense evolved from customary law,<sup>208</sup> just like in case of the prohibition of the use of force. However, the right to self-defense in customary law is ambiguous and it is therefore better to rely on the treaty rule as an “*exclusive regulation of the right to self-defense*”.<sup>209</sup>

Art. 51 of the UN Charter mentions both collective and individual self-defense. The difference is the additional requirement, in case of collective self-defense, for the attacked state to declare being attacked and request the help of third states. Unless an attacked state makes the declaration and requests assistance from other states, collective self-defense cannot be invoked.<sup>210</sup>

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<sup>205</sup> DÖRR, Oliver, RANDELZHOFFER, Albrecht (2012). *Article 2(4)*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume I (Oxford: Oxford University Press), pp. 218-229.

<sup>206</sup> Charter of the United Nations, signed 26 June 1945, in force 24 October 1945, Article 51.

<sup>207</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 259.

<sup>208</sup> BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 41.

<sup>209</sup> RANDELZHOFFER, Albrecht, NOLTE, Georg (2012). *Article 51*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume II (Oxford: Oxford University Press), p. 1404.

<sup>210</sup> ONDŘEJ, Jan (2021). *Vybrané otázky práva mezinárodní bezpečnosti a odzbrojení* (Praha: Wolters Kluwer ČR), p. 67.

#### 4.1. Preconditions for a lawful self-defense

For Art. 51 of the UN Charter to justify a use of force, several requirements must be met. The prerequisite for states to lawfully trigger their right to both individual or collective self-defense, is an existing unilateral unlawful *armed attack*.<sup>211</sup> This condition is confirmed by the ICJ as well, as it stated: “*If the Court found that no armed attack had occurred, then not only would action by the United States in purported exercise of the right of collective self-defence prove to be unjustified, but so also would any action which El Salvador might take or might have taken on the asserted ground of individual self-defence.*”<sup>212</sup> In principle, without an armed attack there is no right to self-defense. Because of the importance of the armed attack requirement, the issue will be discussed in more detail in the following subsection.

The next requirement is necessity. Forcible actions taken in self-defense must be necessary in two respects. First, there is no reasonable or effective non-forcible alternative to the forcible measures. Second, the military action must be defensive.<sup>213</sup> Under no circumstances should it be employed as a punitive or retaliatory measure.<sup>214</sup> Necessity is sometimes further specified by the aspect of immediacy, which commands the defending state to act while the attack is still in progress or immediately after it.<sup>215</sup> Furthermore, proportionality of self-defense must be considered. The proportionality demands that the degree and scope of the defensive conduct as well as the means deployed must not be in obvious disproportion to the attack.<sup>216</sup> Therefore, the response must be appropriate and reasonable. It is, however, a requirement dependent on the context of each case, because there are no predefined guidelines on what a proportional response in self-defense is.<sup>217</sup>

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<sup>211</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 262.

<sup>212</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 51.

<sup>213</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), pp. 299, 300, 305.

<sup>214</sup> BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 65.

<sup>215</sup> RUYSS, Tom (2010). 'Armed Attack' and Article 51 of the UN Charter. *Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 518.

<sup>216</sup> BÍLKOVÁ, Veronika (2008). Vzestup a pád doktríny preventivní války. *Mezinárodní politika*, Vol. 32, No. 3, p. 9.

<sup>217</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), pp. 316, 321.

Finally, the defending state has a duty to report activation of its right to self-defense to the UN Security Council<sup>218</sup> and the duty to refrain from implementing further forcible measures as soon as the UNSC successfully takes “*measures necessary to maintain international peace and security*”.<sup>219</sup> In conclusion, exercising forcible self-defense should be perceived as a temporary, exceptional and subsidiary practice.<sup>220</sup> Ruys explains Art. 51 of the UN Charter from three perspectives, namely *ratione materiae*, *ratione temporis* and *ratione personae*. The first perspective tries to explain what kind of force amounts to armed attack, the second one focuses on the timeframe of the self-defense and the third one considers actors.<sup>221</sup>

#### 4.2. The *ratione materiae* perspective – the notion of armed attack

Art. 51 of the UN Charter clearly states that only *armed attack* might be considered a basis on which the right to forcible self-defense can be invoked. It is accepted that every armed attack is simultaneously qualified as the use of force, but not *vice versa*. Therefore, a distinction between *armed force* prohibited under Art. 2(4) and *armed attack* in Art. 51 is to be made. Only an armed attack triggers self-defense, so if a less grave use of force occurs, states can only resort to countermeasures.<sup>222</sup> The armed attack requirement, however, arouses no less controversies or questions than the definition of the use of force, as the Charter is of no help in respect to the definition. Although UN General Assembly Resolution 3314 (XXIX), Definition of Aggression, was not adopted to define armed attack under Art. 51 of the UN Charter, the document is commonly referred to by academic writers in relation to armed attacks.<sup>223</sup> The Resolution provides a valuable clue on which attacks may qualify as Art. 51's armed attacks.<sup>224</sup>

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<sup>218</sup> RANDELZHOFFER, Albrecht, NOLTE, Georg (2012). *Article 51*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume II (Oxford: Oxford University Press), p. 1424, 1425.

<sup>219</sup> Charter of the United Nations, signed 26 June 1945, in force 24 October 1945, Article 51.

<sup>220</sup> RUYSS, Tom (2010). *'Armed Attack' and Article 51 of the UN Charter. Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 517. And RANDELZHOFFER, Albrecht, NOLTE, Georg (2012). *Article 51*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume II (Oxford: Oxford University Press), p. 1424.

<sup>221</sup> RUYSS, Tom (2010). *'Armed attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 126.

<sup>222</sup> RANDELZHOFFER, Albrecht, NOLTE, Georg (2012). *Article 51*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume II (Oxford: Oxford University Press), p. 1401.

<sup>223</sup> e.g. KLABBERS, Jan (2016). *Intervention, Armed Intervention, Armed Attack, Threat to Peace, Act of Aggression, and Threat or Use of Force: What's the Difference?* In: WELLER, Marc (ed.), *The Oxford Handbook of the Use of Force in International Law* (New York: Oxford University Press).

<sup>224</sup> LIPOVSKÝ, Milan (2017). *Zločin agrese v Římském statutu Mezinárodního trestního soudu po revizní konferenci v Kampale* (Praha: Univerzita Karlova, Právnická fakulta), pp. 35, 36.

Armed attack must be directed against a state within its jurisdiction, regardless of whether the state's citizens, institutions or infrastructure are attacked.<sup>225</sup> In exceptional cases, attacks that occur outside the borders of a state may also trigger the right to self-defense. Such situations might include attacks against flagged vessels or embassies, i.e. “*external manifestations of a state*”.<sup>226</sup> In most cases, however, when a state's citizen was to be targeted outside of the state's borders, the controversial doctrine of protection of nationals abroad would have to be considered. The often-contested doctrine allows a state to exercise its right to self-defense to protect its citizens outside of its jurisdiction without prior consent of the government of the territory, where the defending states' citizens are located at the time when they are affected by an armed attack.<sup>227</sup>

Authors of the Commentary on the UN Charter summarize armed attack as situations “[...] *when force is used on a relatively large scale, is of a sufficient gravity, and has a substantial effect.*”<sup>228</sup> As well as in case of prohibited use of force, some scholars propose a minimal gravity threshold for armed attacks, because the practice suggests that attacks under Art. 51 of the UN Charter must generally reach a certain level of gravity in *scale and effects* for states to lawfully resort to forcible self-defense.<sup>229</sup> In its jurisprudence, the ICJ made a distinction between “[...] *the most grave forms of the use of force (those constituting an armed attack)*” and “*other less grave forms*”.<sup>230</sup> Further distinction was made between an *armed attack* and a *mere frontier incident*, which is considered to be less grave.<sup>231</sup> On the other, small-scale cross-border attacks have been debated as grounds for self-defense in the past, while only very minor frontier incidents were considered to be of lacking gravity to constitute an armed attack.<sup>232</sup>

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<sup>225</sup> BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 50. And HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 267.

<sup>226</sup> RUYSS, Tom (2008). The “Protection of Nationals” Doctrine Revisited. *Journal of Conflict and Security Law*, Vol. 13, No. 2, p. 245.

<sup>227</sup> GRIMAL, Francis, MELLING, Graham (2011). The Protection of Nationals Abroad: Lawfulness or Toleration? A Commentary. *Journal of Conflict and Security Law*, Vol. 16, No. 3, p. 546.

<sup>228</sup> RANDELZHOFFER, Albrecht, NOLTE, Georg (2012). *Article 51*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume II (Oxford: Oxford University Press), p. 1409.

<sup>229</sup> *Ibid.*, pp. 1409, 1410.

<sup>230</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986; p. 191.

<sup>231</sup> *Ibid.*, p. 103.

<sup>232</sup> RUYSS, Tom (2010). ‘Armed attack’ and Article 51 of the UN Charter: Evolutions in Customary Law and Practice (Cambridge: Cambridge University Press), pp. 156, 157. And KRETZMER, David (2013). The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum. *The European Journal of International Law*, Vol. 24, No. 1, p. 243.

The attack's gravity is not, however, ascertained based on specific criteria which are generally defined and required for all attacks to meet. On the contrary, it is the factual case-by-case circumstances of each attack, which are crucial for the decision whether self-defense is permissible, or not. Such circumstances include type of employed weapons, inflicted harm or duration of the attack.<sup>233</sup> As regards the used weapons, they may range from typical ones, such as explosives or small arms, to unconventional ones, e.g., an object which was not intended as a weapon but was turned into one (hijacked airplane).<sup>234</sup> Considering the factor of violent effect, the attack is generally required to inflict human casualties or considerable destruction of property.<sup>235</sup> And in practice, it is mainly the consequences of the attack which is essential for the assessment.<sup>236</sup>

As already indicated, practice does not seem to require an armed attack to use a massive-scale force or have dire consequences for self-defense to be permissible.<sup>237</sup> This opinion is supported by the ICJ Oil Platforms judgement, in which it ruled: “*The Court does not exclude the possibility that the mining of a single military vessel might be sufficient to bring into play the "inherent right of self-defence".*”<sup>238</sup> Due to the uncertainty about minimal intensity of an armed attack, a wide range of attacks of varying intensity can be the basis for the exercise of the right to self-defense.

In relation to the minimal-threshold-phenomenon, the accumulation of events doctrine has formed. This theory acknowledges the possibility that a series of related consecutive smaller-scale attacks would still allow for invocation of Art. 51. In other words, individually the attacks would not be considered grave enough, but cumulatively they trigger the attacked state's right to self-defense.<sup>239</sup> However, the accumulation of events theory is questionable. Although the

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<sup>233</sup> BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 46.

<sup>234</sup> RUYSS, Tom (2010). *'Armed attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 176.

<sup>235</sup> ZEMANEK, Karl (2013). *Armed Attack*. Encyclopedia entry. In: Max Planck Encyclopedia of Public International Law, p. 10. And RUYSS, Tom (2010). *'Armed attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 522.

<sup>236</sup> RUYSS, Tom (2010). *'Armed attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 177.

<sup>237</sup> *Ibid.*, p. 520.

<sup>238</sup> Oil Platforms (Islamic Republic of Iran v. United States of America), Judgement, I.C.J. Reports 2003, p. 72.

<sup>239</sup> BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 46. Or HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press, p. 291.

ICJ also recognized this theory in the past, there can be no question of general acceptance of the accumulation of events doctrine.<sup>240</sup>

### 4.3. The *ratione temporis* perspective

The temporal perspective has two aspects, namely when does lawful self-defense start and when does it end. I will start with the former aspect.

According to Art. 51 of the UN Charter “*nothing shall impair the inherent right to self-defense if an armed attack occurs.*”<sup>241</sup> Among scholars there is barely any doubt about admissibility of reactive self-defense, i.e. self-defense following a launched attack which is still in progress. In practice, however, we can also encounter actions of self-defense which precede the attack itself. Self-defense undertaken in advance is either anticipatory, pre-emptive, or preventive. However, understanding of the aforementioned terms varies. Some differentiate between all three,<sup>242</sup> some perceive anticipatory self-defense as an umbrella term,<sup>243</sup> and some do not consider the category of pre-emptive self-defense at all.<sup>244</sup>

In Deeks's definition, anticipatory self-defense is exercised when the attack is absolutely imminent, proximate, inevitably about to happen.<sup>245</sup> This category is thus strictly based on the *Webster formula*, articulated in the Caroline case as “*a necessity of self-defence, instant, overwhelming, and leaving no choice of means, and no moment for deliberation*”.<sup>246</sup> Deeks further explains that for some academics, the temporal imminence is what distinguishes anticipatory from pre-emptive self-defense. In the pre-emptive approach, the defending state is allowed to take action as soon as it has no reason to doubt that the adversary state has *intent and capacity* to attack.<sup>247</sup> That is, if it is clear from contextual factors that the threat is very real,

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<sup>240</sup> KRETZMER, David (2013). The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum. *The European Journal of International Law*, Vol. 24, No. 1, p. 263. Or BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), pp. 47, 48.

<sup>241</sup> Charter of the United Nations, signed 26 June 1945, in force 24 October 1945, Article 51.

<sup>242</sup> e.g. DEEKS, Ashley (2016). *Taming the Doctrine of Pre-Emption*. In: WELLER, Marc (ed.), *The Oxford Handbook of the Use of Force in International Law* (New York: Oxford University Press), pp. 663 et seq.

<sup>243</sup> e.g. RUYSS, Tom (2010). ‘*Armed attack*’ and Article 51 of the UN Charter: *Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 252.

<sup>244</sup> e.g. BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 59-65.

<sup>245</sup> DEEKS, Ashley (2016). *Taming the Doctrine of Pre-Emption*. In: WELLER, Marc (ed.), *The Oxford Handbook of the Use of Force in International Law* (New York: Oxford University Press), pp. 662, 665, 666.

<sup>246</sup> ŠTURMA, Pavel (ed.) (2019). *Casebook. Výběr případů z mezinárodního práva veřejného*. Fourth Edition (Praha: Univerzita Karlova, Právnická fakulta), pp. 255, 258, 259.

<sup>247</sup> DEEKS, Ashley (2016). *Taming the Doctrine of Pre-Emption*. In: WELLER, Marc (ed.), *The Oxford Handbook of the Use of Force in International Law* (New York: Oxford University Press), pp. 662, 663, 666, 667.

at least its preparation seems to be in motion.<sup>248</sup> Basically, it is a defense against a situation which is one step more distant from the actual beginning of an attack than “imminent” or “about to happen right away”. In parallel, Buchan and Tsagourias point out that the imminence requirement should be understood broadly, especially in a world where weapons of mass destruction exist. From their point of view, an attack is imminent at the very moment when it is the state's last chance to defend itself, i.e. there may still be a few steps left to the actual execution of the attack, but once these steps would be employed, it would simply be too late for the defending state to effectively protect itself.<sup>249</sup>

Ondřej labels the former situation a pre-emptive self-defense, as he only distinguishes between pre-emptive and preventive self-defense.<sup>250</sup> In a similar vein, Ruys considers the response to imminent threat a pre-emptive self-defense and recognizes the latter intent-and-capacity-situation as “interceptive” self-defense.<sup>251</sup> As showed, such terminological contradictions make it difficult to reach a definite conclusion about types and lawfulness of “detering” self-defense.

The third considered category is preventive self-defense. The preventive self-defense started to gain attention after the US forces invaded Iraq in 2003, but the doctrine has never been accepted in practice and has been rejected by vast majority of scholars.<sup>252</sup> Preventive self-defense is supposed to eliminate non-imminent threats, meaning it averts a threat which may or may not become an attack sometime in the future.<sup>253</sup> Erakat notes that such understanding of the imminence factor “[...] *redefines it as the probability of an attack*”.<sup>254</sup> For instance, efforts of the adversary to obtain weapons of mass destruction have been argued to constitute such attack in the past.<sup>255</sup> The authors of a Commentary to the UN Charter warn that any invocation

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<sup>248</sup> ERAKAT, Noura S. (2014). New Imminence in the Time of Obama: The Impact of Targeted Killings on the Law of Self-Defense. *Arizona Law Review*, Vol. 56, No. 1, pp. 207, 208. And HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 430.

<sup>249</sup> BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), pp. 63, 64.

<sup>250</sup> ONDŘEJ, Jan (2021). *Vybrané otázky práva mezinárodní bezpečnosti a odzbrojení* (Praha: Wolters Kluwer ČR), pp. 61, 62.

<sup>251</sup> RUYSS, Tom (2010). *‘Armed attack’ and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 525.

<sup>252</sup> BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 61.

<sup>253</sup> BÍLKOVÁ, Veronika (2008). Vzestup a pád doktríny preventivní války. *Mezinárodní politika*, Vol. 32, No. 3, p. 8.

<sup>254</sup> ERAKAT, Noura S. (2014). New Imminence in the Time of Obama: The Impact of Targeted Killings on the Law of Self-Defense. *Arizona Law Review*, Vol. 56, No. 1, p. 227.

<sup>255</sup> RUYSS, Tom (2010). *‘Armed attack’ and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), pp. 320 et seq.

of self-defense other than reactive is prone to abuse and should thus remain very limited and exceptional. They also add that there should be heavy burden of proof to bear for those, who resort to self-defense in advance.<sup>256</sup>

The second important temporal aspect is duration of the right to self-defense. This aspect is closely related to other preconditions for exercising self-defense – necessity, proportionality, immediacy, and to the role of the UN Security Council in the process. Duration of measures taken in self-defense depends on the scale and duration of the attack. The smaller the scale of the attack, the shorter the response should generally be. But when a state faces recurring attacks or attacks which are large in scope, its defensive action can be more extensive, as the attacks are harder to repel.<sup>257</sup> Duration of the response must, however, be adequate to the attack in any respect, not just the scale of it. In any case, the right to self-defense ceases to exist at the moment the UNSC takes effective and successful peace-restorative action.<sup>258</sup>

#### **4.4. The *ratione personae* perspective**

It has been already mentioned that to invoke the right to self-defense, the target of the armed attack must be a state. But the perpetrator of the armed attack must be regarded, too. Opinions on whether armed attacks carried out by non-state actors may provide grounds for self-defense differ. Even though Henderson<sup>259</sup> or Kretzmer<sup>260</sup> admit that it is possible to invoke self-defense against non-state actors' armed attacks, the predominant academic opinion only accepts self-defense against armed attacks by states.<sup>261</sup>

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<sup>256</sup> RANDELZHOFFER, Albrecht, NOLTE, Georg (2012). *Article 51*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume II (Oxford: Oxford University Press), p. 1424.

<sup>257</sup> GILL, Terry (2016). *When Does Self-Defence End?* In: WELLER, Marc (ed.), *The Oxford Handbook of the Use of Force in International Law* (New York: Oxford University Press), p. 750.

<sup>258</sup> *Ibid.*, p. 751.

<sup>259</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), pp. 264 et seq.

<sup>260</sup> KRETZMER, David (2013). The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum. *The European Journal of International Law*, Vol. 24, No. 1, p. 247.

<sup>261</sup> e.g. ORAKHELASHVILI, Alexander (2016) In: WELLER, Marc (ed.), *The Oxford Handbook of the Use of Force in International Law* (New York: Oxford University Press), pp. 171, 172.

## 5. TARGETED KILLINGS UNDER ARTICLE 51 OF THE UN CHARTER

Now that the key aspects of the Art. 51 of the UN Charter have been summarized, I will apply the conclusions on targeted killings. In light of Art. 51 of the UN Charter, targeted killings can be analyzed from two perspectives. The first one is whether targeted killings can constitute an armed attack and can thus be grounds for invoking the right to self-defense. This perspective receives much less attention in legal writings than the second one, which considers under what conditions and for how long can targeted killings be employed as a means of lawful self-defense.

### 5.1. Targeted killings as armed attack

First, an armed attack under Art. 51 of the UN Charter must be an attack directed against citizens, institutions or infrastructure of state, which is also characterized by intent, as the execution of it is not accidental or unintended. Such features can be found in cases of targeted killings. The aim of such attacks is to deprive a person or a small group of people of life, the motivation for execution of targeted killings is therefore to kill selected persons. Also, targeted killings are not coincidental. They are mostly operations which require thorough planning and oftentimes advanced technology to be executed successfully.

Second, the gravity and scale must be considered. But assessment of how severe an attack has to be to constitute an armed attack is far from straightforward. In case of targeted killings, it is even more complicated because of the wide range of attacks which can all be qualified as targeted killings. It has already been concluded that targeted killings constitute a use of force. They are thus executed by states against, they are armed, employ weapons and result in deaths. These conclusions, however, do not necessarily indicate that they constitute an armed attack as well. According to Henderson, in customary practice armed attacks triggering the right to self-defense are not necessarily expected to be large-scale.<sup>262</sup> On the other hand scholarly texts often mention substantial effect, loss of lives, extensive destruction of property or military territorial intrusions<sup>263</sup> as being representative of an armed attack. Further, Kretzmer

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<sup>262</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), pp. 281-285.

<sup>263</sup> ZEMANEK, Karl (2013). *Armed Attack*. Encyclopedia entry. In: Max Planck Encyclopedia of Public International Law, p. 10. And RUYSS, Tom (2010). *'Armed attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 155. And RANDELZHOFFER, Albrecht, NOLTE, Georg (2012). *Article 51*. In: SIMMA, Bruno, KHAN Daniel-Erasmus, NOLTE, Georg, PAULUS, Andreas (eds.), *The Charter of the United Nations, A Commentary*, Third Edition, Volume II (Oxford: Oxford University Press), p. 1409.

admits that “[armed attack] *may range from a fairly restricted use of force, such as a border raid causing limited loss or damage, to a full-scale invasion of its territory.*”<sup>264</sup> While targeted killings' objective is to kill an individual or a small group of selected individuals at the most, the attacks often generate collateral damage which means that more people get killed or severely injured than intended.<sup>265</sup> Among those affected by the attacks are often civilians.<sup>266</sup>

An example for such an attack could be the Skripal case. Although the alleged target of the attack was Sergei Skripal, Novichok poisoned several other people, one of whom died. However, in this particular case, I doubt that it could constitute an armed attack. First, while the UK explicitly labeled the attack a ‘*use of force*’,<sup>267</sup> it has never treated it as an armed attack. Second, all things considered, the gravity in scale, intensity and effect is still relatively low in comparison to other attacks that might be considered to amount to an armed attack. Third, the attack was a covert operation, so the UK had to first conduct investigation to determine what happened. In my opinion, the delay between the timeframe of the poisoning and the moment it became clear who the attacker was, was too long. Any forcible measure the UK could have taken after the attack would have simply been futile, as the attackers' actions had already been terminated and exposure to the poison could not have been prevented by force. Hence, there would have not been any action to deter.

As for the targeted killings of terrorist leader bin Laden in Operation Infinite Reach and Iranian Gen Soleimani which both resulted in several deaths (see Chapters 1.2.2.1 and 1.2.3.1), neither of them was labeled as armed attack. On the other hand, I have already mentioned that targeted killings are generally no large-scale attacks, and these two cases are no exceptions, despite their extent and gravity. While theory does not rule out the possibility that small-scale attacks like targeted killings may individually constitute an armed attack, it is not extraordinary that cases such as the discussed ones were not considered under Art. 51 of the UN Charter.

However, in relation to targeted killings, the accumulation of events theory comes into consideration, even though it is not generally accepted. Provided that a series of connected smaller attacks occurs, it may amount to an armed attack and trigger the right to self-defense.

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<sup>264</sup> KRETZMER, David (2013). The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum. *The European Journal of International Law*, Vol. 24, No. 1, p. 243.

<sup>265</sup> UN Doc. A/HRC/44/38, CALLAMARD, Agnès. Use of armed drones for targeted killings: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 15 August 2020, p. 6.

<sup>266</sup> KRISHNAN, Armin (2012). *Gezielte Tötung: die Zukunft des Krieges* (Berlin: MSB Matthes & Seitz Berlin), p. 72.

<sup>267</sup> Statement by Ambassador Jonathan Allen, Chargé d’Affaires, at a UN Security Council Briefing on a nerve agent attack in Salisbury, 14 March 2018.

It is irrelevant, whether the related attacks are operated in the same way or each of them is different.<sup>268</sup> When applied to targeted killings, the doctrine suggests that it is not important whether the individual cases of targeted killings constituted armed attacks. What is of significance, however, is the cumulation over time, which effectively intensifies the related attacks, so that all of them together can be considered an armed attack. If a targeted killing was a part of such a series of attacks, or if the series consisted entirely of targeted killings, it would be possible to argue that the targeted killing together with the other attacks constituted an armed attack.

Overall, it cannot be ruled out that some intense and grave cases of targeted killings may constitute an armed attack, but as already pointed out, it always depends on the specific circumstances, which can vary significantly considering how many forms can targeted killing take. On a final note, given that this analysis is conducted within the framework of norms that are intended to prevent states from resorting to violence in international relations, I think it is not only appropriate, but desirable to be cautious about drawing a generalized conclusion that every targeted killing qualifies as an armed attack.

## **5.2. Targeted killings as acts of self-defense**

Unlike the considerations of whether targeted killings constitute an armed attack, their employment as means of self-defense is relatively common. The right to self-defense has been repeatedly used as a justification for executing a targeted killing.<sup>269</sup> At the same time, targeted killings are often associated with the fight against terrorism,<sup>270</sup> as explained in Chapter 1 of this thesis. And for that reason, the effort to find legal grounds for their execution can lead to attempts to expand the meaning of imminent armed attack. Melzer and Erakat both bring attention to the fact that the imminence factor frequently lacks on occasions when targeted killings are used in self-defense.<sup>271</sup> According to Erakat, because of the US' aspiration to reshape the imminence requirement, the practice of targeted killings undertaken in self-defense

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<sup>268</sup> BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 46. Or HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press, p. 291

<sup>269</sup> HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), p. 428.

<sup>270</sup> HUNTER, Thomas B. (2009). Targeted Killing: Self-Defense, Preemption, and the War on Terrorism. *Journal of Strategic Security*, Vol. 2, No. 2, pp. 1-52. Or ERAKAT, Noura S. (2014). New Imminence in the Time of Obama: The Impact of Targeted Killings on the Law of Self-Defense. *Arizona Law Review*, Vol. 56, No. 1, pp. 211-221.

<sup>271</sup> MELZER, Nils. (2008). *Targeted Killing in International Law* (Oxford: Oxford University Press), pp. 52, 53. And ERAKAT, Noura S. (2014). New Imminence in the Time of Obama: The Impact of Targeted Killings on the Law of Self-Defense. *Arizona Law Review*, Vol. 56, No. 1, pp. 211-221.

significantly increased, especially against non-state actors.<sup>272</sup> The US implements an extensive interpretation of imminence so as to justify the targeted killings eliminating future threats. Consequently, such attacks seem to have the characteristics of preventive self-defense, rather than anticipatory or pre-emptive. However, the doctrine of preventive self-defense is fairly controversial.<sup>273</sup>

For instance, after targeting Gen Soleimani the United States reported the invocation of Art. 51 of the UN Charter to the UNSC. The US justified the targeted killing as response to “*an escalating series of armed attacks*” and as means of preventing further attacks.<sup>274</sup> It claimed neither an ongoing attack nor any *imminent* attacks. Thus, the US failed to prove that their resort to self-defense was permissible. The most obvious reason why is the timeframe. None of the alleged armed attacks was ongoing, so the attack on Soleimani could not be a reactive self-defense that was supposed to stop the armed attack. As to the claim that the targeted killing was meant to deter future attacks, the US did not provide evidence of imminence of such attacks. A mere possibility that the adversary might strike again sometime in the future is insufficient.

Furthermore, it is controversial to attack a high-profile military member of a sovereign country in self-defense based on attacks perpetrated by a militia group – Hezbollah in this case. It is possible for the attacked state to lawfully take action against a non-state actor as well as a state. But in this case the US claimed to be acting in self-defense against Iranian attacks as well as its proxy militias.<sup>275</sup> It is highly unlikely that Hezbollah's conduct could be attributed to Iran based on the aforementioned rules anchored in Arts. 4–11 ARSIWA.

For these reasons, the case of targeting Gen Soleimani does not seem to be a good example of a targeted killing used in self-defense. Ideally, the US should have resorted to force only provided the following conditions were satisfied: States can only employ measures in self-defense against actors, to whom is the armed attack attributable. It is not possible to take action against an actor which has not carried out any armed attack. The alleged armed attack should still be underway, or the defending state should reasonably believe that the other state has the

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<sup>272</sup> ERAKAT, Noura S. (2014). New Imminence in the Time of Obama: The Impact of Targeted Killings on the Law of Self-Defense. *Arizona Law Review*, Vol. 56, No. 1, p. 220.

<sup>273</sup> ONDŘEJ, Jan (2021). *Vybrané otázky práva mezinárodní bezpečnosti a odzbrojení* (Praha: Wolters Kluwer ČR), pp. 62, 63. Or BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 61. Or RUYSS, Tom (2010). *'Armed attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge: Cambridge University Press), p. 322.

<sup>274</sup> The Article 51 UN Charter Notification Letter from the United States Mission to the United Nations to the President of the United Nations Security Council, 8 January 2020.

<sup>275</sup> *Ibid.*

ability and intention to execute an imminent armed attack. Given how vaguely the US described the possible future Iranian attacks, it gives the impression that it was justifying preventive self-defense.

In addition to adherence to the timeframe of a lawful self-defense and the obligation to take defensive action only against the actor who carried out an armed attack, targeted killings executed in self-defense must be necessary and proportional.<sup>276</sup> This means that a response to an armed attack in form of a targeted killing is necessary, as anything less severe would not effectively halt the attack. To the defending state selecting a person and then killing them must seem like a reasonable means of preventing either completion of an ongoing armed attack or launch of an armed attack which seems to be imminent. And even when it is necessary for the state to take forcible action and defend itself, the chosen form of defense must be proportional to the attack. And given that targeted killings aim to kill, it is crucial to examine the gravity of the armed attack in contrast to deprivation of human life. As in other cases of self-defense, when executing a targeted killing in self-defense, in the attacked state is not exempted from the obligation to report the exercise of its right under Art. 51 of the UN Charter to the UNSC.

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<sup>276</sup> e.g. HENDERSON, Christian (2024). *The Use of Force and International Law*, Second Edition, (Cambridge: Cambridge University Press), pp. 299, 300, 305, 316, 321. Or BUCHAN, Russel, TSAGOURIAS, Nicholas (2021). *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing Ltd), p. 65. Or BÍLKOVÁ, Veronika (2008). Vzestup a pád doktríny preventivní války. *Mezinárodní politika*, Vol. 32, No. 3, p. 9.

## CONCLUSION

Targeted killings are a doctrinal concept which lacks authoritative definition. Because of that, there are differences in what individual scholars consider to be a targeted killing. Nevertheless, it is possible to point out characteristics which make up the very essence of targeted killings. They are premeditated and deliberate forcible actions whose objective is to kill an individual or a small group of individuals. The targeted persons are always carefully selected prior to the attack. As there is no uniform and comprehensive legal framework of targeted killings, my intention in this thesis was to consider them within the ambit of *jus ad bellum* norms. It was possible to draw these general conclusions:

1. Do targeted killings constitute a prohibited use of force under Article 2(4) of the UN Charter?

The prohibition of the use of force enshrined in Art. 2(4) of the UN Charter is a peremptory norm anchored both in treaty and international custom. Nonetheless, the contents of the non-use of force principle remains a subject of scholarly debate to this day. For comprehension of what makes a conduct prohibited under Art. 2(4), the wording of the article and the meaning of force must be considered.

For a forcible attack to fall within the purview of Art. 2(4), it must be executed by a state against a state as a trans-frontier action which contradicts purposes of the UN in any manner. There is a consensus, that the employed force must be armed. *Armed* is to be understood as weaponized in broad sense of the word, as poisonings may well fall within the scope of prohibited force. However, it is the effect of the employed force that is crucial for ascertaining whether the attack breached Art. 2(4) of the UN Charter. The effect of the use of force should be non-abstract, causing for example death or serious damage. In my argumentation I have advocated for scholarly opinions which claim that the idea of *de minimis* threshold should be dismissed. Therefore, provided the attack shows these characteristics, gravity is irrelevant.

It is possible to conclude that targeted killings fall within the scope of the prohibition of the use of force. State-sponsored targeted killing is an extraterritorial practice. If the attack is attributable to a state, there is no doubt that it happens within *international relations*, as required by the provision. Targeted killings also employ weapons, e.g., machine gun, UAV or poison, because their essence lies within the intention to project lethal force against an individual. In other words, targeted killings result in human casualties and may inflict damage of property.

Indeed, targeted killings do not seem to be of great gravity but following the argumentation on non-existence of minimal gravity threshold, such circumstance is irrelevant.

2. Do targeted killings constitute an armed attack under Article 51 of the UN Charter?

Armed attack is nowadays defined as a deliberate, intensified use of force against a state which is sufficiently grave in scale and effects to trigger the right to self-defense. At the same time, it has been argued that attacks do not have to be massive to qualify as armed attack. The issue is that it is difficult to draw a clear line between “mere” use of force and an armed attack. There are no predefined criteria of armed attack and so the attack's entire context must always be considered before drawing a conclusion.

In theory, targeted killings seem to fit the description of armed attack under Art. 51 of the UN Charter – they are deliberate, hostile, weaponized, and (mostly) directed against a state through its citizens. But it is the gravity or intensity requirement which is problematic. Even though the gravity threshold of armed attack should not be high, I do not think that targeted killings performed in accordance with their objective, i.e. without causing or being capable of causing collateral harm to individuals who were not intentionally targeted or without considerable destruction of property, should be considered an armed attack. Ultimately, it is necessary to assess each attack individually. The implications of a precise attack carried out in the middle of a desert resulting in death of one person might be very different from targeted killings executed on a busy street.

3. Under what conditions may states use targeted killings as a means of lawful self-defense under Article 51 of the UN Charter?

One of the UN-Charter-based exceptions to the prohibition of the use of force is the inherent right to individual or collective self-defense enshrined in Art. 51. The article allows states to use targeted killings in order to defend themselves or help defend an attacked state which asked for help. This right can be exercised only when an armed attack occurs.

It has been concluded that self-defense employing targeted killings is permissible against an armed attack in progress (reactive self-defense). I have also mentioned that some scholars admit possible lawfulness of self-defense invoked prior to an attack, provided the attack is imminently about to be executed or when a defending state has a reliable intelligence about another state's clear intent and capacity to carry out an attack very soon in the future. Due to terminological discrepancies, such self-defense would be called either anticipatory or pre-

emptive. The doctrine of preventive self-defense was rejected, as it is lacking wider support both in practice and among scholars. However, in relation to the topic of this thesis preventive self-defense cannot be overlooked. There are many cases of targeted killings which were employed as means of self-defense without the condition of ongoing or imminent armed attack being satisfied, as their executors often try to justify them the grounds of counterterrorist efforts.

Moreover, for targeted killings to be considered a lawful means of self-defense, following criteria must be met. First, self-defense is an *ultima ratio* measure. Thus, there must be an absolute necessity for the defending state to use forcible action such as killing a person, as non-forcible conduct would not be an effective protection. Next limitation to self-defense is proportionality. This principle ensures that conducting the attack and causing death is an appropriate answer to the gravity of the executed attack and is not excessively disproportionate. The attacked state also has a duty to report to UNSC that it has been attacked and invokes Art. 51 of the UN Charter and an obligation to halt self-defense as soon as the UNSC successfully implements necessary measures.

In conclusion, this thesis dealt with targeted killings executed by state actors. However, given the growing importance of non-state actors in public international law, further research on targeted killings operated by such actors would provide valuable information. Furthermore, the conducted analysis considered targeted killings only from the perspective of *jus ad bellum* legal framework. But the concept of targeted killings carries significant implications for human rights law and as well as international humanitarian law. These two legal perspectives are equally as relevant for a comprehensive assessment of targeted killings as the *jus ad bellum*.

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## **Cílená zabíjení ve smyslu článků 2 odst. 4 a 51 charty OSN**

### **ABSTRAKT**

Autorka se v předkládané diplomové práci zabývá tématem cílených zabíjení, a to v kontextu mezinárodního práva veřejného. Útoky v podobě cílených zabíjení posuzuje konkrétně z pohledu základních ustanovení právního rámce jus ad bellum. Autorka si v práci klade za cíl zodpovědět tři výzkumné otázky, a to, zda mohou být cílená zabíjení považována za použití síly ve smyslu čl. 2(4) Charty OSN, dále zda mohou být cílená zabíjení považována za ozbrojený útok podle čl. 51 Charty OSN a také za jakých podmínek je přípustné použít cílená zabíjení jako prostředek sebeobrany.

Jelikož jsou cílená zabíjení nevyjasněným doktrinárním pojmem, autorka v první kapitole obsah tohoto pojmu shrnuje a cílená zabíjení pro účely práce tak definuje. Dále uvádí tři případy použití cílených zabíjení v praxi s cílem ilustrovat, jak širokou škálu útoků pojem zahrnuje. V následujících kapitolách se autorka zaměřuje na vymezení obsahu ustanovení čl. 2(4) Charty OSN, tedy zákazu použití síly, a čl. 51 Charty OSN, který zaručuje přirozené právo států na sebeobranu.

Na obsahu zkoumaných článků však neexistuje shoda ani mezi státy, ani mezi akademiky. V otázce zakázaného použití síly formulovaného v čl. 2(4) Charty OSN je sporná zejména existence minimálního prahu závažnosti útoku, který musí být překročen, aby bylo možné hovořit o zakázaném použití síly hovořit. A pokud takový práh existuje, není jednoznačné, kde leží jeho hranice. Co se týče čl. 51 Charty OSN, tam se názory rozcházejí především v otázce podmínek výkonu sebeobrany, zejména z pohledu jejího temporálního vymezení. Autorka za pomoci analytické metody shrnuje současné pojetí těchto ustanovení, přičemž zohledňuje i menšinové akademické názorové proudy.

Jádrem práce jsou pak kapitoly, ve kterých autorka aplikuje závěry o obsahu čl. 2(4) a 51 Charty OSN na cílená zabíjení a syntetickou metodou tak zodpovídá stanovené výzkumné otázky.

**KLÍČOVÁ SLOVA:** cílená zabíjení – zákaz použití síly – ozbrojený útok – sebeobrana

## **Targeted Killings under Articles 2(4) and 51 of the UN Charter**

### **ABSTRACT**

In the present thesis, the author deals with the topic of targeted killings in the context of public international law. Specifically, targeted killings are considered through the lenses of the fundamental provisions of the jus ad bellum legal framework. The objective of the thesis is to answer three research questions, namely whether targeted killings constitute a use of force under Article 2(4) of the UN Charter, whether targeted killings can be considered an armed attack under Article 51 of the UN Charter, and finally, under what conditions may states use targeted killings as a means of self-defense under Article 51 of the UN Charter.

Given the doctrinal nature of the term, the author provides a definition of targeted killings in the first chapter. The author further summarizes three examples of targeted killings carried out in the past in order to demonstrate the variety of the attacks which may be designated as targeted killings. In the subsequent chapters, the author focuses on the scope of Article 2(4) of the UN Charter, i.e. prohibition of the use of force, and Article 51 of the UN Charter which guarantees the states' inherent right to self-defense.

However, the scope of the researched articles remains disputed to this day. In relation to the prohibition of the use of force formulated in Article 2(4) of the UN Charter, particularly discussed is the existence of minimal threshold of gravity. A consensus is yet to be found on how grave must an attack be to constitute a prohibited use of force. Or whether such threshold exists at all. As for Article 51 of the UN Charter, opinions differ mainly on the issue of the conditions of lawful exercise of self-defense, especially its temporal aspect. Using an analytical method and factoring in minority academic opinions, the author summarizes the current understanding of the researched provisions.

Using the synthetic method, the author then applies the conclusions on the scope of Articles 2(4) and 51 of the UN Charter to targeted killings. These chapters are crucial for providing answers to the research questions.

**KEY WORDS:** targeted killings – prohibition of the use of force – armed attack – self-defense