

# Challenges in Global Affairs, Final Project

## *The legitimacy of unilateral breaches of domestic sovereignty: a political legal approach*

---

### **Introduction**

What makes the breach of the sovereignty of another country legitimate? In February 2014, Russian forces invaded the Crimean peninsula following the aftermath of president Yanukovych fleeing the country as a result of great civil unrest. This unilateral action of the Russian Federation was not backed by the approval of an international organization such as the UN or NATO. Sparking a lot of controversy in Western media, this invasion was proclaimed as being both illegal and illegitimate by many. Just a year before that US Navy Seals raided the compound of Osama Bin Laden near Abbottabad, Pakistan. This action was not sanctioned by international organizations either. However this time the breach of national sovereignty was barely mentioned by the same media outlets and the mission was portrayed as a success. Using these and other cases this essay aims to answer the question what makes the invasion of other countries legitimate. By looking on the concept of legitimacy rather than focusing on the legal basis, the broader political and societal circumstances can be taken into account.

In this paper the theoretical context of political legitimacy will be looked at by turning to the realm of political philosophy. Here two approaches to the topic will be identified and examined. After this five cases will be presented to look at the theoretical concept in practice. Having presented the cases, the paper will turn to analyzing them before turning to the conclusions and discussion of the results.

### **Methodology**

This paper uses a political legal approach to the topic of unilateral breaches of domestic sovereignty. It limits itself in scope by looking only at breaches of domestic sovereignty by state actors and leaves out breaches by other groups such as terrorists. In a political legal approach the circumstances under which events happened are analyzed to determine why societal phenomena are regulated in specific way. This non-evaluative approach focusses on which interest have been taken into account in the decision making process and how relevant concerns were protected in the case at hand (Lindgard et al., 2014). This methodology is relevant for this paper as it does not take sides in the conflict but tries to come to its own independent conclusion based on facts and theory. In researching the concept of legitimacy this is important as different sides often hold different views about the legitimacy of an action. Although important, these discussions should take place in the political arena rather than a scientific one. Politicians, not researchers, decide on possible actions which include political (diplomacy), economic (economic sanctions) or military (war) options in bilateral and multilateral conflicts. Therefore, it is up to researchers to come to their own conclusions independently while being free of political influences.

Using five cases, this paper will try to find commonalities that make breaches of sovereignty legitimate in the eyes of the people. This paper will look at three reasons used by governments in justifying these actions: breaches aimed at bringing individuals to justice, breaches aimed at relieving human suffering

and breaches pursuing political goals. Cases were selected using convenience sampling (Onwuegbuzie & Leech, 2007) based on familiarity of the author with the cases. Each of the cases will be shortly introduced before the legitimization used in the case is analyzed. An overview of the cases used is presented in table 1.

**Table 1: cases used**

#	Name	Breaching state	Breached state	Short description
1	The Eichmann kidnapping	Israel	Argentina	Mossad kidnaps Nazi lieutenant Adolf Eichmann from his home in Argentinean to be tried in Israel
2	The Osama Bin Laden assassination	United States	Pakistan	US Navy Seals assassinate Osama Bin Laden in his compound in Abbottabad, Pakistan
3	The intervention in Kosovo	Coalition of NATO members	Former Yugoslavia	NATO intervenes in former Yugoslavia through strategic airstrikes.
4	The invasion of Iraq	United States	Iraq	An alliance led by the US and UK invaded Iraq after accusations of Saddam Hussein breaching the Geneva conventions.
5	The Crimean invasion	Russian Federation	Ukraine	The Russian Federation invades the Crimean peninsula and annexes it.

## **A theoretical approach to the concept of legitimacy**

Before looking at the cases at hand the concept of legitimacy has to be defined. Political legitimacy is the recognition and acceptance by the people of an authority of a system or government (Aragon, 2009). Questioning legitimacy is therefore about questioning the authority (or actions derived from this authority) of the governing bodies about the acceptance by those who are governed. According to Weber (1991; 1964), people give legitimacy to political systems based on three reasons: tradition (because something has been there for a long time), charisma (people have faith in their rulers) or because of legality (trust in the rule of law). Therefore, in breaches of domestic sovereignty, at least one of these elements has to be present in order for it to be seen as legitimate. However, presenting legitimacy this way only uses the descriptive element of the definition whereas a normative approach might also be appropriate given the use of some kind of benchmarks as a reason for justifying breaches in domestic sovereignty. Here, legitimacy is linked to moral justice (Rawls, 1993). Breaches in domestic sovereignty are in this perspective justified if they are the right thing to do from a moral perspective. Using both these perspectives gives a wide range of opportunities to justify actions in foreign territory.

Besides looking at the reasons used to legitimize the actions of a government or organization, it is also important to incorporate the perception of people who are under the authority of a government or organization as a result of its action. It is they who face the day to day consequences of these actions making them relevant to include in the investigation. In the case of breaches of domestic sovereignty, this concept can be broadened to the people who live in the breached country. By looking at both the invader and the invaded, a comprehensive view of the legitimacy of an action can be derived.

## Presentation of the cases

In this section, the cases used to analyze the concept of legitimacy in breaches of domestic sovereignty are presented. For each case a short description of the events that led up to the actions, the motivation for the action and the reactions from the various stakeholders is given. These are then analyzed in the next section for patterns.

### *Case 1: the Eichmann kidnapping*

In May 1960, Israeli intelligence kidnapped ex-SS officer Adolf Eichmann from his hiding place in Argentina and brought him to Israel. Here, he was prosecuted for his acts during the Second World War as an SS-officer responsible for planning the transports to the concentration camps. Argentina, being outraged over this breach of domestic sovereignty, claimed Israel violated international law (The Guardian, 2013). Stating Israel should have informed Argentinean authorities and officially ask for the apprehension of Eichmann, Argentinean authorities filed an official complaint with the UN and demanded compensations (Grobman, 1997). Eventually this would lead to Israel apologizing for the breach but would not return Eichmann. Argentina did not consider this apology enough and send the Israeli ambassador home although diplomatic relations were not broken. Israel justified its actions by using the moral argument Eichmann had committed crimes against the people of Israel and thus had the right to prosecute him (Leavy, 1962). News outlets worldwide reacted split to these events with calling anything connected with the indictment of Eichmann tainted with lawlessness but also that bringing Eichmann to justice was legal (Grobman, 1997). Overall, this action did not led to a major diplomatic incident.

### *Case 2: the Osama Bin Laden assassination*

In May 2011, US Navy Seals conducted an operation in Abbottabad, Pakistan aimed at the capture or killing of Osama Bin Laden, the leader of Al Qaeda. Bin Laden was killed during this action. Pakistani government officials condemned the operation claiming it was the greatest humiliation for Pakistan since Eastern Pakistan seceded to form Bangladesh. Stating the US had disregarded Pakistani sovereignty, it even classified the operation as an act of war (Strange, 2013). US officials announced it did not inform the Pakistani government as they were afraid this would result in Bin Laden escaping (Strange, 2013). Although the action resulted in the US-Pakistani relations taking a blow, it did not affect in any complaints with the UN or other diplomatic measures. Currently, relations have returned to a normal level (U.S. Department of State, 2014).

### *Case 3: military intervention in Kosovo*

In March 1999, NATO forces launched an air strike campaign to prevent human suffering in the Kosovo province (part of former Yugoslavia). During 78 days, bombing raids were carried out to prevent violence and repression in Kosovo by Yugoslavian military and police forces (NATO, 2014). The actions were condemned by several states, including Yugoslavia, Russia and China. However, most states approved the actions of the NATO (Wheeler, 2001). Using the suffering of the people of Kosovo to justify the campaign the bombings were successful to stop the actions of the Yugoslavian forces as they retreated from the area after a military agreement was reached.

#### Case 4: the invasion of Iraq

In March 2003, US and coalition forces invaded Iraq after accusations by the US that the Iraqi regime of Saddam Hussein had biological and chemical weapons. Following a short war, coalition force toppled the regime and installed a transitional government. Heavy criticism from the public all over the world manifested itself through protests all over the world after the invasion (Tyler, 2003).

#### Case 5: the Crimean invasion

In February 2014, forces without insignia took over strategic positions in the Crimean peninsula. Being part of a larger offensive that also included the Dombass region, it turned out later these forces were Russian military personnel. Being populated by a majority of Russians, the Crimean peninsula later seceded from Ukraine to join the Russian Federation (Walker, Salem, & MacAskill, 2014). Reactions in Ukraine and the Western world mostly condemned the actions of the Russian Federation as it violated Ukrainian sovereignty (Akinyemi, 2014). An overview of these reactions is presented in figure 1. The Russian Federation claimed it had invaded Crimea to stabilize order and to prevent unrests after the chaos following the flight of former president Yanukovych as well as its rights to protect its citizens (there are many Russians living in the Crimea) (BBC News Europe, 2014).

## Analysis

This section analyses the cases presented in the previous sections for recurring patterns. It does so by looking at commonalities between cases and differences on similar variables. These are then used to derive heuristics to predict the reactions as a result of a breach in domestic sovereignty.

Justification for the actions by the breaching states seems to be derived on moral grounds. Whether this is by using the actions to bring people to justice as a means to justify the intervention (case 1 and 2), to relieve human suffering (case 3) or for political goals (case 4 and 5), the normative approach to legitimacy of action seems to be prevalent. Even though the descriptive elements of legitimacy also seem to play a role in creating acceptance of the breach in the home country of the breaching nation, it does not seem to play a role in gaining acceptance of the wider international community. A second element that seems to be present is that outrage by both the country whose sovereignty is breached as well as the international community is highly dependent on the amount of violence used. Ranging from little outrage in the Eichmann case (where little to no violence was used) to the invasion of Iraq and Crimea (where lots of violence occurred) which resulted in large outrage at various media outlets. This



Figure 1: Reactions to the invasion of Crimea. Source: Wikimedia Foundation (2014).

suggest that so called surgical strikes seem to be more appropriate when it comes to breaches of domestic sovereignty than full scale invasions.

## **Conclusion and discussion**

Illegal actions are not necessary illegitimate. Although the views of legitimacy might vary across stakeholders on a case to case basis, commonalities can be found in the presented cases when it comes to the justification of the actions. In the cases presented three, types of justification are presented to establish a basis for the actions of a state: justifications related to bringing individuals to justice, justifications related to relieving human suffering and justifications related to the achievement of political goals. Looking at whether or not these justifications are enough to make the actions legitimate, it was found that actions where justification of the first two categories were used were seen as more legitimate. Justifications falling in the third category (reaching political goals) however, cause more of a controversy and can remain disputed many years after the events have unfolded. Therefore, if state actors decide to take these kinds of actions they should carefully consider the justification they use to pursue it.

When it comes to the reliability of the results presented in this paper, one can question the number of cases that have been used. Although the cases were diverse in scope, the number is low for this type of research (Creswell, 2002). This low number could have resulted in a skewed view of the kinds of justifications used and the perceptions towards them when it comes to legitimacy.

Regarding the validity of the findings, some questions can be placed by the cases themselves. Due to the used sampling method only cases were selected that were known to the author. This selection might not be representative for all unilateral breaches of domestic sovereignty. As no experts in this field were consulted and sampling was on an ad hoc basis, a biased selection might have occurred. Combined with the small sample size, as discussed in the previous paragraph, this could skew the results and had an impact on the conclusion. However, given the exploratory nature of this project it is not considered to be too much of a problem. Nevertheless, it is suggested to repeat this study with a larger sample size and a more rigid selection of cases to improve on both the reliability and validity of the results.

Besides repeating this study with an improved design, other domains of study can also be identified from this study. Most notably breaches by non-state actors and their justifications for legitimizing their actions is something that can be looked at. As this paper primarily focused on breaches by state actors, it does not talk about these groups. Given groups such as Al Qaeda have played an important role in international conflicts in the last decade, looking closer at them in this context is relevant as it can give insights in their motivations. Furthermore, it would be interesting to see if these organizations use similar lines of motivations as state actors do or if they use a different set. This is interesting as it answers the question if a similar classification system can be used or if a new one needs to be developed in order to understand them.

Words (essay): 2512

Words (bibliography): 287

Concepts used: Legitimacy (the changing global order), unilateral/bilateral (the changing global order), international organizations (NATO/UN) (the changing global order)

## Bibliography

Akinyemi, A. (2014, March 2). *Ukraine Crisis: World Leaders React to Unfolding Disaster in Crimea*.

Retrieved from <http://www.ibtimes.co.uk/ukraine-crisis-world-leaders-react-unfolding-crisis-crimea-1438553>

Aragon, J. (2009). *Political Legitimacy and Democracy*. Retrieved from

[http://www.luc.edu/media/lucedu/dccirp/pdfs/articlesforresourc/Article\\_-\\_Aragon\\_Trelles,\\_Jorge\\_2.pdf](http://www.luc.edu/media/lucedu/dccirp/pdfs/articlesforresourc/Article_-_Aragon_Trelles,_Jorge_2.pdf)

BBC News Europe. (2014, March 5). *Ukraine crisis: Does Russia have a case?* Retrieved from

<http://www.bbc.com/news/world-europe-26415508>

Creswell, J. (2002). *Educational research: planning, conducting, and evaluating quantitative and qualitative research*. Upper Saddle River, NJ: Pearson Education.

Grobman, G. G. (1997). *Eichmann: From Capture to Trial*. Retrieved from

<http://remember.org/eichmann/study3.htm>

Leavy, Z. (1962). The Eichmann trail and the role of law. *ABA Journal*, 48, 820-825.

Lindgard, H., & etall. (2014). *Methods in legal research*. Lund.

NATO. (2014, November 11). *The Kosovo Air Campaign*. Retrieved from

[http://www.nato.int/cps/en/natohq/topics\\_49602.htm](http://www.nato.int/cps/en/natohq/topics_49602.htm)

Onwuegbuzie, A., & Leech, N. (2007). A Call for Qualitative Power Analyses. *Quality & Quantity*(41), 105–121.

Rawls, J. (1993). *Political Liberalism*. New York: Columbia University Press.

Strange, H. (2013, July 9). *US raid that killed bin Laden was 'an act of war', says Pakistani report*.

Retrieved from <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/10169655/US-raid-that-killed-bin-Laden-was-an-act-of-war-says-Pakistani-report.html>

The Guardian. (2013, June 10). *From the archive, 10 June 1960: Dispute over Eichmann's capture*.

Retrieved from <http://www.theguardian.com/theguardian/2013/jun/10/adolf-eichmann-trial-issues-1960>

- Tyler, P. E. (2003, February 17). *THREATS AND RESPONSES: NEWS ANALYSIS; A New Power In the Streets*. Retrieved from <http://www.nytimes.com/2003/02/17/world/threats-and-responses-news-analysis-a-new-power-in-the-streets.html>
- U.S. Department of State. (2014, September 10). *U.S. Relations With Pakistan*. Retrieved from <http://www.state.gov/r/pa/ei/bgn/3453.htm>
- Walker, S., Salem, H., & MacAskill, E. (2014, March). *Russian 'invasion' of Crimea fuels fear of Ukraine conflict*. Retrieved from <http://www.theguardian.com/world/2014/feb/28/russia-crimea-white-house>
- Weber, M. (1964). *The Theory of Social and Economic Organization*. In T. Parsons (Ed.). New York: Free Press.
- Weber, M. (1991). *Politics as a Vocation*. In H. Gerth, & C. Wright Mills (Eds.), *From Max Weber: Essays in Sociology*. London: Routledge.
- Wheeler, N. (2001, August 9). *The legality of Allied Force*. Retrieved from [http://www.unc.edu/depts/diplomat/archives\\_roll/2001\\_07-09/hum\\_intervention/hum\\_05\\_wheeler.html](http://www.unc.edu/depts/diplomat/archives_roll/2001_07-09/hum_intervention/hum_05_wheeler.html)