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An invitation is an invitation is an invitation: legitimate authority to invite in recent Swedish practice

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Abstract

This article deals with intervention by invitation in international law or the provision of military assistance on request. The article focuses on the criteria for the legitimate authority to invite foreign military assistance. The purpose of the article is to discuss the international law regarding intervention by invitation and in particular the criteria for legitimate authority through recent Swedish practice with respect to the provision of military assistance on request. This way both the international legal framework and more so the Swedish interpretation and application of the international legal framework is analyzed. The international legal framework regarding intervention by invitation is particularly debated and contested both in theory and practice both among academics and states. The Swedish state practice on the matter is only just beginning to form; the first time Sweden based the provision of military assistance on the international legal basis of invitation was in 2015 to Afghanistan. The article shows how Sweden positions itself on a spectrum of many different possible positions on the issue of the criteria for legitimate authority to invite foreign military assistance.

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An invitation is an invitation is an invitation: legitimate authority to invite in recent Swedish practice

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1. Introduction

This article deals with intervention by invitation in international law or the provision of military assistance on request. The article focuses on the criteria for the legitimate authority to invite foreign military assistance. The purpose of the article is to discuss the international law regarding intervention by invitation and in particular the criteria for legitimate authority through recent Swedish practice with respect to the provision of military assistance on request. This way both the international legal framework and more so the Swedish interpretation and application of the international legal framework is analyzed. The international legal framework regarding intervention by invitation is particularly debated and contested both in theory and practice both among academics and states. The Swedish state practice on the matter is only just beginning to form; the first time Sweden based the provision of military assistance on the international legal basis of invitation was in 2015 to Afghanistan. The article shows how Sweden positions itself on a spectrum of many different possible positions on the issue of the criteria for legitimate authority to invite foreign military assistance.

The article begins by presenting briefly the overall international legal framework with respect to intervention by invitation and in particular the criteria for the authority to invite. Very little is generally agreed upon in the international legal doctrine regarding intervention by invitation, but arguably the presentation of the overarching international framework sketched below should be relatively uncontroversial. The focus of the presentation of the overarching framework is the criteria for legitimate authority. The point is to present the most important possible criteria for legitimate authority. The point is further to present the possible criteria which are most relevant for the cases under study; thus the potential criteria for legitimate authority to invite foreign military assistance on the part of non-state actors are not discussed in the article.

After that the Swedish interpretation of the potential criteria for legitimate authority is analyzed. The three cases which have occurred or are about to occur are Afghanistan, Iraq and Mali. The material used in order to find out what is the Swedish position is the government bills to parliament in the respective cases. In the government bills the international legal basis for the provision of military assistance is spelled out and the circumstances reigning in the country concerned with bearing on the

criteria for legitimate authority, among other things. With the international legal framework as backdrop through the reasoning in the Swedish government bills the article extracts what emerges as the Swedish official view of intervention by invitation and the criteria for legitimate authority. Considering Sweden's relative unfamiliarity with international military operations lacking a UN Security Council (UNSC) mandate and Sweden's traditional policy of military non-alignment, it is particularly interesting to see whether the Swedish position tends to diverge from or rather converge with what could be labelled a Western mainstream.

2. Criteria for authority

The legitimate representatives of a state may issue an invitation to intervene to foreign military forces, typically provided by another state.¹ In order for the authorities of a state to be legally entitled to issue an invitation several criteria that might be applicable are debated in the doctrine. These criteria are effective control over territory and population, absence of civil war, democratic governance, and respect for human rights. They will be commented on in turn in the following.

The above-mentioned criteria would be criteria that the government in place would hypothetically have to fulfil in addition to being the government in place, in order to be able to issue a legally valid invitation to foreign military forces. The number and nature of any such criteria are debated in the international legal doctrine.

The democratic governance criterion also appears as an argument in favour of a democratically elected government which however has not been allowed to take power or which has been removed from power by undemocratic means to be allowed to issue a valid invitation to foreign

¹ Cf. for instance, O. Corten, *Le droit contre la guerre : L'interdiction du recours à la force en droit international contemporain*, second edition (Editions PEDONE, Paris, 2014) p. 409 et seq. ; G. Nolte, 'Intervention by Invitation' in F. Lachenmann and R. Wolfrum (eds.), *The Law of Armed Conflict and the Use of Force : The Max Planck Encyclopedia of Public International Law*, Thematic Series Volume 2 (Oxford University Press, Oxford, 2017) pp. 583-589, at p. 589; C. Kress & B. Nussberger, 'Pro-democratic intervention in current international law: the case of The Gambia in January 2017', 4:2 *Journal on the Use of Force and International Law* (2017) pp. 239-252, p. 246. The author wishes to thank the Torsten Söderberg Foundation for making the writing of this article possible through grant number R5/17 *Krigets juridik i den svenska regeringsformen: ett rörligt mål* (The law of war in the Swedish Instrument of Government: a moving target). All translations into English are the author's own except where otherwise pointed out.

states to intervene at the expense of the sitting undemocratic government. This variant of the democratic criterion will also be commented on here.

Some would claim that the incumbent government of a state by definition has the authority to invite foreign military assistance without any other additional criterion having to be fulfilled at all. Others would claim that not only does the inviting government have to be the sitting government, but a host of other requirements have to be fulfilled as well in order for the government to be entitled to issue a valid invitation. Among the latter participants in the doctrinal debate views may differ greatly on what if not all criteria that will have to be fulfilled in order for the invitation to be legally valid.

2.1 Effective control

Effective control over territory and population is a traditional criterion of the legitimacy of a government making an invitation to a foreign state to intervene with its military forces. A government which exercises effective control over a territory and a population is also a traditional criterion of the existence of a state in international law.² According to one stream of thought on intervention by invitation and arguably a strong one, a government which exercises effective control over population and territory has the unquestionable authority to invite foreign military assistance to its territory.

Some would claim that the exercise of effective control is not a necessary criterion of legitimacy in the context of intervention by invitation. Then the mere existence of an incumbent government irrespective of its effective control over territory and population would give the government the authority to invite foreign military forces.³ A variant of this line of thought is that a democratically elected government may be entitled to invite foreign military forces even though the government may not exer-

² Cf. G. Fox, 'Intervention by Invitation', in M. Weller (ed.) and A. Solonou and J. William Rylatt (ass. eds.), *The Oxford Handbook of the Use of Force in International Law* (Oxford University Press, Oxford, 2015) pp. 816-840, p. 833; Montevideo Convention on the Rights and Duties of States (1933), Article 1.

³ Cf. C. Gray, *International Law and the Use of Force*, fourth edition (Oxford University Press, Oxford) pp. 106-107, 118.

cise effective control over territory and population.⁴ In the latter case, the necessary criterion would be democratic elections, however, whereas in its purer form the sitting government argument does not presume either the exercise of effective control or the government having been democratically elected.⁵ We will come back to the democratic argument below.

Traditionally, arguably, effective control over territory and population is regarded as a necessary criterion of legitimacy with respect to the entitlement of the sitting government to invite foreign military forces. Or, perhaps rather, the effective control over population and territory is presumed to lie with the government in place. The sitting government is expected to be in effective control of the country and if not entirely in control in practice this presumption is still upheld; the government in place is probably in control of at least parts of the territory and population anyway.⁶

2.2 Civil war

A further criterion emphasizing the traditional criterion of effective control over population and territory is the criterion of absence of civil war.⁷ This criterion would also invalidate the incumbent government criterion in its purest form not demanding any effective control over territory and population by the sitting government at all in principle. At least in a situation of internal armed conflict, a government obviously lacking effective control over its territory and population thus would not have the authority to invite foreign military troops under the absence of civil war theory.

⁴ Cf. B. Nussberger, 'Military strikes in Yemen in 2015: intervention by invitation and self-defence in the course of Yemen's "model transitional process"', 4:1 *Journal on the Use of Force and International Law* (2017) pp. 110-160, at p. 140 et seq.

⁵ Cf. Gray, *supra* note 3, p. 104.

⁶ Cf. E. de Wet, 'The Modern Practice of Intervention by Invitation in Africa and Its Implications for the Prohibition of the Use of Force', 26: 4 *European Journal of International Law* (2016) pp. 979-998, pp. 990-992; I. Wong, 'Authority to consent to the use of force in contemporary international law: the Crimean and Yemeni conflicts', 6:1 *Journal on the Use of Force and International Law* (2019), pp. 52-82, pp. 58-61, 80.

⁷ See generally, with the case of Yemen as a point of departure, Nussberger, p. 130 et seq.

The absence of civil war argument, often labelled the negative equality argument, was first and so far most forcefully developed by the Institut de Droit International in 1975.⁸

The absence of civil war criterion connects with international humanitarian law on the one hand and with all peoples' right to self-determination on the other. Under IHL when non-state armed groups are strong enough to gain combatant status i.e. when they control parts of the territory of the state and are organized enough to carry out military operations and follow IHL, the non-state armed groups are equal in principle to the state actor in legal terms and then there is no reason why the state should be allowed to ask for foreign military assistance whereas the non-state armed group or groups would not, so the argument goes.⁹ Therefore, none of the sides is entitled to foreign military assistance; hence the term negative equality principle.¹⁰ A diametrically opposite variant of this argument would be that in case the state and non-state sides are equally strong in principle then both sides have the authority to invite foreign military forces.¹¹

The absence of civil war criterion also connects with the right of all peoples to self-determination.¹² If a people is carrying out a rightful armed struggle for self-determination it should not be hindered in its rightful endeavor by state troops unjustly assisted by foreign military forces. The non-state armed group or groups carrying out the struggle on the part of the people has the right to fight on equal terms with the armed forces of

⁸ Institut de droit international, Wiesbaden Session, Resolution //III//, The Principle of Non-Intervention in Civil Wars, 14 August 1975 <www.idi-iil.org>, visited on 19 May 2020; Institut de droit international, Rhodes Session, Resolution, Military Assistance on Request, 8 September 2011 <www.idi-iil.org>, visited on 19 May 2020; see also Q. T. T. Nguyen, 'Rethinking the Legality of Intervention by Invitation: Toward Neutrality', 24:2 *Journal of Conflict & Security Law* (2019) pp. 201-238, at pp. 216-217.

⁹Cf. Corten 2014, *supra* note 1, pp. 424, 458-459; de Wet 2016, *supra* note 6, pp. 992-993.

¹⁰ See C. Henderson, *The Use of Force and International Law* (Cambridge University Press, Cambridge, 2018) pp. 362-365; Fox, *supra* note 2, pp. 827-829; Gray, *supra* note 3, pp. 86-87; for a critical view in light of current practice, see E. de Wet, 'Reinterpreting exceptions to the use of force in the interest of security: Forcible intervention by invitation and the demise of the negative equality principle', 111 *American Journal of International Law Unbound* (2017), pp. 307-311; C. Nowak, 'The changing law of non-intervention in civil wars – assessing the production of legality in state practice after 2011', 5:1 *Journal on the Use of Force and International Law* (2018) pp. 40-77.

¹¹ On the old belligerency doctrine, see for instance Fox, *supra* note 2, pp. 822-824; E. Lieblich, *International law and civil wars* (Routledge, New York, 2013) pp. 76-82, 235.

¹² Cf. Corten 2014, *supra* note 1, pp. 473-476; de Wet 2016 *supra* note 6, pp. 994-996.

the state. Still, the absence of civil war criterion as an obstacle to a valid invitation being extended by the sitting government on whose territory the civil war is being fought is strongly contested.¹³

2.3 Democracy

The next possible criterion for the authority of the government to extend a valid invitation to intervene to the surrounding world would be the criterion of democracy.¹⁴ This criterion is of a more recent and more unsettled nature than the criterion relating to effective control over territory and population. The criterion of democracy in its relatively more traditional form would add democratic governance as an additional necessary cumulative criterion to the criterion of effective control. Thus, merely being the government even in control of the territory and population would not automatically result in the government having the authority to invite foreign military forces. In addition to exercising effective control, the government must have been democratically elected, at least, and probably be exercising its power in a reasonably democratic manner as well.¹⁵ The system of governance in the country should be democracy.¹⁶

A variant of this argument is that the democratically elected government need not actually be in power in order to be entitled to validly invite foreign military forces. The democratically elected government might not have been allowed to take power or the democratically elected government might have been ousted from power by undemocratic perhaps violent means through a military coup for instance.¹⁷ Just having been democratically elected or having led a state as a democratically elected

¹³ Cf. G. Kajtár, 'The use of force against ISIL in Iraq and Syria – a legal battlefield', 34:3 *Wisconsin International Law Journal* (2017) pp. 535-584, at pp. 559-562; Lieblich, *supra* note 11, pp. 150-152; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, paras. 58, 246; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, paras. 42-54.

¹⁴ See generally, Kress & Nussberger, *supra* note 1, pp. 239-252.

¹⁵ De Wet 2016, *supra* note 6, pp. 984-985, classifies free and fair elections as a minimum requirement for democratic governance; cf. also Lieblich, *supra* note 11, pp. 217-218.

¹⁶ Lieblich, *ibid.*, p. 217.

¹⁷ Cf. Corten 2014, *supra* note 1, pp. 466-471, 511-512; Nussberger 2017, *supra* note 4, p. 141; Kress & Nussberger, *supra* note 1, pp. 247-249; Lieblich, *ibid.*, p. 215.

government is then the criterion of legitimate authority to invite irrespective of current effective control over territory and population.¹⁸

2.4 Human rights

A further possible criterion for the lawful authority of a state to invite foreign military troops is the criterion of respect for human rights.¹⁹ If a government violates human rights and/or international humanitarian law then the government does not have the authority to invite foreign military assistance.²⁰ This is also, like the criterion of democracy, a relatively recent criterion for a lawful invitation to intervene and like the criterion of democracy the law is far from settled on the subject of the respect for human rights as a necessary criterion for the authority of the representatives of a state to invite foreign military forces. If the criteria of democracy and protection of human rights would be consistently applied – and hypothetically cumulatively with the effective control criterion – then only governments exercising effective control over their territory and population and being democratic and human rights respecting would be entitled under the law to invite foreign military troops.

In such a scenario, which does not correspond with the law in force and particularly not with international practice, the felt need for foreign military assistance would probably be smaller than currently since an effective, democratic, human rights respecting government is less likely to be contested by non-state armed opposition groups than an ineffective, undemocratic human rights violating one.

Instead of being used in combination with the effective control over population and territory criterion, the democracy and human rights criterion could be used independently of the effective control criterion, typically in favour of a democratically elected government who is not in power or in favour of a non-state actor striving to gain power and to change the (non-democratic) system of government of a state. The potential right of non-state actors to invite foreign military assistance will not be studied in this article and the possibility of the government of a

¹⁸ Cf. Nolte, *supra* note 1, p. 587

¹⁹ See generally, E. de Wet, 'Complicity in violations of human rights and humanitarian law by incumbent governments through direct military assistance on request', 67:2 *International and Comparative Law Quarterly* (2018) pp. 287-313; see also Henderson, *supra* note 10, pp. 376-377.

²⁰ Cf. Lieblich, *supra* note 11, p. 219.

state to lawfully base an invitation merely on its respect for democracy and human rights will be discussed in the context of the criterion of democracy, the human rights criterion being closely related to the criterion of democracy in theory and practice under all circumstances.²¹ Respect for human rights is a likely however not necessary consequence of a democratic system of governance whereas it is arguably impossible by definition in a dictatorship.²²

In the next section we will study closely three instances of military assistance on the request of three governments, of Afghanistan, Iraq and Mali respectively. The military assistance in question will be the one provided by Sweden as a member of the Nato Resolute Support Mission (RSM), the US-led Operation Inherent Resolve (OIR) and the French-led Task Force Takuba (within the larger French-led Operation Barkhane) respectively. Through this study we will see how Sweden values all the possible criteria for legitimate authority to invite gone through above and what criterion or criteria which seem to be decisive for the Swedish decision to respond favourably to the invitation of the respective governments.

3. Swedish practice: Afghanistan, Iraq, Mali

In recent years Sweden has sent or will send military troops to other countries on three occasions legally based on the invitation, and only on the invitation, of the other countries: To Afghanistan within the Nato FSM beginning in 2015, to Iraq within Operation Inherent Resolve (OIR) beginning likewise in 2015 and to Mali within the Task Force Takuba in 2020. Previously, before participating in these international military operations, Sweden had always demanded that there be an authorization in the form of a resolution by the UN Security Council in order for Sweden to be willing to contribute troops to such operations. Previously, Sweden would not have contributed troops unless there had been an authorizing resolution from the UN Security Council. This Swedish line of practice changed with the Nato RSM.

Since Sweden is a small country the Swedish contributions have generally been rather small in absolute numbers and relative to the entire number

²¹ Cf. Lieblich, *ibid.*, pp. 218-219.

²² *Ibid.*

of troops participating in the respective international military operations. Typically, Sweden also finds itself not on the forefront fighting actively but rather further back carrying out education and exercises and giving advice to the local military troops. In Afghanistan the entire operation RSM consists of training and advisory functions. In Iraq, OIR includes also active military fighting by the invited foreign troops. In Mali it seems the role of the Swedish troops would develop in comparison with what seems to have been their typical role in Iraq and Afghanistan. Sweden's part of the Task Force Takuba would amount to 150 soldiers of a total of 500 and the tasks of the Task Force Takuba unusually would seem to include offensive measures.²³ The absolute number of Swedish personnel would not be radically greater in the Task Force Takuba (150) than in the preceding two international military operations, the RSM (50) or the OIR (70), but the relative Swedish contribution to the operation would be considerably greater than with respect to the preceding two international military operations.

Sweden is a militarily non-aligned state, however, co-operating closely with Nato as well as with a number of states in bilateral arrangements as well as in multilateral ones inside and outside the EU framework.²⁴ Sweden's position as still non-aligned in combination with its distinctively internationalist profile might make it interesting to see where Sweden positions itself on the issue of the lawful authority to invite foreign military troops under international law. What criteria does Sweden find decisive in the context of the lawful authority to invite foreign military assistance? Does Sweden require many of the potential criteria for lawful authority to be fulfilled, or rather few?

²³ www.lemonde.fr/afrique/article/2020/01/22/sahel-le-general-lecointre-precise-le-plan-d-action-francais_6026860_3212.html, visited on 2 June 2020; www.thedefensepost.com/2020/03/16/sweden-150-special-forces-helicopters-takuba-mali, visited on 13 June 2020. *See further infra.* section 3.3.

²⁴ Cf. the homepage of the Swedish armed forces "Internationellt samarbete" (International cooperation), <www.forsvarsmakten.se/sv/om-forsvarsmakten/vart-arbetssatt/internationellt-samarbete/>, "Nordiskt samarbete" (Nordic cooperation), <www.forsvarsmakten.se/sv/om-forsvarsmakten/vart-arbetssatt/nordiskt-samarbete/>, and "Försvarssamarbete med Finland" (Defence cooperation with Finland), <www.forsvarsmakten.se/sv/om-forsvarsmakten/vart-arbetssatt/forsvarssamarbete-med-finland/>, all visited on 3 June 2020; *for instance* Joint Expeditionary Force under UK leadership, European Intervention Initiative under French leadership, and Framework Nations Concept under German leadership.

Moreover, the Swedish position is seldom presented in the international legal doctrine despite the fact that Sweden is and for a long time has been an active contributor to many international military operations.

In order to find out how Sweden views the criteria for lawful authority to invite, this article will study the argumentation of the Swedish government contained in the government bills to parliament where the government asks for the approval by parliament of the decision, ultimately by the government, to send Swedish troops abroad to participate in the international military operations in question. In the government bills the government among other things lays out the international legal support for sending Swedish troops to another state as well as discusses the circumstances reigning in the state in question, including with respect to among other things the territorial control by the government, the respect for democracy and human rights, and the prevalence or not of civil war or fighting generally in the country.

Normally, the parliament approves of the proposed decision by the government with a large majority. So far, parliament has never refused the approval of any government proposal to send Swedish armed forces abroad to participate in international military operations, most of which as noted earlier have previously been internationally legally based on a UN Security Council authorization making the military operations and the Swedish contribution in particular slightly less controversial in the Swedish view.

Usually also, differences in party affiliations do not matter very much with respect to the attitude toward Swedish participation in different international military operations except that the right and left wing parties respectively tend to be more skeptical for different reasons. Together these parties make up about thirty per cent of the members of the Swedish parliament currently.

When the parliament has approved the proposed decision by the government to send Swedish armed forces abroad then the government goes ahead and executes its decision.

The relevant constitutional provision in the Swedish Instrument of Government for the cases studied in this article is Article 16 entitled “De-

ployment of armed forces” in Chapter 15 entitled “War and danger of war”. Article 16 provides the following (official translation):

Deployment of armed forces

Art. 16. The Government may send Swedish armed forces to other countries or otherwise deploy such forces in order to fulfil an international obligation approved by the Riksdag. Swedish armed forces may also be sent to other countries or be deployed if:

1. it is permitted by an act of law setting out the conditions for such action; or
2. the Riksdag permits such action in a special case.

3.1 Nato Resolute Support Mission

3.1.1 Mandate

The Nato (Resolute Support Mission) RSM is a training and advisory mission in Afghanistan.²⁵ The RSM has no mandate to fight except in self-defence.²⁶ Sweden joined the Nato RSM from its start on 1 January 2015 after having participated in the UK-led, first, then Turkey, The Netherlands, Germany and at last Nato-led and UN Security Council authorized International Security Assistance Force (ISAF) in Afghanistan since 2002.²⁷ By the end of 2014, ISAF ceased to exist and the new non-combat training and advisory operation was established under Nato leadership.²⁸ The purpose of the Swedish contribution, as stated in the government bill, is to assist the Afghan security forces with training, advice and support in order to consolidate the ability of the security forces to independently handle the security in the country.²⁹ The Swedish force is supposed to consist of fifty persons as a maximum.³⁰ In case the situation deteriorates there shall be a possibility to add a temporary reinforcement and evacuation force of 150 persons as a maximum.³¹

²⁵ Cf. regeringens proposition 2019/20:27 Fortsatt svenskt deltagande i Natos utbildnings- och rådgivningsinsats Resolute Support Mission i Afghanistan, 24 oktober 2019 (government bill 2019/20:27 Continued Swedish participation in Nato’s training and advisory mission Resolute Support Mission in Afghanistan, 24th October 2019), p. 8.

²⁶ Cf. government bill 2019/20:27, *ibid.*, p. 8

²⁷ Cf. UN Security Council resolution 1386 (2001) preambular para. 8.

²⁸ Cf. UN Security Council resolution 2189 (2014) preambular paras. 8, 11.

²⁹ Government bill 2019/20:27, *supra* note 25, pp. 1, 11-12.

³⁰ *Ibid.*, pp. 1, 12-13.

³¹ *Ibid.*

The RSM is carried out at the invitation of the Afghan government, according to the latest in a row of practically identical Swedish government bills.³² The invitation constitutes the basis for the Status of Forces Agreement concluded between the Afghan government and Nato in September 2014.³³ According to the latest government bill, as well as all the preceding ones, the international legal basis of the RSM is the Status of Forces Agreement between the Afghan government and Nato.³⁴ The government of Afghanistan has also agreed to the participation of a number of non-Nato member states in the operation of which Sweden is one.³⁵ The Status of Forces Agreement covers a non-combat operation for training, guidance and support to the Afghan defence and security forces.³⁶ The use of force of the operation is limited to the self-protection of the force and the personnel therefore has the right to possess and carry weapons.³⁷ Also, after a special request and invitation from the Afghan government, training, advice and support can be provided to Afghan special forces on the tactical level.³⁸

³² *Ibid.*, p. 4. The previous bills are, in descending chronological order: Regeringens proposition 2018/19:5 Fortsatt svenskt deltagande i Natos utbildnings- och rådgivningsinsats Resolute Support Mission i Afghanistan, 18 oktober 2018 (government bill 2018/19:5 Continued Swedish participation in Nato's training and advisory mission Resolute Support Mission in Afghanistan, 18 October 2018); regeringens proposition 2017/18:32 Fortsatt svenskt deltagande i Natos utbildnings- och rådgivningsinsats Resolute Support Mission i Afghanistan, 26 oktober 2017 (government bill 2017/18:32 Continued Swedish participation in Nato's training and advisory mission Resolute Support Mission in Afghanistan, 26 October 2017); regeringens proposition 2016/17:33 Fortsatt svenskt deltagande i Natos utbildnings- och rådgivningsinsats RSM i Afghanistan, 27 oktober 2016 (government bill 2016/17:33 Continued Swedish participation in Nato's training and advisory mission RSM in Afghanistan, 27 October 2016); regeringens proposition 2015/16:41 Fortsatt svenskt deltagande i Natos utbildnings- och rådgivningsinsats RSM i Afghanistan, 5 november 2015 (government bill 2015/16:41 Continued Swedish participation in Nato's training and advisory mission RSM in Afghanistan, 5 November 2015); regeringens proposition 2014/15:13 Svenskt deltagande i Natos utbildnings- och rådgivningsinsats Resolute Support Mission (RSM) i Afghanistan (government bill 2014/15:13 Swedish participation in Nato's training and advisory mission Resolute Support Mission (RSM) in Afghanistan, 6 November 2014); regeringens proposition 2013/14:33 Fortsatt svenskt deltagande i den internationella säkerhetsstyrkan (ISAF) och framtida deltagande i Natos utbildningsinsats (RSM) i Afghanistan, 7 november 2013 (government bill 2013/14:33 Continued Swedish participation in the international security force (ISAF) and future participation in Nato's training mission (RSM) in Afghanistan), 7 November 2013).

³³ Government bill 2019/20:27, *supra* note 25, p. 4.

³⁴ *Ibid.*, p. 7.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

The Swedish government mentions the fact that the UN Security Council has welcomed the establishment of the RSM.³⁹ This is not invoked among the legal justifications of the Swedish presence in Afghanistan, however. The importance of the close co-operation between the RSM and the UN efforts in the country has also been referred to by the UN Security Council, it is noted in the government bill.⁴⁰

3.1.2 *Effective control*

The issue of the (lacking) territorial control by the Afghan government comes up in several of the government bills. In the latest government bill, the issue of the effective control is not dealt with explicitly as such, but considering the prevalence of what is labelled an armed conflict in the country it must be assumed that the Swedish government does not consider effective territorial control by the Afghan government to constitute a necessary criterion for the legal validity of the invitation by the Afghan government, or put differently, the obvious lack of territorial control by the Afghan government does not negatively affect its authority to invite foreign military forces.⁴¹

In the previous government bill of 2018 on the continued Swedish participation in the Nato RSM, it was specified that the Afghan government was estimated to control less than half of the territory of the country.⁴² In the government bill of 2017, it was found that the Afghan government was then estimated to control less than two thirds of the Afghan territory.⁴³ No similar concrete estimation of the degree of territorial control by the Afghan government is made in the latest government bill. When the Nato RSM and the Swedish contribution to it were initiated in 2015 the issue of the territorial control by the Afghan government was not addressed directly in the government bill. On the subject of the security situation in Afghanistan, the bill states that the situation in Afghanistan and challenging and differs in different parts of the country.⁴⁴ Dur-

³⁹ *Ibid.*, p. 4; UN SC resolution 2274 (2016) preambular para. 20; UN Security Council resolution 2189 (2014) preambular para. 13 and operative para. 1 are not explicitly mentioned in the government bill but indirectly referred to.

⁴⁰ Government bill 2019/20:27, *supra* note 25, p. 4; UN SC resolution 2189 (2014) preambular paras. 11-12; UN SC resolution 2274 (2016) operative para. 7 (f); UN SC resolution 2405 (2018) operative para. 6 (f).

⁴¹ Government bill 2019/20:27, *supra* note 25, p. 5.

⁴² Government bill 2018/19:5, *supra* note 32, p. 5.

⁴³ Government bill 2017/18:32, *supra* note 32, p. 4.

⁴⁴ Government bill 2014/15:13, *supra* note 32, p. 6.

ing 2014 the security situation in the Southern and Eastern parts had worsened compared with 2013 and the armed resistance had been able to regain control over some areas, in the countryside in particular, the government bill finds.⁴⁵ Recurring attacks have been carried out also in other parts of the country, including in Kabul, the bill states.⁴⁶ The security situation is better in Northern Afghanistan than in the Southern and Eastern parts of the country, the Swedish government bill finds.⁴⁷ Thus at least it can be noted that the Afghan government did not exercise effective control over the entirety of the territory of the country at the time of the start of the RSM.

3.1.3 Civil war

The ongoing internal armed conflict in Afghanistan is referred to in most government bills on the Swedish contribution to the RSM. In the latest government bill, it is stated that despite the peace efforts, the “armed conflict” has worsened in extent and intensity and the armed conflict constitutes the most important obstacle to the development of Afghanistan.⁴⁸ The internal armed conflict obviously is not regarded by the Swedish government as a factor weakening the legal validity of the invitation to contribute military forces by the Afghan government. “The worsened security situation” is also referred to in the latest government bill and it is pointed out that this entails significant challenges to the Afghan defence and security forces, whose overall ability to manage the security in the country is “uneven”, according to the Swedish government bill.⁴⁹

Describing the situation in Afghanistan earlier on in the bill, the Swedish government states that the Afghan security forces are fully responsible

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Government bill 2019/20:27, *supra* note 25, p. 5.

⁴⁹ *Ibid.*, pp. 11-12. The earliest government bills on the Nato RSM, of 2014 and 2015, talked of there being a risk of the Swedish personnel becoming subject to “armed attack” (government bill 2014/15:13, *supra* note 32, p. 14; government bill 2015/16:41, *supra* note 32, p. 13). In the bill of 2016 and following this has been altered into becoming subject to “armed violence” (government bill 2016/17:33, *supra* note 32, p. 11; government bill 2017/18:32, *supra* note 32, p. 4; government bill 2018/19:5, *supra* note 32, p. 5; government bill 2019/20:27, *supra* note 25, p. 13). The change of terminology is not explained. Judging from the contents of the government bills, the change from “armed attack” to “armed violence” is not due to an improving security situation in Afghanistan.

for the security in Afghanistan since December 2014.⁵⁰ The armed resistance and most prominently the Taliban, according to the bill, have carried out offensive armed operations in several parts of the country.⁵¹ Daesh is also present in Afghanistan although to a lesser degree, primarily in the Eastern parts, and continues to carry out suicide attacks, against Shia Muslim targets in particular, according to the bill.⁵²

In the initial Swedish government bill on the Nato RSM, the “conflict” going on in Afghanistan is referred to several times but the term “armed conflict” is not used. The protracted conflict constitutes the biggest obstacle to Afghanistan’s development, the government bill finds.⁵³ There has not been any progress toward a peaceful solution despite efforts having been made also with international support, the bill says.⁵⁴ There are hopes that president Ghani will give new life to the peace process, the initial bill continues.⁵⁵

3.1.4 Democracy

The subject of democracy is raised in the latest government bill, as well as in the earlier ones. Parliamentary elections were held in Afghanistan in 2018 and in 2019 there were presidential elections.⁵⁶ The parliamentary elections, it is pointed out, were characterized by violence and big logistical and administrative challenges, according to the bill.⁵⁷ At the same time a relatively high participation rate in the elections shows the support of the population for a democratic election process.⁵⁸ Concerning the political situation more generally it is stated in the Swedish bill that Afghan domestic policy is characterized by disagreement and ethnic tension.⁵⁹

The Swedish government does not point out whether democracy constitutes a necessary criterion for a valid invitation by the Afghan govern-

⁵⁰ Government bill 2019/20:27, *supra* note 25, p. 5;UNSC resolution 2189(2014) preambular para. 8.

⁵¹ Government bill 2019/20:27, *supra* note 25, p. 5.

⁵² *Ibid.*

⁵³ Government bill 2014/15:13, *supra* note 32, p. 6.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Government bill 2019/20:27, *supra* note 25, pp. 4-5.

⁵⁷ *Ibid.*, p. 4.

⁵⁸ *Ibid.*, p. 5.

⁵⁹ *Ibid.*, p. 4.

ment in the Swedish view. Since the situation of democracy is described in the government bill it must be understood that the presence of a democratic system of government is somehow relevant to the Swedish government's position, however.

The initial government bill on the Swedish contribution to the Nato RSM on the subject of democracy noted that in 2014 there had been presidential elections to the provincial councils in Afghanistan.⁶⁰ The presidential election, according to the bill, became a big manifestation of the trust of the Afghans in democracy and the presidential election constituted the first democratic power shift in the history of Afghanistan.⁶¹ Despite imminent threats of violence and harassment a high rate of participation in the election was attained, according to the bill.⁶² A National Unity Government was established after controversies between the two candidates in the election concerning the result.⁶³

The EU mission supervising the presidential election found that extensive electoral fraud had occurred, according to the Swedish bill.⁶⁴

3.1.5 Human rights

The situation for human rights in Afghanistan is commented upon in very critical terms in the most recent Swedish government bill. The respect for human rights is very deficient, it is found.⁶⁵ Women and girls have a marginalized role and are subjected to threat and violence, the government bill says.⁶⁶ The rule of law and the justice system are weak and unlawful detentions and violent crimes occur on a large scale, the bill continues.⁶⁷ Torture is still common, according to the government bill, although there has been a certain progress over the years.⁶⁸

The humanitarian situation in Afghanistan has worsened during 2019, the most recent government bill finds.⁶⁹ The armed conflict is the most

⁶⁰ Government bill 2014/15:13, *supra* note 32, p. 5.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.* p. 5.

⁶⁵ Government bill 2019/20:27, *supra* note 25, p. 5.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, pp. 5-6.

⁶⁸ *Ibid.*, p. 5.

⁶⁹ *Ibid.*

important cause for this, but Afghanistan has also periodically suffered from extensive drought.⁷⁰ The possibility for the humanitarian actors to reach those in need is limited by the security situation, the lacking infrastructure and threats, according to the bill.⁷¹ Corruption permeates the entire Afghan society, and constitutes a serious obstacle to a sustainable development, the bill adds.⁷²

On the subject of human rights, the Swedish government finds in its initial bill on the RSM that the respect for human rights and in particular the situation of women and girls remains very worrying.⁷³ Torture and violent crime occurs on a large scale and the discrimination of women is extensive.⁷⁴ According to the UN, the Swedish government writes in its bill, the number of reported cases of violence against women has increased substantially but the prosecution of such crimes of violence is limited with widespread impunity as a consequence.⁷⁵

The rule of law is weak and prosecution is based on confessions which sometimes are extorted through torture.⁷⁶ The extensive use of force on the part of different groupings in society contributes to the big challenges with respect to human rights in Afghanistan, the Swedish government continues.⁷⁷

As international commitment decreases and a possible future political agreement with the Taliban may materialize, the risk increases of a decline for human rights, the Swedish government bill concludes.⁷⁸

The issue of corruption is also taken up in the initial bill, and it is observed that the very extensive corruption permeates the entire society and constitutes a serious obstacle to a sustainable development.⁷⁹ Presenting the security situation in Afghanistan, the government bill finds that the Afghan police is seriously corrupt.⁸⁰

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*, p. 6.

⁷³ Government bill 2014/15:13, *supra* note 32, p. 8.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, p. 6.

⁸⁰ *Ibid.*, p. 7.

The humanitarian situation in Afghanistan continues to worsen, the government finds in its initial bill on the Nato RSM.⁸¹ The ongoing conflict, the seasonal floods, recurrent droughts, earthquakes and other extreme weather conditions are the main causes of the difficult situation in the country, the bill finds.⁸² The security situation affects the humanitarian actors' possibility to work in Afghanistan and limits the possibility to reach those in need.⁸³

Thus, it can be observed that all the usual potential criteria of a valid invitation by a government to foreign military forces were commented upon by the Swedish government when it initially decided to contribute to the Nato RSM. However, solely the actual invitation by the incumbent government of Afghanistan was decisive whereas none of the other rather serious circumstances potentially weakening the legal validity of the invitation affected the view of the Swedish government, or parliament later on. The invitation by the Afghan government and nothing but the invitation decides the matter from the point of view of international law, according to Sweden.⁸⁴

In the yearly bills to parliament proposing the continued Swedish participation in the Nato RSM, the international legal basis is laid out in the same way as in the first bill.⁸⁵ The invitation and all the criteria potentially affecting the international legal validity of the invitation are commented upon in a similar way and the conclusion by the government, and parliament, is the same, Sweden will contribute personnel to the Nato RSM.

3.2 Operation Inherent Resolve

3.2.1 Mandate

In 2014 Sweden joined the US-led multilateral Operation Inherent Resolve (OIR) in order to assist the Iraqi government in its fight against the non-state armed organization The Islamic State of Iraq and Syria (here-

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*, p. 8.

⁸⁴ *Ibid.*, pp. 2, 10-11, 13.

⁸⁵ For all the bills, *see supra* note 32 and 35.

inafter: Daesh).⁸⁶ The Iraqi government had sent two letters to the UN Security Council requesting urgent assistance from the international community.⁸⁷ In its second letter, Iraq explained that – and for what reasons – it had requested the US to lead international efforts to strike Daesh sites and military strongholds, “with our express consent”.⁸⁸ Seventy-six states and five organizations participate in the coalition with a core group of about thirty countries to which Sweden belongs.⁸⁹

In 2019 Sweden renewed its commitment to participate in the coalition for the sixth time since its original decision in 2014.⁹⁰ The Swedish force participates in the military training operation which is carried out by the global coalition against Daesh, the government bill says.⁹¹ On the subject of the tasks of the Swedish troops, the government bill states further that the Swedish forces will contribute to the execution of the training operation through protection and guard at all the coalitions’ bases as well as through training and guidance to the Iraqi defence forces in Iraq, with a

⁸⁶ Cf. regeringens proposition 2014/15:104 Svenskt deltagande i den militära utbildningsinsatsen i norra Irak, 9 april 2015 (government bill 2014/15:104 Swedish participation in the military training operation in northern Iraq, 9 April 2015), p. 4.

⁸⁷ UN Security Council, S/2014/440, Letter dated 25 June 2014 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General; UN Security Council, S/2014/691, Letter dated 20 September 2014 from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council.

⁸⁸ UN Security Council, S/2014/691, *ibid.*

⁸⁹ Regeringens proposition 2019/20:28 Fortsatt svenskt deltagande i den militära utbildningsinsatsen i Irak, 10 oktober 2019 (government bill 2019/20:28 Continued Swedish participation in the military training operation in Iraq, 10 October 2019), p. 6.

⁹⁰ Government bill 2019/20:28, *ibid.*; government bill 2014/15:104, *supra* note 86; Regeringens proposition 2018/19:6 Fortsatt svenskt deltagande i den militära utbildningsinsatsen i Irak, 18 oktober 2018 (government bill 2018/19:6 Continued Swedish participation in the military training operation in Iraq, 18 October 2018); regeringens proposition 2017/18:31 Fortsatt svenskt deltagande i den militära utbildningsinsatsen i Irak, 26 oktober 2017 (government bill 2017/18:31 Continued Swedish participation in the military training operation in Iraq, 26 October 2017); regeringens proposition 2016/17:127 Fortsatt svenskt deltagande i den militära utbildningsinsatsen i Irak, 21 mars 2017 (government bill 2016/17:127 Continued Swedish participation in the military training operation in Iraq, 21 March 2017); regeringens proposition 2016/17:32 Fortsatt svenskt deltagande i den militära utbildningsinsatsen i Irak, 27 oktober 2016 (government bill 2016/17:32 Continued Swedish participation in the military training operation in Iraq, 27 October 2016); regeringens proposition 2015/16:40 Fortsatt svenskt deltagande i den militära utbildningsinsatsen i norra Irak, 5 november 2015 (government bill 2015/16:40 Continued Swedish participation in the military training operation in northern Iraq, 5 November 2015).

⁹¹ Government bill 2019/20:28, *supra* note 89, pp. 1, 11.

view to contributing to their capacity to resist and defeat Daesh.⁹² It is specified that the Swedish personnel will not have combat tasks.⁹³

The number of Swedish troops planned to be in place in Iraq is set to a maximum of 70.⁹⁴ In case the situation so demands it will be possible to add another 150 persons as a maximum in the form of a temporary reinforcement and evacuation force.⁹⁵

As the international legal basis of the international military operation in Iraq and the Swedish contribution thereto, the Swedish government invokes in 2019 in its latest government bill, firstly, the Iraqi invitation to the international community to assist it with support in order to fight Daesh and, secondly, the bilateral agreements concluded between Iraq and the participating states concerning the tasks of the forces among other things.⁹⁶ On the right of the Swedish troops to use force, the Swedish government states that this right is based on the consent of Iraq and on any restrictions that are either imposed by Iraq or follow from international law, including human rights and international humanitarian

⁹² *Ibid.*, pp. 1, 11-12.

⁹³ *Ibid.*, pp. 1, 13. Interestingly, from a Swedish perspective, in the two initial government bills relating to the Swedish contribution to the OIR, it was laid down that the Swedish troops shall “in principle” not have armed tasks within the operation (government bill 2014/15:104, *supra* note 86, p. 9; government bill 2015/16:40, *supra* note 86, p. 9). The condition “in principle” disappeared in the subsequent bills. The expressions “armed tasks”, “offensive tasks” and “combat tasks” seem to have been used interchangeably (*cf.* government bill 2014/15:104, *supra* note 86, p. 9; government bill 2015/16:40, *supra* note 86, p. 9; government bill 2017/18:31, *supra* note 90, p. 14; government bill 2018/19:6, *supra* note 90, p. 12; government bill 2019/20:28, *supra* note 89, p. 13). Also, as in the case of Afghanistan above (*see supra* note 49), in the first two bills on the Swedish contribution to the OIR, the risk of the Swedish personnel being subject to an “armed attack” was mentioned (government bill 2014/15:104, *supra* note 86, p. 9; government bill 2015/16:40, *supra* note 90, p. 10) whereas and for no obvious reason in the bill of 2016 and following this has been changed into “armed violence” (government bill 2016/17:32, *supra* note 90, p. 10; government bill 2016/17:127, *supra* note 90, p. 12; government bill 2017/18:31, *supra* note 90, p. 14; government bill 2018/19:6, *supra* note 90, p. 13; 2019/20:28, *supra* note 89, p. 13).

⁹⁴ Government bill 2019/20:28, *supra* note 89, pp. 1, 11.

⁹⁵ *Ibid.*; initially the corresponding figures were 35 and 120 (government bill 2014/15:104, *supra* note 86, pp. 1, 9; government bill 2015/16:40, *supra* note 90, pp. 1, 8-9).

⁹⁶ Government bill 2019/20:28, *supra* note 89, p. 8, *see also* pp. 1, 3, 12; UN SC S/2014/440, UN SC S/2014/691; and the original government bill 2014/15:104, *supra* note 86, p. 8. Through correspondence, the government has agreed with Iraq that the Swedish personnel enjoys the status equal to the one of administrative and technical personnel under the Vienna Convention on Diplomatic Relations (1961) (Government bill 2019/20:28, *supra* note 89, p. 8).

law.⁹⁷ There are no common rules of engagement for the international coalition acting in Iraq.⁹⁸

The Swedish government does invoke resolutions adopted by the UN Security Council as a background to what it then proclaims is the international legal basis of the international military operation in Iraq.⁹⁹ In the government bill, the reasoning on the international legal basis for the operation is opened by the statement that the Security Council “in several resolutions” has condemned the actions of the Daesh and the Security Council has found that Daesh and other groups constitute a threat to international peace and security.¹⁰⁰ The government bill, further, refers to Security Council resolution 2249 (2015) according to which those member states who have the capacity are called upon to take the necessary measures in Iraq, among other territories, in accordance with international law, in particular the UN Charter, as well as human rights, refugee law and international humanitarian law, in order to strengthen and coordinate their efforts to prevent and suppress terrorist actions committed by Daesh.¹⁰¹ The resolutions of the UN Security Council are not directly invoked in support of the Swedish contribution to the international operation in Iraq, however.

3.2.2 *Effective control*

In the most recent bill to parliament of 2019 the Swedish government states that the situation in Iraq has become gradually stabilized after Daesh’s loss of control over the territory which the terror network previously controlled in the country.¹⁰² This finding would seem to indicate that the Iraqi government now controls the entire territory of the country whereas before it obviously did not. The government continues to say that a better security situation and a peaceful transition period after

⁹⁷ Government bill 2019/20:28, *supra* note 89, p. 8.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*; UNSC resolution 2249 (2015) op. para. 5: the Security Council “[c]alls upon Member States...to take all necessary measures...on the territory under the control of ISIL also known as Da’esh...and to eradicate the safe haven they have established over significant parts of Iraq and Syria”; before that, in operative para. 1 the Security Council “[u]nequivocally condemns...the horrifying terrorist attacks perpetrated by ISIL also known as Daesh...in Sousse...Ankara...over Sinai...in Beirut and...in Paris and notes it has the capability and intention to carry out further attacks and regards all such acts of terrorism as a threat to peace and security”.

¹⁰² Government bill 2019/20:28, *supra* note 89, p. 4.

the parliamentary elections in 2018 has led to a cautious optimism concerning the future after many years of conflict.¹⁰³ However, there are still big challenges on the road to long-term peace and stability, the Swedish government finds.¹⁰⁴

On the subject indirectly of territorial control, the Swedish government finds that even after the defeat of Daesh at the end of 2017, voids which occur in areas with weak central control and unclear division of responsibility between the Iraqi military, Kurdish forces and local militias, are used by members of Daesh.¹⁰⁵ Thus, in some areas control by the government is still weak. At the same time, it is noted in the government bill that the relations between the federal government and the provisional government in the autonomous region Iraqi Kurdistan has become considerably better during the last year.¹⁰⁶

Still, despite a gradual stabilization of the security situation, Iraq has been negatively affected by the continued unstable situation in the region during the past year (2019), the Swedish government writes.¹⁰⁷ The tensions between Washington and Teheran have had negative consequences for the security situation, the bill finds.¹⁰⁸ Iraq finds itself in a difficult situation, the Swedish government observes, due to the country's mutual dependence on the US and Iran.¹⁰⁹

In the first government bill on the Swedish contribution to the OIR, of 2015, the government writes that in the summer of 2014 Daesh took control over large parts of the territory of Iraq.¹¹⁰ Supported by the US-led OIR, the Iraqi defence forces consisting, according to the Swedish bill, of Iraqi security forces and Kurdish Peshmerga troops, have been able to take back parts of the territories occupied by Daesh, however Daesh is still in control of the city of Mosul and large parts of the Anbar province in Western Iraq, among other things, according to the govern-

¹⁰³ *Ibid.*, pp. 4-5.

¹⁰⁴ *Ibid.*, p. 5.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, p. 6.

¹⁰⁷ *Ibid.*, p. 5.

¹⁰⁸ *Ibid.*, p. 6.

¹⁰⁹ *Ibid.*

¹¹⁰ Government bill 2014/15:104, *supra* note 86, p. 5. The following government bill talks of a third of the territory of Iraq having been taken over by Daesh (government bill 2015/16:40, *supra* note 90, p. 4).

ment bill of 2015.¹¹¹ Thus, it is obvious that the Iraqi government was not in effective control of the entire territory of Iraq.

3.2.3 *Civil war*

At the time of the drafting of the latest bill by the Swedish government there had obviously been an armed conflict in Iraq. The Swedish government finds that after an extensive military campaign led by the Iraqi defence forces and supported by the global coalition against Daesh, the Iraqi government declared victory over Daesh in 2017.¹¹²

The occupation by Daesh of large parts of Iraq in 2014 and the ensuing military efforts by Iraq supported first by the US only and then by the US-led coalition to push back Daesh is described in the first Swedish government bill, as we have seen.¹¹³ The government bill talks of the “armed conflict” and Daesh’s advance forcing more than two million people to flee their home in Iraq.¹¹⁴ Also, the bill talks of the military multinational operation being carried out in Iraq and Syria by the US-led coalition, led by the US central command in Tampa, Florida.¹¹⁵ The bill also mentions “the ‘military’ campaign” against Daesh.¹¹⁶

Thus, there is no doubt that an armed conflict, of a non-international nature, prevailed in Iraq when the Iraqi government extended its invitation to the international community to intervene. The Swedish government obviously does not consider the reigning armed conflict to constitute an obstacle to the Iraqi government’s authority to extend a valid invitation to other countries to contribute military troops.

In the second Swedish government bill on OIR, approved late in 2015 by the Swedish parliament, the Swedish government states that the international coalition against Daesh in Iraq continuously carries out air raids against Daesh.¹¹⁷ The air raids have been a prerequisite for the Iraqi defence forces and their allied militias – so called popular mobilization units, according to the bill – being able to succeed in liberating parts of

¹¹¹ Government bill 2014/15:104, *supra* note 86, p. 5; see also bill 2015/16:40, *supra* note 90, p. 5).

¹¹² Government bill 2019/20:28, *supra* note 89, p. 5.

¹¹³ Government bill 2014/15:104, *supra* note 86, pp. 5, 7.

¹¹⁴ *Ibid.*, p. 5.

¹¹⁵ *Ibid.*, p. 7.

¹¹⁶ *Ibid.*, p. 5.

¹¹⁷ Government bill 2015/16:40, *supra* note 90, p. 5.

Iraq from Daesh.¹¹⁸ The second government bill also talks of the “armed conflict” in Iraq.¹¹⁹

3.2.4 Democracy

Describing the situation in Iraq the Swedish government bill specifically mentions the parliamentary elections in 2018.¹²⁰ Democracy is not discussed as such in the government bill, but some important aspects of the potentially democratic governance of Iraq are. First, the Swedish government points out that in order to fight Daesh and other future similar groups in the long term the root causes of the conflict must be dealt with.¹²¹ Efforts to improve the distribution of resources between Iraq’s ethnic and religious groups are particularly important, the Swedish government thinks.¹²² The development of Daesh is fundamentally a symptom of political discontent the Swedish government observes.¹²³ The discontent concerns not least political and economic marginalization, deficient social services, corruption and unemployment, the Swedish government writes.¹²⁴ The discontent and its reasons are not presented by the Swedish government as factors affecting the legal validity of the Iraqi invitation, but still would seem to show that Sweden considers a democratic development to constitute a crucial aspect of the eventual solution of the conflict in Iraq.

There was a new Iraqi government in October 2018 after an extended period of negotiations, the Swedish government says.¹²⁵ Filling the posts of Minister of Defence, Minister of the Interior and Minister of Justice was particularly difficult and took until the following summer, according to the bill, and in October 2019 the post of Minister of Education was still empty.¹²⁶ There are no women in the Iraqi government, the bill points out.¹²⁷ The vacancies in the government have led to a domestic political deadlock and have delayed the work with promised reforms.¹²⁸

¹¹⁸ *Ibid.*, p. 5.

¹¹⁹ *Ibid.*, p. 6.

¹²⁰ Government bill 2019/20:28, *supra* note 89, p. 4.

¹²¹ *Ibid.*, p. 5.

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*, p. 6.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

The situation of democracy in Iraq is briefly touched upon and merely in indirect terms in the first Swedish government bill on OIR. Illustrating that the state of democracy is precarious, probably, the Swedish government states that the military campaign against Daesh must be completed by an inclusive political process making Iraq's different religious and ethnic groups feel involved and secure in society.¹²⁹ This is the key to a democratic and stable Iraq, the Swedish government bill states.¹³⁰ The development of Daesh is a result of the conflict in Syria as well as the labile political situation in Iraq, the bill finds.¹³¹ Military measures against Daesh must be completed by country specific political processes for Syria and Iraq, the bill continues.¹³² It would seem as if the state of Iraq at the time of the initial Swedish government bill was not democratic except for its general elections.

3.2.5 Human rights

The latest Swedish government bill on the continued Swedish participation in OIR says little on the subject of human rights. The bill mentions the serious and extensive violations of human rights and IHL by Daesh.¹³³ The bill emphasizes the importance of bringing persons suspected of international crimes before justice.¹³⁴ Bringing suspected international criminals to court will be a key issue in the time to come, the Swedish government writes.¹³⁵

The corruption prevailing in Iraq is mentioned a couple of times in the bill.¹³⁶ The fight against corruption is pointed out as one of two important factors deciding the long-term stability of Iraq, the other one according to the Swedish government being offering more equal living conditions to the Iraqi population.¹³⁷

Independently of the proceedings relating to the government bill to parliament, the Swedish Ministry for Foreign Affairs published a report tak-

¹²⁹ Government bill 2014/15:104, *supra* note 86, p. 5.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ Government bill 2019/20:28, *supra* note 89, p. 5.

¹³⁴ *Ibid.*, pp. 5, 7.

¹³⁵ *Ibid.*, p. 5.

¹³⁶ *Ibid.*, pp. 5-6.

¹³⁷ *Ibid.*, p. 6.

ing stock of the situation of human rights in Iraq in 2019.¹³⁸ The report paints a very dark picture of the situation of human rights in Iraq. The report states in the introductory summary that the situation pertaining to human rights, democracy and rule of law in Iraq is very serious.¹³⁹ In addition to the challenges of the reigning post-conflict phase, Iraq also has long-term structural problems, according to the report.¹⁴⁰ The greatest challenges are the high level of violence in society, the weak rule of law, inequality and corruption.¹⁴¹ During Sweden's membership in the UN SC in 2017-2018 Sweden continuously raised the question of the situation of human rights in Iraq including the importance of reforms of the judicial sector and of inclusive political solutions, the report states.¹⁴² Still, the apparent deficiencies in the respect for human rights were not considered by Sweden to weaken the authority of the Iraqi government to invite foreign military troops to its territory.

On the subject of human rights in the first Swedish government bill on the Swedish contribution to the OIR, the focus is rather on the violations of human rights by Daesh rather than on any potential violations by Iraq.¹⁴³ The government bill refers to serious, systematic and extensive violations of human rights and violations of international humanitarian law by Daesh.¹⁴⁴ In the second Swedish government bill on OIR, it is stated that also the armed militias fighting alongside the Iraqi government are reported to have committed violations and reprisals against civilians in the liberated areas.¹⁴⁵ The first Swedish government bill also points out that the UN Human Rights Council has called on the government of Iraq to promote and protect human rights.¹⁴⁶ Sweden's development aid to Iraq, furthermore, is focused on the promotion of democracy, human rights, equality between women and men, anticorruption and support to civil society organizations, according to

¹³⁸ Iraq – Human rights, democracy and the rule of law: the situation on 30 June 2019 (in Swedish, *Irak - Mänskliga rättigheter, demokrati och rättsstatens principer*. Situationen per den 30 juni 2019); <www.regeringen.se/rapporter/2019/12/manskliga-rattigheter-demokrati-och-rattsstatens-principer-i-irak/>, visited on 2 June 2020.

¹³⁹ *Ibid.*, p. 1.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*, at p. 18.

¹⁴³ Government bill 2014/15:104, *supra* note 86.

¹⁴⁴ *Ibid.*, pp. 5-6, 9.

¹⁴⁵ Government bill 2015/16:40, *supra* note 90, p. 5.

¹⁴⁶ Government bill 2014/15:104, *supra* note 86, p. 6.

the initial bill.¹⁴⁷ Indirectly, this could be understood to illustrate that the existing human rights promotion and protection was weak when Sweden decided to favourably answer the invitation to contribute troops by the Iraqi government.

3.3 Task Force Takuba

3.3.1 Mandate

In the third and last Swedish case that will be studied here, Sweden plans to contribute troops to the French-led Task Force Takuba in Mali and perhaps also in Niger.¹⁴⁸ In the beginning of 2020 the Swedish government proposed in a bill to parliament that 150 Swedish troops be sent to Mali at the invitation of the Malian government in order to participate in the operation Task Force Takuba.¹⁴⁹ The Swedish troops will also operate on the territory of the neighbouring Niger if an invitation is extended by the government of Niger, according to the bill.¹⁵⁰ If the situation so demands, the Swedish force shall be reinforced with up to 100 persons, the government bill proposes in its bill.¹⁵¹ The Swedish troops in the Task Force Takuba are planned to stay in Mali until the end of 2021.¹⁵² The multinational Task Force Takuba makes up part of the French Operation Barkhane which has functioned in Mali since 2014 and replaced the French Operation Serval which was initiated in Mali in 2013.¹⁵³ The mission of Operation Barkhane is to fight armed terrorist groups in the Sahel region.¹⁵⁴ Due to a notable increase in the activities of the armed extremist groups including large attacks against military as well as civilian targets in the border area between Mali, Burkina Faso and Niger, France decided to include Task Force Takuba in the existing Operation Bar-

¹⁴⁷ *Ibid.*, pp. 6-7.

¹⁴⁸ Regeringens proposition 2019/20:86 Svenskt deltagande i militär insats för stärkt säkerhet i Mali, 12 mars 2020 (government bill 2019/20:86 Swedish participation in military operation for enhanced security in Mali, 12 March 2020).

¹⁴⁹ *Ibid.*, p. 1; the decision by parliament to approve of the proposal of the government was taken on 11 June 2020 (Riksdagens snabbprotokoll 2019/20:137, 11 juni 2020 (Parliament's rapid protocol, 2019/20:137, 11 June 2020), § 8, p. 41).

¹⁵⁰ *Ibid.*, pp. 1, 9-11; such an invitation has now been received (Parliament's rapid protocol, *ibid.*, § 4, address 2, p. 3).

¹⁵¹ Government bill 2019/20:86, *supra note* 148, pp. 1, 11-12.

¹⁵² Government bill 2019/20:86, *supra note* 148, p. 10, states about twelve months; in the debate in parliament the Minister for Defence Mr Peter Hultqvist stated that a mandate is sought until 31 December 2021 (Parliament's rapid protocol, 2019/20:137, 11 June 2020, § 4, address 21 and 23).

¹⁵³ Government bill 2019/20:86, *supra note* 148, p. 2.

¹⁵⁴ *Ibid.*, p. 4.

khane, the Swedish government writes in the bill.¹⁵⁵ The task of the Task force Takuba will be to assist the Malian security forces in fighting armed terrorist groups on Malian territory, the Swedish government writes further.¹⁵⁶ It is not mentioned in the government bill, but the total number of troops in Task Force Takuba is going to amount to about 500, according to other sources.¹⁵⁷

The international legal basis for the Swedish participation in Task Force Takuba is the invitation by Mali in the form of a letter from the President of Mali to Sweden, the government bill states.¹⁵⁸ The right to use force, the Swedish government bill continues, is based on the consent of Mali and on any potential limitations that may be decided by Mali as well as on any limitations which may follow from international law including human rights and international humanitarian law.¹⁵⁹ This time the actual active use of force by the Swedish troops would seem likely as opposed to the cases of Afghanistan and Iraq discussed earlier.

Also, the Swedish government bill adds, without however directly invoking this as an international legal basis for the operation, the UN Security Council has in several resolutions found that the security situation in Mali constitutes a threat to international peace and security.¹⁶⁰ The UN Security Council has also expressed that the terrorist organizations' activities in Mali and Sahel constitute a threat to peace and security within and outside the region, the bill continues.¹⁶¹

The international legal basis of the French-led Operation Barkhane, as well as the preceding French-led Operation Serval, is also an invitation by Mali, the Swedish government bill points out.¹⁶² The operations by the French forces have been welcomed by the UN Security Council the

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *See supra* note 23.

¹⁵⁸ Government bill 2019/20:86, *supra* note 148, p. 8.

¹⁵⁹ *Ibid.*, p. 9.

¹⁶⁰ *Ibid.*; *see* UNSC resolution 2484(2019); UNSC resolution 2480(2019); UNSC 2432(2018); UNSC resolution 2423(2018); UNSC resolution 2374(2017); UNSC resolution 2364(2017); UNSC resolution 2295(2016); UNSC resolution 2227(2015); UNSC resolution 2164(2014); UNSC resolution 2100(2013); UNSC resolution 2085(2012); UNSC resolution 2071(2012).

¹⁶¹ Government bill 2019/20:86, *supra* note 148, p. 9; *see ibid.*

¹⁶² Government bill 2019/20:86, *supra* note 148, p. 9.

government bill says.¹⁶³ In addition, the French forces have a particular Security Council mandate to intervene, after a request by the UN Secretary-General, in order to support Minusma (Mission multidimensionnelle intégrée des Nations Unies pour la stabilisation au Mali) when the UN operation is subject to imminent serious threat, according to the government bill.¹⁶⁴ Again, the Security Council resolutions are used as an indirect international legal support for the Swedish participation in Task Force Takuba. There is no authorization by the UN Security Council except as we saw for French forces under certain circumstances to support the Minusma (in Mali).¹⁶⁵

On the mandate of the Task Force Takuba, the Swedish government bill specifies that the task of the force will be to assist the Malian security forces in fighting armed terrorist groups on Malian territory through advice, support and joint operations with the Malian security forces.¹⁶⁶ The Task Force Takuba will be led by the commander of Operation Barkhane.¹⁶⁷

The main task of the Swedish force will be to support, rescue and reinforce ongoing operations within Task Force Takuba, according to the government bill.¹⁶⁸ Thus what is at issue is a central function for the implementation of the operation, the government bill observes.¹⁶⁹

Beside the main task, the Swedish troops will also be able to contribute to the implementation of the mandate of Task Force Takuba within existing resources and abilities, the bill continues somewhat vaguely.¹⁷⁰ One example of the latter kind of tasks may be escort tasks in order to sup-

¹⁶³ *Ibid.*; see UNSC resolution 2423(2018), UNSC resolution 2374(2017); UNSC resolution 2364(2017); UNSC resolution 2295(2016), UNSC resolution 2227(2015), UNSC resolution 2164(2014).

¹⁶⁴ Government bill 2019/20:86, *supra* note 148, pp. 6, 9; UNSC resolution 2100(2013) operative para. 18. Sweden contributes troops to Minusma since 2015; the Swedish contribution is briefly described in the bill (2019/20:86, *supra* note 148, p. 8). Minusma in its turn supports Operation Barkhane and the G5 Sahel Joint Force with certain logistics when needed, the Swedish government bill says (*ibid.*, p. 6). Minusma and Operation Barkhane has a continuous exchange which includes necessary coordination, information exchange, and support within the operations' respective mandates and established working methods, according to the Swedish bill (2019/20:86, *ibid.*, p. 7).

¹⁶⁵ *Cf. supra* note 164, government bill 2019/20:86, *supra* note 148, p. 9.

¹⁶⁶ Government bill 2019/20:86, *supra* note 148, p. 10.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

port the activities of the operation, according to the bill.¹⁷¹ Furthermore, the Swedish force can intervene in case of imminent threat from armed terrorist groups against the other operations in the area relying on an international legal basis, such as Minusma, G5 Sahel's Joint Force, or other operations initiated by the UN, the EU or led by EU member states, the bill continues.¹⁷² Thus, the Swedish troops will potentially be very active, with a broad range of different tasks in a wide geographical area (Mali in its entirety and potentially Niger) and in many different operational contexts. According to the threat assessment by the Swedish armed forces of the Mali region and border area where the Swedish troops are supposed to operate, the level of threat of terrorism and armed violence is high.¹⁷³

The international legal basis for the Swedish troops to be entitled to operate also in Niger would be an invitation by the government of Niger which is yet lacking, the bill says.¹⁷⁴ The bill explains that in order to save time the government bill also comprehends the issue of sending a Swedish armed force to Niger despite the current lack of an invitation from Niger.¹⁷⁵

3.3.2 Effective control

The government bill directly and in relative detail, compared with the government bills on Afghanistan and Iraq discussed above, addresses the question of effective control over population and territory by the government of Mali.¹⁷⁶

The situation in Mali has deteriorated during the recent year, above all in the central parts but also in the northern parts of the country, the Swedish government bill says.¹⁷⁷ The country is characterized by security related, political, economic and humanitarian challenges.¹⁷⁸ And more precisely, with a view to (lacking) effective control, the presence of the

¹⁷¹ *Ibid.*

¹⁷² *Ibid.* The G5 Sahel consists of Burkina Faso, Mali, Mauretania, Niger and Chad and was established in 2014; the G5 Sahel and its Joint Force are briefly described in the Swedish bill, *ibid.*, pp. 7-8).

¹⁷³ Government bill 2019/20:86, *supra* note 148, p. 12.

¹⁷⁴ *Ibid.*, p. 9.

¹⁷⁵ *Ibid.*, p. 11.

¹⁷⁶ Government bill 2019/20:86, *supra* note 148.

¹⁷⁷ *Ibid.*, p. 4.

¹⁷⁸ *Ibid.*

state is limited, not least in central and northern Mali, with far-reaching consequences for the living conditions of the people.¹⁷⁹

The border area between Mali, Niger and Burkina Faso, further, is characterized by weak presence of the respective states which has made possible the use by extremist groups of local discontent for recruitment, the bill adds.¹⁸⁰ Groups with connections to Daesh are active in the area, which has led to an increased number of terror attacks including against the civilian population, according to the government bill.¹⁸¹ Part of the border area functions as a transport route for legal as well as illegal products, the bill states.¹⁸²

There are also more indirect hints in the bill that the territorial control is wanting. Discussing the operations of other international actors in Mali, the government bill mentions, for instance, the EU training mission (EUTM Mali) whose task it is to advise and support the defence forces of Mali in order, in the words of the Swedish bill, to reestablish the control by the Malian state over its territory.¹⁸³ Conversely, this would seem to imply that currently the Malian state, i.e. probably the government, is not in control of its territory.

Also, when the Swedish government argues in favour of the Swedish contribution to Task Force Takuba in the government's bill to parliament, the Swedish government points out that the Task Force Takuba is needed and demanded in order to avoid increased terrorist activity in the region which would make it more difficult for the Malian authorities to stabilize the area and would make it more difficult to provide the civilian population with basic social services.¹⁸⁴ Furthermore, the Swedish government points out that both Minusma's and Mali's military capacities are limited and strained.¹⁸⁵ Both arguments used by the Swedish government would seem to confirm that the control of the territory by the Mali government is lacking.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*, p. 5.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ *Ibid.*, p. 7. Sweden contributes personnel to EUTM Mali since 2013 and to the other EU operation in Mali, the civilian advisory mission EUCAP Sahel Mali, since 2015 (*ibid.*, pp. 8, 11).

¹⁸⁴ *Ibid.*, p. 11.

¹⁸⁵ *Ibid.*

3.3.3 Civil war

The situation in Mali is not discussed in terms of civil war or armed conflict in the Swedish government bill, but given the low degree of territorial control by the Malian government among other factors, it is not surprising that the security situation is very unstable. The possibility of a resumed armed conflict does not seem remote judging from the government bill.

Since long there is a tense relationship between the people in the south of Mali and different minorities in the north, among them the Tuaregs, the bill states.¹⁸⁶ Periodically, these disagreements have turned into violence and other kinds of clashes also occur between peoples in the Sahel region including Mali, the government bill continues.¹⁸⁷

The security situation has been further complicated in recent years by an increase in terrorism and criminal activities such as illegal trade in weapons, drugs and humans.¹⁸⁸ The lack of state presence creates room for the violent extremist groups' activity, the government bill states.¹⁸⁹ Terrorist attacks occur regularly directed against civilians as well as Malian security forces and international civilian and military presence, the government bill observes.¹⁹⁰

The number of conflicts between different population groups increases, among other things due to fights over shrinking natural resources, according to the bill.¹⁹¹ The worsened security situation in Mali contributes to instability in the surrounding region, the government bill continues.¹⁹²

3.3.4 Democracy

The Swedish government bill on Task Force Takuba indirectly touches on the issue of democracy. The bill mentions presidential and parliamentary elections having been held in Mali, or not, in recent years.¹⁹³ The bill notes that central parts of the peace agreement of 2015 concluded after

¹⁸⁶ *Ibid.*, p. 4.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*, pp. 4-5.

¹⁹⁰ *Ibid.*, p. 5.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*, pp. 5-6.

the conflict in Mali has not been implemented, for instance as concerns political and institutional reforms.¹⁹⁴

3.3.5 Human rights

The situation for human rights in Mali is still very worrying, the government bill finds.¹⁹⁵ Violations and abuse of human rights related to the security situation are reported regularly, the bill states.¹⁹⁶ The violations include among other things extrajudicial executions, torture or other degrading treatment, sexual violence and arbitrary detentions.¹⁹⁷ Violations of human rights are reported to having been committed by among others the Malian security forces, the Swedish government bill observes,¹⁹⁸ i.e. the forces that Task Force Takuba is supposed to assist. Similar problems have been reported concerning the G5 Sahel Joint Force, the government bill notes.¹⁹⁹ Impunity is widespread, the bill continues.²⁰⁰

As was noted earlier, the government bill points out that problems resulting from the weak state presence in parts of Mali constitutes a challenge to the rule of law.²⁰¹ Since 2013, the bill notes, there is an independent expert, appointed by the UN, with the task to support the government of Mali in its efforts to promote and protect human rights in the country.²⁰² The UN Security Council has also instituted a sanctions regime for Mali, according to the bill.²⁰³ The sanctions regime includes travel restrictions and freezing measures against persons and entities who threaten peace, security and stability in the country by for instance obstructing the delivery of humanitarian assistance to or in Mali, by committing acts that violate international human rights law or international humanitarian law, or by using children in violation of applicable international law, in the context of the armed conflict in Mali.²⁰⁴

¹⁹⁴ *Ibid.*, p. 5.

¹⁹⁵ *Ibid.*, p. 6.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² *Ibid.*, p. 7.

²⁰³ *Ibid.*; UNSC resolution 2374 (2017).

²⁰⁴ Government bill 2019/20:86, *supra* note 148, p. 7; UNSC resolution 2374 (2017) op. para. 8 (e)-(g).

Furthermore, on the issue of human rights and international humanitarian law, the UN has established a commission of inquiry for Mali with the task to investigate serious crimes against human rights and humanitarian law committed between 1 January 2012 and 19 January 2018.²⁰⁵ A Swedish ambassador chairs the commission.²⁰⁶ After the referral by the Mali government, a preliminary investigation concerning war crimes committed on Malian territory since January 2012 was initiated by the International Criminal Court (ICC) Prosecutor, the government bill continues.²⁰⁷ One person has been sentenced to prison for war crimes and a further person is currently charged with war crimes and crimes against humanity.²⁰⁸

On the subject of Sweden's development aid to Mali, which is also briefly dealt with in the government bill on the Swedish contribution to the Task Force Takuba, the government bill says that part of the development aid goes to strengthening democracy and gender equality and strengthening respect for human rights.²⁰⁹ In sum, it would seem as if democracy is weak and likewise the protection of human rights in Mali. None of this is brought up by the Swedish government as problematic with respect to the authority of the Malian government to invite foreign military assistance, however.

4. Conclusion: The Swedish position

In this section the findings of the above case studies will be compared and conclusions will be drawn as to the Swedish position on the authority to consent to intervention as it appears from the government bills presented to parliament in the respective cases. In all three cases – Afghanistan, Iraq and Mali – there has been an invitation issued by the government in place to provide military assistance.

In all three cases there were reasons for the Swedish government in its bills to parliament to comment explicitly or implicitly on factors poten-

²⁰⁵ Government bill 2019/20:86, *supra* note 148, p. 7.

²⁰⁶ *Ibid.*, p. 7.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*; *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15, judgment of 27 September 2016; *The Prosecutor v. Al-Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, ICC-01/12-01/18.

²⁰⁹ Government bill 2019/20:86, *supra* note 148, p. 8.

tially relevant to the authority of the respective governments to consent to intervention.

With regard to effective control over territory and population the bills describe a situation in the different countries of varying lack of control. In none of the cases is the government in effective control of the entire territory. In Iraq the situation got better from the point of view of the territorial control by the government when Daesh was defeated at the end of 2017. When Sweden joined the OIR, Daesh had taken control over large parts of the territory of Iraq, according to the Swedish government bill.²¹⁰ In Afghanistan and Mali the effective control of the territory by the government is limited, judging from the bills.²¹¹ The lacking effective control of the territory by the governments which Sweden has been invited to assist is not considered by the Swedish government as a problem with respect to the authority of the governments to make the invitation.

Closely related to the issue of territorial control is the issue of civil war potentially raging in the country. In all three cases there is or has recently been an armed conflict. In the case of Afghanistan, the Swedish government still explicitly talks of the armed conflict raging in the country.²¹² In the case of Iraq an armed conflict was ongoing when Sweden joined the OIR. In Mali there has been an armed conflict but the current situation although unstable is not characterized as one of armed conflict in the Swedish government bill. It can be noted that the UN Security Council sanctions regime referred to in the government bill on Mali talks of the armed conflict in Mali.²¹³ Nothing in the Swedish practice so far would indicate that Sweden would consider that the authority of a government to invite foreign military assistance would cease in the case of a civil war being fought in the country concerned.

On the subject of democracy in the country the government of which is extending the invitation, it would not seem judging from the government bills as if the Swedish demands are very high. Since issues relating to democracy are discussed in the bills and on occasion in some detail, the impression conveyed by the bills is that the Swedish government at least

²¹⁰ *Supra* note 110 *et seq.*

²¹¹ *Supra* note 42 *et seq.*; note 176 *et seq.*

²¹² *Supra* note 48.

²¹³ *Supra* note 204; UNSC resolution 2374 (2017) op. para. 8 (e)-(g).

considers democratic governance to be important in theory. In all three cases studied in this article there are general elections, so from that perspective the countries could be labelled democratic in a minimalist sense of the term. Interestingly, with respect to Iraq, the Swedish government seems to explain the development of Daesh as fundamentally a result of lacking democracy in a more genuine substantive sense.²¹⁴

There is nothing in the government bills indicating whether the Swedish government considers that the authority to invite foreign military assistance is dependent on the presence of at least a minimal degree of democracy in the country. Even if Sweden would not consider a democratic system of government to be a necessary condition for the authority of a government to extend a valid invitation, however, in practice it would be difficult for Sweden to answer favourably an invitation to provide military assistance if the government making the invitation lacked democratic aspirations completely.

On the subject of human rights, finally, the situation in all three countries studied here is presented as very serious in the Swedish government bills, in the case of Iraq complemented by a country report by the Swedish government.²¹⁵ In none of the cases is the government capable to respect and protect human rights. The lacking protection of human rights in the countries concerned does not seem to affect the authority of the governments to express a valid consent to foreign military intervention, according to the Swedish view.

In sum, if the government in place, probably after general elections, extends an invitation to other countries to provide military assistance it would have the authority to do so, according to Sweden. The possible presence of a civil war and lacking protection of human rights would not seem to weaken the authority of the inviting government, in the Swedish view, nor would the democratic governance reigning have to be anything but formal it seems, in order for the government to maintain its authority to invite.

²¹⁴ *Supra* note 121 *et seq.*

²¹⁵ *Supra* note 138.

